AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

4–6–94
Vol. 59 No. 66

federal register

Wednesday
April 6, 1994

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

OFFICIAL BUSINESS
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SECOND CLASS NEWSPAPER

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

4-6-94
Vol. 59 No. 66
Pages 16089–16510

federal register

Wednesday
April 6, 1994

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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

Food and Nutrition Service

7 CFR Parts 271, 272, 273 and 277

[Amdt. No. 316]

RIN 0584–AB45

Food Stamp Program; Administrative Improvement and Simplification Provisions From the Hunger Prevention Act of 1988

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This action places into final form an interim Food Stamp Program rule published on June 7, 1989. The interim rulemaking implemented Food Stamp Program provisions contained in the Hunger Prevention Act of 1988. The provisions of that Act addressed in this rule are: (1) Expanding the definition of disabled; (2) optional training for volunteer and non-profit organizations; (3) program information for low-income households; (4) expanding hardship criteria for waiving of in-office interview; (5) simplified applications; (6) joint applications; (7) verification; (8) federally authorized demonstration projects which cash out benefits in other assistance programs; (9) telephone access to certification offices in order to receive program information or to report changes; (10) annualizing self-employment income and expenses from farming; and (11) resource exclusions for farm households in transition from farming.

DATES: The provisions of this final action are effective and shall be implemented as follows: (i) Those provisions in § 271.2(11), § 272.1(g), § 273.2(b)(3), § 273.2(c)(5), § 273.2(f)(8)(i)(A), and § 273.2(f)(8)(ii), which adopt the interim provisions of the June 7, 1989 interim rule as final with some changes, are effective May 6, 1994 and must be implemented no later than September 5, 1994; (ii) all other provisions, which adopt the interim provisions as final with no changes, are effective as of July 1, 1989.

FOR FURTHER INFORMATION CONTACT: Judith M. Seymour, Eligibility and Certification Rulemaking Section, Certification Policy Branch, Program Development Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 305–2496.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12866

The Food and Nutrition Service is issuing this proposed rule in conformance with Executive Order 12866, and has determined that it is a "significant regulatory action." Based on information compiled by the Department, it has been determined that this action: (1) Would have an effect on the economy of less than $100 million; (2) would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (3) would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (4) would not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and (5) would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related notice(s) to 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*). William E. Ludwig, the Administrator of the Food and Nutrition Service (FNS), has certified that this final rule does not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected to the extent that they may be required to modify application forms, add telephone access information to their forms, and modify their verification procedures, however the effect on these entities will be minimal. Participants and applicants will be affected by changes to the application and to procedures in reporting medical expenses.

Paperwork Reduction Act

The reporting and recordkeeping burden associated with the certification and continued eligibility of food stamp households is approved by the Office of Management and Budget (OMB) under OMB control number 0584–0064.

The food stamp application, as approved under this OMB number, already contains several important verification statements to the household. The requirement in 7 CFR 273.2(c)(5) that State agencies develop a separate written general "Notice of Verification" versus including such information on the food stamp application or verbally conveying such information to households does not alter or change the methodologies used to determine the burden estimates approved under OMB control No. 0584–0064.

The requirements in 7 CFR 272.2(a), 272.4(d), and 272.5 relative to the submission and updating of an optional "Program information activities planning document" as part of a State agency's Plan of Operation have been submitted to OMB and have been approved under OMB approval number 0584–0083. This rule amends the table at 7 CFR 271.8 "Information collection/recordkeeping—OMB assigned control numbers" to reflect the OMB control number for the approval of burden associated with 7 CFR 272.5 of this rule.

The remaining provisions of this rule do not contain any reporting and/or recordkeeping requirements subject to approval by OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil

Justice Reform. This rule is intended to have preemptive effect with respect to any State or local law, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "effective date" paragraph of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of its provisions, all applicable administrative procedures must be exhausted. In the Food Stamp Program, the administrative procedures are as follows: (1) For program benefit recipients—State administrative procedures issued pursuant to 7 U.S.C. 2020(e)(10) and 7 CFR 273.15; (2) for State agencies—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 276.7 (for rules related to non-quality control (QC) liabilities); (3) for program retailers and wholesalers—administrative procedures issued pursuant to 7 U.S.C. 2023 set out at 7 CFR 278.8.

Background

On June 7, 1989 the Department published an interim rulemaking at 54 FR 24518, which implemented several of the food stamp provisions contained in the Hunger Prevention Act of 1988 (Pub. L. 100–435). Comments were solicited on the provisions of the interim rulemaking through August 7, 1989. The Department received 13 comment letters from State and local welfare agencies and public interest groups. All comments received were reviewed and considered but comments which were unclear or not pertinent to this rulemaking are not addressed in this preamble. For a full understanding of the provisions of this final rule, the reader should refer to the preamble of the interim rule. The provisions of the interim rule addressing specified procedures for claiming the medical deduction are not being finalized in this rule. Those provisions will be addressed in a forthcoming proposed rule entitled Simplification of Program Rules. Also, the provision of the interim rule addressing the delivery of benefits to households which apply after the fifteenth of the month is not finalized in this rule but will be placed in final form in the forthcoming Benefit Delivery final rule.

Definition of Elderly or Disabled—7 CFR 271.2

Section 350 of Public Law 100–435 added three categories to the definition of elderly or disabled persons. These categories are: (1) Recipients of interim assistance benefits pending the receipt of supplemental security income (SSI); (2) recipients of disability-related medical assistance benefits under title XIX of the Social Security Act (SSA); and (3) recipients of disability-based State general assistance benefits. Recipients of any of these benefits must be treated as disabled persons for food stamp purposes provided the eligibility to receive these benefits is based upon disability or blindness criteria which are at least as stringent as those under title XVI of the SSA. The Department amended paragraph (11) of the definition of "Elderly or disabled member" in 7 CFR 271.2 in the interim rulemaking to implement these provisions.

The Department received several comments suggesting changes to the interim rule language. One commenter stated that it was unclear in the rule language that receipt of interim assistance is involved in only the first of the three new categories of disabled member. The Department shares the commenter's concern and is amending paragraph (11) of the definition of "Elderly or disabled member" in 7 CFR 271.2 in this rulemaking to more clearly indicate that receipt of interim assistance as a condition of being defined as disabled for food stamp purposes is only required for those persons who are interim recipients of SSI.

Another commenter stated that it is unclear in the regulatory language if it is only disability-based State general assistance (GA) that must be based upon disability or blindness criteria at least as stringent as title XVI of the SSA, or whether the "at least as stringent" requirement applies to all three types of benefits. The Department interprets the law to require that the "at least as stringent" criteria apply to all three types of benefits. The regulatory language at 7 CFR 271.2 is being amended to clarify this point.

Another commenter pointed out that the definition of elderly or disabled persons in 7 CFR 271.2 needs to be revised to clearly state that it is State programs, not individual cases, which are to be measured by the "at least as stringent criteria as those under title XVI of the Social Security Act" requirement. The commenter argued that the regulation, as it is written in the interim rule, appears to state that the decision as to whether a GA program is based on criteria as stringent as those under title XVI of the Social Security Act can be made on a case-by-case basis. The commenter argued, however, that the intent of Public Law 100–435 was for this decision to be made on a State-by-State basis, not case-by-case. The Department agrees with the commenter and is amending paragraph (11) of the definition to clarify this point.

In order to further emphasize that State disability programs will be measured by criteria at least as stringent as those under title XVI, the Department has decided to further amend the definition of "Elderly or disabled member" in this final rule to include in paragraph (11) of the definition the specific citation to the SSA regulations interpreting title XVI of the SSA. Including this citation will provide State and local agencies with the information necessary to determine if an individual applying for food stamps meets the definition of elderly/disabled person as set forth in the Food Stamp Act.

Training—7 CFR 272.4(d)

Section 322(a) of Public Law 100–435 amended section 11(e)(6)(C) of the Act (7 U.S.C. 2020(e)(6)(C)) to specifically require that training for case workers provided by the State agency convey the goals of and methods for promptly and accurately certifying eligible households. The interim rule amended 7 CFR 272.4(d)(1)(i) to reflect this statutory language. A commenter did not think it was necessary for the Department to instruct State agencies to include this "function" of the Program in their training programs. As the Department explained in the preamble of the interim rule, this language was added to the regulations to emphasize Congressional concern in this area as reflected by Public Law 100–435. The Department is adopting the interim provisions at 7 CFR 272.4(d)(1)(i) as final without change.

In addition, pursuant to section 322(b) of Public Law 100–435, the interim rule added a new paragraph (d)(2) to 7 CFR 272.4 to allow State agencies, at their option, to offer training and assistance to persons working with certain volunteer or nonprofit organizations. In conjunction with this new option, the interim rule added a new paragraph (f) to 7 CFR 277.4 to provide that expenses (e.g., travel costs, lodging, or meals) of the persons working with the volunteer or nonprofit organization who receive this training and assistance would not be reimbursed. A commenter was concerned that the interim rule language appearing in 7 CFR 277.4(f) could be misinterpreted to mean that travel expenses of State employees who work with organizations that receive this training would not be allowable. The Department agrees that the language could create this misinterpretation. Accordingly, this final rule amends the interim provisions at 7 CFR 277.4(f) to

clarify this distinction. The interim provision at 7 CFR 272.4(d)(2) is adopted as final without change.

Information for Low-Income Households—7 CFR 272.5(c)

Section 204(a) and (b) of Public Law 100–435 and 7 CFR 272.5(c) of the interim rule allow State agencies, at their option, to inform low-income households about the availability, eligibility requirements, application procedures and benefits of the Food Stamp Program. Pursuant to section 204(b) of Public Law 100–435, the interim rule also amended 7 CFR 272.5(c) to specify that State agencies, at their option, may request reimbursement under 7 CFR part 277 for these outreach activities. The interim rule contained a number of conforming amendments necessitated by the addition of these outreach activity provisions. 7 CFR 272.5(c) was amended to specify that if a State agency elects to request reimbursement for Program informational materials directed at low-income households, those materials must meet any applicable bilingual requirements. 7 CFR 272.5(c) was further amended to require that prior to claiming such outreach costs, State agencies must receive approval from the Food and Nutrition Service (FNS) of an appropriate amendment to their State Plan of Operations. In addition, 7 CFR 272.2(a)(2) was amended to add a reference to the optional "Program informational activities plan" as a component of the State Plan of Operation, and 7 CFR 272.2(d)(1) was amended to add the requirement that State agencies submit the optional "Program informational activity" planning document to FNS for inclusion in their State Plan of Operation. Lastly, the interim rule added a conforming amendment to 7 CFR part 277, appendix A, to remove paragraph C(14) which was made obsolete.

One commenter felt the requirement of 7 CFR 272.2(a)(2) which mandates that State agencies submit a Program informational activities plan is burdensome. The commenter suggested that the budget justification contained on the form FNS–366A should be sufficient to obtain the prediction of expenditures. The Department disagrees. As State agencies begin to implement outreach under Public Law 100–435, the Department wishes to make sure that controls are in place that ensure cost-effective spending. The plans provide important information on the kinds of activities and services being planned as well as the sub-populations at which State agencies are targeting their efforts. Having this information and the budget projection data will enable the Department to assist State agencies in developing the most cost-effective outreach programs possible. Therefore, this final rule adopts the interim provisions pertaining to information for low income households as final without change.

Waiver of the In-Office Interview—7 CFR 273.2(e)

In accordance with section 330 of Public Law 100–435, the interim rule amended 7 CFR 273.2(e) to explicitly specify the circumstances under which the in-office interview for an applicant household must be waived. Consequently, current rules at 7 CFR 273.2(e) require that in-office interviews be waived if requested by households which are unable to send a household member to the food stamp office because they: (1) Are elderly or disabled as defined in 7 CFR 271.2; (2) live in a location which is not served by a certification office; (3) are experiencing transportation difficulties as determined by the State agency on a case-by-case basis; or (4) are experiencing other hardships that the State agency determines warrants a waiver of the in-office interview such as illness, care of a household member, hardships due to residing in a rural area, prolonged severe weather or work hours. If the in-office interview is waived, the State agency has the option to conduct a telephone interview or a home visit.

The Department received one comment criticizing the interim rule provision, stating that the provision made "the obvious and thoroughly unnecessary statement that granting waivers to in-office interviews applied in rural areas". The commenter felt that adding emphasis to the regulations is not a decisive way to act when the Program has operational problems. Furthermore, the commenter felt that problems State agencies may have in applying the requirement to grant waivers of in-office interviews should be dealt with by FNS regional office staff. The Department understands the commenter's concerns, but the language in the interim rule was not added to address operational concerns, but rather was required by law. Public Law 100–435 clearly states that waiving in-office interviews for households in rural areas is sometimes necessary, and State agencies must do so when a household meets specific criteria. The interim rule amended 7 CFR 273.2(e) specifically to address Congressional concern that residency in a rural area not be a barrier to participation in the Food Stamp Program. Therefore this action adopts the interim provisions at 7 CFR 273.2(e) as final without change.

The Food Stamp Application Form—7 CFR 273.2(b)

Pursuant to section 310 of Public Law 100–435, the June 7, 1989 interim rule amended several provisions of the regulations pertaining to the food stamp application form. Prior to publication of the interim rule, the regulations at 7 CFR 273.2(b) permitted State agencies to deviate from the FNS-designed food stamp application in order to process joint applications with other assistance programs, meet the requirements of a State agency computer system or accommodate State agency needs that are determined to be justifiable. The first provision of section 310 of Public Law 100–435 amended section 11(e)(2) of the Food Stamp Act to mandate that, in addition to its current criteria for approving State agency application forms, FNS must also ensure that the application is brief. Accordingly, the June 7, 1989 interim rule amended 7 CFR 273.2(b) to include brevity as a condition for approving deviations from the FNS food stamp application form.

The majority of comments received about the food stamp application form concerned this provision. Commenters, while supporting the interim rule's intent to shorten the food stamp application, wondered how the Department intends to judge whether an application form is "brief" enough to meet the requirements of Public Law 100–435.

Senate Report No. 100–397 (p. 24) expressed Congressional dismay over the length of multi-program application forms, i.e. application forms for food stamps and Aid to Families with Dependent Children (AFDC) benefits. The Department concurs with Congress on this issue. The purpose of an application form is to obtain basic eligibility information from the client (such as name, address, income, expenses, etc.). Such information requires only a few pages of questions for applicant households to complete. The Department also understands, however, that limiting the length of applications can be a problem for State agencies trying to administer a variety of programs. In December 1990, the Department completed a review of all State-designed application forms. The review had been initiated because of the passage of Public Law 100–435 and the ongoing concern that the food stamp application not be a barrier to participation in the Program. The reviewers found length to be the most disturbing problem with State-designed multi-program application forms. The

length of the forms ranged from 3 to 44 pages, and the number of programs covered by the forms ranged from 3 to 9. Of the multi-program applications reviewed, 8 forms were 1–10 pages long, 21 were 11–20 pages, 7 were 21–30 pages, and 12 forms were over 30 pages long.

The Department realizes that the length of application forms is due to a great extent to such demands as automation and the need to administer a variety of programs. The Food Stamp Act, however, requires the Department to ensure that application forms are easy to use, readable, brief and written in simple terms. Therefore, the Department, in reviewing State agency applications, attempts to balance the need to reduce the burden on applicants and each State agency's need to administer the many programs under its jurisdiction. The Department is making no changes to the interim provision and is adopting that provision as final.

The second provision of section 310 of Public Law 100–435 requires that the Department, in consultation with the Department of Health and Human Services (HHS), provide guidance to those State agencies requesting assistance in the development of brief, simply-written application forms, including forms that allow for simultaneous application to participate in the Food Stamp, AFDC, and Medicaid Programs. Accordingly, the June 7, 1989 interim rule amended 7 CFR 273.2(b) to advise State agencies of their option to request assistance from FNS when developing their applications.

A commenter suggested that the Department reevaluate the FNS application form and work with the Department of Health and Human Services (HHS) to design a simpler, shorter form to be used for all assistance programs. The Department has completed drafting a revised version of the FNS Food Stamp Application Form (FNS Form 385), which is available to State agencies. The Department believes, however, that since many public assistance programs are administered by State agencies and funded by a combination of Federal and State monies, State agencies are better able to design a short, multi-program application form that will enhance the administration of their public assistance programs while lessening barriers to participation for food stamp applicants.

Another commenter objected that there is no clear procedure to request assistance from FNS in developing a new application form. The Department disagrees. In the preamble to the June 7, 1989 interim rule (54 FR 24521), the Department describes the procedure necessary to request assistance. The procedure, which has not changed, is for State agencies to request assistance through the Deputy Administrator for the Food Stamp Program. The Deputy administrator, or the Deputy Administrator's designee, would be responsible for overseeing the review of an application form by FNS officials at the Regional level and would coordinate the review of the application with HHS. Regional officials will be responsible for coordinating between the State agency and the National office.

Section 310 of Public Law 100–435 also requires that all applications for food stamp benefits contain certain statements on the front cover which advise the household of important information about the application process. These required statements include: (1) A place on the front cover where applicants can write their names, addresses, and signatures; (2) instructions that advise the households of their right to file the application without finishing all parts; (3) a statement describing the expedited service procedures; and (4) a statement that informs the household that benefits are provided only from the date of application. Accordingly, the interim rule amended 7 CFR 273.2(b) to require that the food stamp application form contain the above information.

Subsequent to publication of the interim rule, section 1736 of the Mickey Leland Memorial Domestic Hunger Relief Act, Title XVII, Public Law 101–624, 104 Stat. 3359, enacted November 28, 1990 (hereafter referred to as the Leland Act) amended section 11(e) of the Food Stamp Act to require that certain information previously mandated to be displayed on the front cover of the application form must now be placed "on or near" the front page of the application form. There must continue to appear on the front page of the application a place where applicants can write their names, addresses, and signatures. However, the instructions that advise the households of their right to file the application without finishing all parts, the statement describing the expedited service procedures, and the statement that informs the household that benefits are provided only from the date of application must now appear "on or near" the front page. The Department implemented this provision in a final regulation implementing categorical eligibility and application provisions of the Leland Act, published at 56 FR 63611 on December 4, 1991, which amended 7 CFR 273.2(b)(1)(v), (b)(1)(vi), and (b)(1)(vii).

The changes mandated by the Leland Act and implemented in the final rule published on December 4, 1991 have superseded the provisions of Public Law 100–435 pertaining to mandatory information appearing on the front page of the application form. For this reason, the Department is not addressing any comments which discuss this provision of Public Law 100–435. Individuals with any questions about this provision should refer to the December 4, 1991 final rule.

Section 310 of Public Law 100–435 and the interim rule mandate that households be informed on the application of their right to file for food stamp benefits with only their name, address and signature. This is reflected in 7 CFR 273.2(b)(1)(iv) of the interim rule. A commenter felt this requirement did not consider the impact on on-line application systems which satisfy the intent of this provision in a more sophisticated manner. Usually, an on-line application system does not require applicants to complete any handwritten information on an application form. The eligibility worker completes the on-line application at the certification interview. When an applicant is unable to complete the on-line application process, usually some sort of "Intent to Apply" application form is submitted to protect the filing date. The applicant then returns to complete the on-line application process at a later date.

The Department does not believe the interim rule conflicts with any on-line system presently in operation. In the final rulemaking implementing categorical eligibility and application provisions of the Leland Act, published at 56 FR 63611 on December 4, 1991, the Department amended 7 CFR 273.2(b)(3) to give FNS authority to review and approve deviations from the FNS-designed application form, including the use of on-line application forms. The Department believes this oversight authority will ensure that on-line application forms contain the mandatory information required by law. The Department is therefore adopting the interim provision in 7 CFR 273.2(b)(1)(iv) as final without change.

The Department also received a general comment which recommended the final rule specifically indicate when the term "applications" refers to the applicant's initial request for certification only, and when it refers to recertification. For food stamp purposes, the Department does not differentiate between certification and recertification. In both situations, a household must complete and submit a food stamp application form, provide verification of information and participate in an

interview with an eligibility worker. Therefore, the term "applications" in the interim rule and in this final rule refers to both initial certification and subsequent recertifications. The Department is, however, considering differentiating between initial certification and subsequent recertification. The Department is currently developing a proposed rule to consider means to simplify program requirements, including simplifying recertification procedures. In that rule, the Department may propose introducing differences in processing initial applications for certification and applications for recertification.

Joint Processing of Applications—7 CFR 273.2(j)

Section 352 of Public Law 100–435 reinstated joint application practices that were previously required under the Food Stamp Act of 1977, as originally enacted, but subsequently were made optional by the Omnibus Budget Reconciliation Act of 1982 (Pub. L. 97–253, 96 Stat. 763, Sept. 8, 1982). Accordingly, the interim rule, published June 7, 1989, amended 7 CFR 273.2 (j) and (j)(1)(i) to require State agencies to join the application for food stamps with the application for public assistance (PA) and general assistance (GA) and to notify AFDC applicants of their right to file a joint application. The interim rule also amended 7 CFR 273.2(j)(1) to add a new paragraph (j)(1)(v) which specified that households whose PA/GA eligibility was terminated shall not be required to file a new application, but shall have their food stamp eligibility and benefits determined by available information from the PA/GA casefile provided the information is sufficient for food stamp purposes.

Comments on the mandate for joint processing of applications were nearly evenly split between opponents and proponents. One commenter recommended the final rule mandate development of a single, universal application for all needs-based assistance programs. Another commenter focused on the issue of whether the interim rule exceeded the legislative intent of section 352 by requiring a single "application" for both food stamps and AFDC when only a single "interview" is necessary. The commenter felt the interim rule should be amended to mandate only a joint interview for food stamp/AFDC applicants, not a joint application. Another commenter disagreed with the requirement to include the application for food stamps in the application for GA benefits because GA is a State-run program.

In regard to the first comment recommending the development of a single, universal application, the Department has found that many State agencies have already developed "multi-program" forms, i.e., one form is used for food stamps, PA and GA, and medical assistance. The Department feels State agencies are in a better position to design application forms that enhance the administration of their benefit assistance programs. For this reason, the Department believes mandating a single, universal application form is unnecessary.

The Department disagrees with the premise of the second comment, which stated that the interim rule exceeded legislative intent by mandating a joint application for both food stamps and AFDC rather than just a joint interview. Section 11(i) of the Food Stamp Act (7 U.S.C. 2020(i)), as amended by section 352 of Public Law 100–435, requires that households in which all members are included in a federally aided public assistance grant (such as AFDC) have their application for food stamps contained in the public assistance application form. The Department believes the law is clear in requiring a joint application for food stamps and PA (as used here, PA is defined at 7 CFR 271.2).

In regard to the third comment, legislation passed subsequent to Public Law 100–435 further defined the requirements regarding joint applications for GA and food stamps. Section 1740 of the Leland Act modified the combined application form requirement in section 11(i)(3) of the Food Stamp Act to require a combined GA and food stamp application form only in States that have a single statewide GA application form. The Department implemented this provision in the December 4, 1991, final rule (56 FR 63597) which implemented the categorical eligibility and application provisions of the Leland Act.

A fourth commenter recommended that the Department withhold approval of joint applications which require clients to answer questions irrelevant to the Food Stamp Program if they are applying for food stamps only. The commenter felt that clients must be informed that answers to those questions are optional. The Department agrees that any joint application must be clear enough to afford applicants the option of answering only those questions relevant to the program or programs for which they are applying. The Department is amending the regulatory language at 7 CFR 273.2(b)(3) to add this requirement.

Application Process—Verification—7 CFR 273.2(f) and 273.21(j)

Section 311 of Public Law 100–435 and the interim rule published June 7, 1989, implemented five provisions pertaining to verification of application information supplied by the household. The interim provisions required that State agencies: (1) Provide all applicant households with a clear written statement explaining what the household must do to cooperate in obtaining verification and completing the application; (2) assist each applicant household in obtaining verification and completing the application process; (3) not require households to provide multiple sources of verification when the household has already provided verification which adequately supports statements on the application (although a State agency may require households to provide additional verification when the State agency determines that existing verification is incomplete, inaccurate or inconsistent); (4) not deny an application solely because a person outside of the household (who is not a person outside of the household because of a specific disqualification action or ineligible status) fails to cooperate with the State agency's processing of the application; and (5) process applications, if a household cooperates by providing information, by taking appropriate steps to verify information otherwise required to be verified under the Food Stamp Act.

One commenter felt that clarification is needed regarding whether a State agency must provide applicants with a general verification statement or a specific verification statement tailored to each applicant household (7 CFR 273.2(c)(5)). The Department believes the preamble to the interim rule was quite clear in encouraging State agencies to develop a general statement that could be given to all applicant households, rather than a written statement which would need to be tailored to each applicant household.

While the interim rule provided guidelines that must be used in developing the general verification notice, the Department wishes to promote greater conformity among State agency-designed notices to ensure that applicant households are consistently informed of the necessary documents needed for verification of information. Therefore, this final action amends 7 CFR 273.2(c)(5) to add a requirement that the State agency, at a minimum, include in the general verification notice examples of the types of

documents the household should provide and an explanation of the period of time the documents should cover.

Another commenter correctly pointed out that the preamble of the interim rule was incorrect in stating that current regulations require that social security numbers must be verified prior to certifying any applicant household for benefits. Current rules at § 273.2(f)(1)(v) state that the State agency shall not delay the certification for or issuance of benefits to an otherwise eligible household solely to verify the social security number (SSN) of a household member.

The same commenter correctly identified an inconsistency in the interim regulation language at 7 CFR 273.2(f)(8)(i)(A) with respect to the requirement for verification where the source of a household's income has changed. The first sentence of that section correctly states that "the State agency shall verify a change in income or actual expenses if the source has changed or the amount has changed by more than $25." The final sentence inadvertently omits the requirement for verification anytime the source of income changes, even if the amount has changed by $25 or less. The same inconsistency exists at 7 CFR 273.2(f)(8)(ii). This final action amends 7 CFR 273.2(f)(8)(i)(A) and (ii) to correct the inconsistencies.

Another commenter criticized the interim rule's interpretation of section 311(D) of Public Law 100–435. Section 311(D) provides that a State agency may not deny any application for participation solely because of the failure of a person outside of the household to cooperate with a request for providing verification. This provision would not apply when the person refusing to cooperate would otherwise be a household member but for the operation of any of the individual disqualification provisions of subsections (b), (d), (e), (f), and (g) of section 6 of the Food Stamp Act. These subsections require disqualification for any person intentionally making a false or misleading statement or committing any act which violates the Food Stamp Act (section 6(b)); any non-exempt person who is physically and mentally fit and is between the ages of 16 and 60 who refuses to register to work (section 6(d)); any person who is a student enrolled at least half-time in an institution of higher education (section 6(e)); any person who is not a resident of the United States, and is not either a citizen or a lawful alien (section 6(f)); and any individual who receives SSI benefits in a "cash-out" State (section 6(g)).

When amending 7 CFR 273.2(d)(1) to incorporate the mandate of section 311(D) of Public Law 100–435, the Department added two more categories to the list of persons outside the household who cause the denial of an application for participation if they fail to cooperate with a request for providing verification. These two new categories were: Individuals disqualified for failure to provide an SSN, and persons who fail to attest to their citizenship or alien status.

The commenter who criticized this provision felt that the Department had exceeded its authority in excluding two new categories of non-household members from the third-party verification rule.

The commenters correctly point out that the Department has broadened the third party verification rule to include two additional categories of persons who will cause the denial of an application to participate if they failed to cooperate with a request to provide verification. This was done to make this provision consistent with other provisions in the regulations where ineligible or disqualified persons are, in effect, deemed by program regulations to be a household member for purposes of determining eligibility and benefit levels. FNS believes this is appropriate as it is consistent with the desire to simplify program requirements that was expressed by Congress in adopting the Hunger Prevention Act (See, e.g., Senate Report No. 100–397, p.25).

The interim rule also amended verification standards for households subject to monthly reporting and retrospective budgeting (MRRB) at 7 CFR 273.21(i) (1) and (3). Those provisions are not being finalized in this final rule, however, because they have been superseded by amendments made in the final rule on Monthly Reporting and Retrospective Budgeting Amendments and Mass Changes, published on December 4, 1991, at 56 FR 63597. Individuals with questions about verification standards for MRRB households should refer to this December 4, 1991 final rule.

Demonstration Projects/Cash-Outs in Other Benefit Programs—7 CFR 273.9(c)(1) and 273.10(d)(1)

In accordance with section 340 of Public Law 100–435, the interim rule amended 7 CFR 273.9(c)(1) to specify that in-kind or vendor payments which would normally be excluded as income but are converted in whole, or in part, to a direct cash payment under the approval of a federally authorized demonstration project shall continue to be excluded from income. These federally authorized demonstration projects include demonstration projects created by waiver of the provisions of Federal law.

However, conversion to direct cash payment does not change the non-deductibility of the expenses paid with these funds. Accordingly, in order to ensure that an excluded vendor payment which has been converted to a direct cash payment is not excluded twice (once as income and once as expenses) the interim rule amended 7 CFR 273.10(d)(1)(i) to specify that an expense covered by an excluded vendor payment which has been converted to a direct cash payment under the approval of a federally authorized demonstration project remains non-deductible as a household expense.

The Department received no comments regarding these provisions of the interim rule. Therefore, this action adopts the interim provisions as final with no changes.

Reporting Responsibilities—7 CFR 273.12 and 273.21

Under section 323 of Public Law 100-435 and the interim rule, State agencies are required to provide a household, at the time of certification and recertification, with a statement describing the household's reporting responsibilities. Moreover, State agencies must provide all households with a toll-free telephone number or a number where collect calls will be accepted in order for the household to reach an appropriate representative of the State agency. The interim rule amended 7 CFR 273.12(b)(1) to specifically require that the "change report" form include a statement describing the household's reporting responsibilities. In addition, 7 CFR 273.12(b)(1) was amended to specify that the "change report" form must contain the number of the food stamp office and a toll-free number or a number where collect calls will be accepted. (Reporting requirements remained unchanged for households subject to MRRB provisions of 7 CFR 273.21.)

The interim rule also amended the provisions relative to the Notice of Eligibility, the Notice of Denial, the Notice of Adverse Action, and the requirements for bilingual notices. The regulations at 7 CFR 272.4(b)(3)(ii)(B), 7 CFR 273.10(g)(1)(i)(A), 7 CFR 273.10(g)(1)(ii) and 7 CFR 273.13(a)(2), respectively, were amended to specify that these notices must also include either a toll-free number or a number where collect calls will be accepted for

households living outside the local calling area.

The Department received one comment on these provisions of the interim rule. The commenter pointed out that the legislative intent of the toll-free or collect telephone number was to increase households' access to the State agency in order to obtain information or report changes. The commenter felt this statement of purpose should be incorporated into the rule itself to help guide State agencies' implementation efforts.

The Department believes including a statement of purpose in 7 CFR 273.12(b) is unnecessary. Congress was clear that its intent in passing the Hunger Prevention Act was to make it easier for eligible households to apply and obtain benefits (Senate Report No. 100–397, p.25). On its face, the implementation of this provision demonstrates its purpose without additional explanation. The interim provisions are adopted as final without change.

Special Provisions for Farm Households—7 CFR 273.8, 273.11, and 273.21

Pursuant to two provisions of Public Law 100–435, the interim rule amended Program regulations to extend eligibility to farm households which are in need of program assistance. Section 341 of Public Law 100–435 specified that self-employed farm households which are subject to MRRB have the option to annualize their self-employment income and expenses over a 12-month period. This provision was implemented in the interim rule by amending 7 CFR 273.21(f)(2)(i) and 273.11.

Section 342 of Public Law 100–435 affected farm households which quit farming. Accordingly, 7 CFR 273.8(e)(5) was amended by the interim rule to specify that property essential to self-employment of a household member engaged in farming is excluded as a resource for one year from the date the household member terminates self-employment from farming. A conforming amendment to 7 CFR 273.8(h)(1)(i) specified that any licensed vehicle which had been used over 50 percent of the time in the self-employment of a household member engaged in farming continues to be excluded as a resource for one year from the date the household member terminates his/her self-employment from farming.

The Department received only one comment on the interim rule which supported the one-year extension of the above exclusion. Therefore, this action adopts the interim provisions as final without change.

Implementation—7 CFR 272.1(g)

Under the interim rule, the provisions addressed in this final rule were retroactively implemented effective July 1, 1989. The Department received several comments complaining about the short implementation time for the interim rule. While we sympathize about the short lead time given to State agencies to implement the interim rule, the Department had no discretion in this matter and had to implement the time frames mandated by Public Law 100–435.

The provisions of this final action which adopt as final without change provisions of the interim rule or modify a provision of the interim rule for clarity only are retroactively effective to July 1, 1989. The clarifications do not represent any change in policy and, thus, do not require any special implementation efforts by State agencies.

The provisions of this final action which require the alteration of State procedures, are to be effective May 6, 1994. State agencies must complete implementation efforts of new provisions no later than September 5, 1994.

Any variance resulting from the implementation of the provisions of this amendment shall be excluded from quality control error analysis for 120 days from the required implementation date in accordance with 7 CFR 275.12(d)(2)(vii).

List of Subjects

7 CFR Part 271

Administrative practice and procedure, Food stamps, Grants programs-social programs.

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs-social programs, Penalties, Records, Reporting and recordkeeping requirements, Social security, Students.

7 CFR Part 277

Food stamps, Government procedures, Grant programs-social programs, Investigations, Records, Reporting and recordkeeping requirements.

Accordingly, 7 CFR parts 271, 272, 273, and 277 are amended as follows:

1. The authority citation of parts 271, 272, 273, and 277 continues to read as follows:

Authority: 7 U.S.C. 2011–2032.

PART 271—GENERAL INFORMATION AND DEFINITIONS

§ 271.2 [Amended]

2. The amendment to 7 CFR 271.2, as published at 54 FR 24527, June 7, 1989, which amended the definition of *Elderly or Disabled Member* by adding a new paragraph (11) is adopted final with the following changes:

a. Paragraph (11) is amended by adding the words "a recipient of" before the words "disability related medical assistance", and before the words "disability-based State general assistance". Paragraph (11) is also amended by removing the word "those" after the words "eligibility to receive", and replacing it with the words "any of these". Paragraph (11) is further amended by adding the words "established by the State agency" before the words "which are at least as stringent as those" Paragraph (11) is also amended by adding the words "(as set forth at 20 CFR part 416, subpart I, Determining Disability and Blindness as defined in Title XVI)" to the end of the paragraph.

§ 271.8 [Amended]

3. The amendment to 7 CFR 271.8, as published at 54 FR 24527, June 7, 1989, to add an OMB Control Number for § 272.5, paragraph (c), is adopted final.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

4. The amendment to 7 CFR 272.1, as published at 54 FR 24527, June 7, 1989, to add paragraph (g)(110) is adopted final.

5. In § 272.1, a new paragraph (g)(132) is added to read as follows:

§ 272.1 General terms and conditions.

* * * * *

(g) *Implementation.* * * *

(132) *Amendment No. 316.* The provisions of this final rule that amend 7 CFR 273.2(b)(3), 273.2(c)(5), 273.2(f)(8) (i)(A) and (ii), and paragraph (11) of the "Elderly or disabled member" definition in 7 CFR 271.2 are effective as of May 6, 1994. The State agency shall implement the provisions not later than September 5, 1994 for all households newly applying for Program benefits on or after such implementation date. The current caseload shall be converted to these provisions at household request, at the time of recertification, or when the case is next reviewed, whichever occurs first, and

the State agency must provide restored benefits back to the required implementation date. If for any reason a State agency fails to implement on the required implementation date, restored benefits shall be provided, if appropriate, back to the required implementation date or the date of application whichever is later. Any variances resulting from implementation of the provisions of this amendment shall be excluded from error analysis for 90 days from this required implementation date in accordance with 7 CFR 275.12(d)(2)(vii).

§ 272.2 [Amended]

6. The amendment to 7 CFR 272.2, as published at 54 FR 24527, June 7, 1989, which added text to the seventh sentence of paragraph (a)(2), and a new paragraph (d)(1)(ix) is adopted final.

§ 272.4 [Amended]

7. The amendment to 7 CFR 272.4, as published at 54 FR 24527, June 7, 1989, which amended paragraph (b)(3)(ii)(B), added a sentence to paragraph (d)(1)(i), redesignated paragraph (d)(2) as paragraph (d)(3), and added a new paragraph (d)(2) is adopted final.

§ 272.5 [Amended]

8. The amendment to 7 CFR 272.5, published at 54 FR 24527, to revise paragraph (c) in its entirety is adopted final.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

9. The amendment to 7 CFR 273.2, published at 54 FR 24528, June 7, 1989, which revised paragraph (b) in its entirety, redesignated paragraph (c)(5) as paragraph (c)(6) and added a new paragraph (c)(5), added two new sentences to the end of paragraph (d)(1), revised the fourth sentence of paragraph (e)(2), added a new paragraph (f)(1)(viii)(A)(*6*), revised paragraphs (f)(5)(i), (f)(8)(i)(A) and (f)(8)(ii) in their entirety, revised the first two sentences of paragraph (f)(8)(i)(C), amended the last sentence of paragraph (g)(2), revised the first sentence of paragraph (h)(1)(i)(C), revised the first and last sentences of paragraph (j) introductory text, removed the first two sentences of paragraph (j)(1)(i) and added three new sentences in their place, and added a new paragraph (j)(1)(v) is adopted final with the following changes:

a. The second sentence of paragraph (b)(3) is amended by removing the word "and" after the words "understandable to applicants" and replacing it with a comma, and adding after the phrase "easy to use" the words ", and, for multi-program applications, clear enough to afford applicants the option of answering only those questions relevant to the program or programs for which they are applying".

b. The last sentence in paragraph (f)(8)(i)(A) is amended by removing the comma after the words "The State agency shall not verify income" and adding after that the words "if the source has not changed and if the amount is unchanged or has changed by $25 or less, unless the information is incomplete, inaccurate, inconsistent or outdated. The State agency shall also not verify". Paragraph (f)(8)(ii) is amended by removing the comma after the words "the State agency shall not verify changes in income" and adding after that the words "if the source has not changed and if the amount has changed by $25 or less, unless the information is incomplete, inaccurate, inconsistent or outdated. The State agency shall also not verify".

c. Paragraph (c)(5) is amended by adding one sentence to the end of the paragraph to read as follows:

§ 273.2 Application processing.

* * * * *

(c) *Filing an Application* * * *

(5) * * * At a minimum, the notice shall contain examples of the types of documents the household should provide and explain the period of time the documents should cover.

* * * * *

§ 273.8 [Amended]

10. The amendment to 7 CFR 273.8, published at 54 FR 24529, June 7, 1989, which amended paragraphs (e)(5) and (h)(1)(i) is adopted final.

§ 273.9 [Amended]

11. The amendment to 7 CFR 273.9, published at 54 FR 24529, June 7, 1989, which added a new sentence to paragraph (c)(1) is adopted final.

§ 273.10 [Amended]

12. The amendment to 7 CFR 273.10, published at 54 FR 24529, June 7, 1989, which added a new sentence to paragraph (d)(1)(i), amended the fourth sentence of paragraph (g)(1)(i)(A), and amended the first sentence of paragraph (g)(1)(ii) is adopted final.

§ 273.11 [Amended]

13. The amendment to 7 CFR 273.11, published at 54 FR 24530, June 7, 1989, which added a new paragraph (a)(1)(v) is adopted final.

§ 273.12 [Amended]

14. The amendment to 7 CFR 273.12, published at 54 FR 24530, June 7, 1989, which amended paragraphs (b)(1)(ii) and (b)(1)(iii), and added new paragraphs (b)(1)(iv) and (b)(1)(v) is adopted final.

§ 273.13 [Amended]

15. The amendment to 7 CFR 273.13(a)(2), published at 54 FR 24530, June 7, 1989, is adopted final.

§ 273.21 [Amended]

16. The amendment to 7 CFR 273.21 published at 54 FR 24530, June 7, 1989 which revised the introductory text of paragraph (c) and paragraph (c)(5), added a new sentence to the end of paragraph (f)(2)(i), redesignated paragraph (h)(3)(iii) as paragraph (h)(4), amended newly redesignated paragraph (h)(4), amended paragraph (j)(3)(iii)(B) is adopted final.

PART 277—PAYMENTS OF CERTAIN ADMINISTRATIVE COSTS OF STATE AGENCIES

§ 277.4 [Amended]

17. The amendment to 7 CFR 277.4, published at 54 FR 24531, June 7, 1989, which added a new paragraph (f) is adopted final with the following changes:

a. Paragraph (f) is amended by removing the word "the" after the words "persons working with" and replacing it with the words "volunteer or nonprofit."

Appendix A to Part 277—[Amended]

18. The amendment to Appendix A, published at 54 FR 24531, June 7, 1989, which removed paragraph C.(14) is adopted final.

Dated: March 24, 1994.

William E. Ludwig,

Administrator.

[FR Doc. 94–8063 Filed 4–5–94; 8:45 am]

BILLING CODE 3410–30–U

FEDERAL RESERVE SYSTEM

12 CFR Part 268

[Docket No. R–0797]

Rules Regarding Equal Opportunity

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (the Board) has revised and reissued its Rules Regarding Equal Opportunity (Rules) to conform those Rules as closely as possible to the Equal Employment Opportunity Commission's (the Commission's) complaint processing regulation for federal employers, "Federal Sector Equal Employment Opportunity", which became effective October 1, 1992.

EFFECTIVE DATE: May 6, 1994.

FOR FURTHER INFORMATION CONTACT: Stephen L. Siciliano, Special Assistant to the General Counsel for Administrative Law (202/452–3920), or J. Mills Williams, Senior Attorney (202/452–3701), Legal Division, Board of Governors of the Federal Reserve System. For hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: These Rules are hereby issued as a final rule. The Board issued these Rules as an interim rule, with request for public comments, on February 18, 1993. This final rule deviates from the interim rule in only a few particulars, based upon recommendations received from the Commission and from interested members of the Board's staff.

With regard to laws respecting discrimination in employment, the Board as a matter of policy has long recognized that it should afford to its employees, applicants for employment, and others the same substantive and procedural rights that are enjoyed by persons in their dealings with other government agencies. Pursuant to this policy, part 268 has been revised by the Board after the issuance by the Commission of its federal sector complaint processing regulations (29 CFR part 1614) which became effective on October 1, 1992. A new part 268 was issued by the Board as an interim rule effective February 18, 1993; (58 FR 9517, February 22, 1993) and is now issued as a final rule with revisions following receipt and consideration of public comments.

Consistent with the Commission's new regulations, this final rule addresses matters of the kind addressed by Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e *et seq.*), the Rehabilitation Act, as amended (29 U.S.C. 791), the Age Discrimination in Employment Act, as amended (29 U.S.C. 621 *et seq.*) and the Equal Pay Act (29 U.S.C. 206(d)). Subpart G (Prohibition Against Discrimination In Board Programs And Activities Because Of A Physical Or Mental Handicap) of the interim rule has also been revised consistent with recent revisions to section 504 of the Rehabilitation Act, as amended (29 U.S.C. 794).

Summary of Comments

The Commission and one commenter recommended that the terms "handicap" and "handicapped" should be replaced with "disability" or "disabled" throughout the Rules. The Rehabilitation Act Amendments of 1992 substituted the term "disability" for the term "handicap" throughout the Rehabilitation Act (Section 102(f), Pub. L. 102–569). It is the Board's intention to update the language of its Rules to conform to the 1992 amendment with whatever updates are made by the Commission. Although such revisions have not yet been incorporated in the Commission's regulations (29 CFR part 1614), in light of the Commission's specific recommendations, the Board has substituted appropriate language throughout the Rules as set forth above.

One commenter took exception to the deletion of section 703 (Self evaluation) of the prior Rules, which was in effect prior to February 18, 1993. Section 703 had required the Board to evaluate its then current policies and practices, and to make necessary modifications, regarding the upgrade of its facilities to conform to the standards of Section 504 of the Rehabilitation Act. The time limits stated in section 703 have passed. The Board has conducted the required survey of its facilities, and the Board has been implementing appropriate modifications to its facilities. Therefore, the Board believes that section 703 has become moot. The Board believes that this is a technical deletion that does not affect the Board's strong and continuing commitment to equal opportunity and equal access for individuals with a disability.

The Commission suggested merging § 268.102(u) into § 268.102(t) of the Rules, so that both paragraphs relate to sections 501 and 504 of the Rehabilitation Act. The Board has adopted this suggestion. The Commission also suggested that the Board amend the definition of "individual with a disability" to exclude from the definition alcoholics and individuals with current infectious diseases. With the assistance of the Commission's staff, the Board has inserted language in § 268.303 which provides that alcoholics will be held to the same performance and conduct standards that all other Board employees must satisfy, following the Commission's regulations regarding holding alcoholics to the same performance and conduct standards to which an employer holds its other employees. 29 CFR 1630.16(b). In addition, language has been inserted to prevent persons with infectious diseases from working in the Board's food handling area, following the Commission's regulations regarding infectious and communicable diseases for food handling jobs. 29 CFR 1630.16(e).

The Commission suggested that adoption of part 268 by the Board is unnecessary in light of the Commission's Government-wide complaint processing procedures. 29 CFR part 1614. The Board believes, however, based on specific provisions of the Federal Reserve Act and established precedent, that adoption of part 268 is necessary to authorize and insure the Board's compliance with the important national policies set forth in the Equal Employment Opportunity Act and the other laws cited above. The Board will continue to work closely with the Commission to insure effective implementation of these Rules consistent with those laws and the policies of the Commission.

Finally, one commenter expressed a concern regarding the organizational placement and reporting relationship of the EEO Programs Officer. Citing the Commission's Federal Sector Equal Employment Opportunity regulations (29 CFR 1614.102(b)(3)), the commenter proposed that the EEO Programs Officer report to the Chairman of the Board of Governors. The Commission addressed this matter in the preamble to its regulations and stated "Moreover, § 1614.607 permits [the agency head] to delegate that authority. Ultimate responsibility would remain, though, with the higher official." 57 FR 12642, April 10, 1992. The Board believes that the EEO Programs Officer's reporting relationship is appropriate and is consistent with the Commission's approach. In this connection, the Board's Rule provides that the EEO Programs Officer, who reports to the Staff Director for Management and whose title has been changed to "EEO Programs Director" as reflected in this Final Rule, may "advise and consult with the Chairman of the Board of Governors * * *" § 268.103(c)(2).

Other Revisions to Interim Rule

Additional, minor modifications have been made in the final rule based on comments received from Board staff. These modifications are not substantive:

(1) The third sentence in § 268.103(c)(11) has been re-written to reflect actual practice concerning the EEO Programs Director's contracting authority;

(2) A new paragraph (d) has been added to § 268.202 stating that section 501 of the Rehabilitation Act is covered by these Rules, which caused paragraphs (d) and (e) to be renumbered as paragraphs (e) and (f);

(3) Sections 268.202(e)(13), 268.205(c), 268 204(b) and 268.604(b)

were modified to clarify existing language in the interim rule;

(4) Section 268.204(f) was modified to make it clear that the Board will develop and use alternative dispute resolution procedures;

(5) Section 268.206(a)(7) was modified to provide that the Staff Director for Management or the General Counsel, or their designees, should consult with the EEO Programs Director before issuing the certification as provided for in subparagraph (7);

(6) Because of the strict time limits governing the issuance of a final decision, §§ 268.209(a) and 268.709(k) have been modified to provide that the Governors will have only 3 business days (formerly 7 calendar days) to ask that a matter be brought to the full Board for final decision rather than be resolved by the Board's delegee; and

(7) Section 268.304(b)(3) was modified so that it now provides that the Board will prefer only U.S. citizens over equally qualified noncitizens in hiring. This was done to insure compliance with the Immigration Reform and Control Act, as amended.

These rules are hereby issued as the Board's final rule and this final rule shall be made effective 30 days from publication. 5 U.S.C. 553(d)(3).

List of Subjects in 12 CFR Part 268

Administrative practice and procedure, Age, Americans with disabilities, Civil rights, Equal employment opportunity, Federal buildings and facilities, Federal Reserve System, Government employees, Religious discrimination, Sex discrimination, Wages.

For the reasons set out in the preamble, chapter II of the Code of Federal Regulations is amended by revising 12 CFR part 268 to read as follows:

PART 268—RULES REGARDING EQUAL OPPORTUNITY

Subpart A—General Provisions and Administration

Sec.
268.101 Authority, purpose and scope.
268.102 Definitions.
268.103 Equal employment designations.

Subpart B—Board Program To Promote Equal Opportunity

268.201 General policy for equal opportunity.
268.202 Board program for equal employment opportunity.
268.203 Complaints of discrimination covered under this part.
268.204 Pre-complaint processing.
268.205 Individual complaints.
268.206 Dismissals of complaints.
268.207 Investigation of complaints.
268.208 Hearings.
268.209 Final decisions.

Subpart C—Provisions Applicable to Particular Complaints

268.301 Age Discrimination in Employment Act.
268.302 Equal Pay Act.
268.303 Rehabilitation Act.
268.304 Employment of noncitizens.
268.305 Class complaints.

Subpart D—Review by the Equal Employment Opportunity Commission

268.401 Review by the Equal Employment Opportunity Commission.
268.402 Time limits for review by the Equal Employment Opportunity Commission.
268.403 How to seek review.
268.404 Procedure on review.
268.405 Decisions on review.
268.406 Reconsideration.

Subpart E—Remedies, Enforcement and Civil Actions

268.501 Remedies and relief.
268.502 Compliance with EEOC decisions.
268.503 Enforcement of EEOC decisions.
268.504 Compliance with settlement agreements and final decisions.
268.505 Civil action: Title VII, Age Discrimination in Employment Act and Rehabilitation Act.
268.506 Civil action: Equal Pay Act.
268.507 Effect of filing a civil action.

Subpart F—Matters of General Applicability

268.601 EEO group statistics.
268.602 Reports to the Equal Employment Opportunity Commission.
268.603 Voluntary settlement attempts.
268.604 Filing and computation of time.
268.605 Representation and official time.
268.606 Joint processing and consolidation of complaints.

Subpart G—Prohibition Against Discrimination in Board Programs and Activities Because of a Physical or Mental Disability

268.701 Purpose and application.
268.702 Notice.
268.703 Prohibition against discrimination.
268.704 Employment.
268.705 Program accessibility: Discrimination prohibited.
268.706 Program accessibility: Existing facilities.
268.707 Program accessibility: New construction and alterations.
268.708 Communications.
268.709 Compliance procedures.

Authority: 12 U.S.C. 244 and 248(i), (k) and (l).

Subpart A—General Provisions and Administration

§ 268.101 Authority, purpose and scope.

(a) *Authority.* The regulations in this part (12 CFR part 268) are issued by the Board of Governors of the Federal Reserve System under the authority of sections 10(4) and 11(i), (k) and (l) of the Federal Reserve Act (partially codified in 12 U.S.C. 244 and 248(i), (k) and (l)).

(b) *Purpose and scope.* This part sets forth the Board's policy, program and procedures for providing equal opportunity to Board employees and applicants for employment without regard to race, color, religion, sex, national origin, age, or physical or mental disability. It also sets forth the Board's policy, program and procedures for prohibiting discrimination on the basis of physical or mental disability in programs and activities conducted by the Board. It also specifies the circumstances under which the Board will hire or decline to hire persons who are not citizens of the United States, consistent with the Board's operational needs, the requirements and prohibitions of the Immigration Reform and Control Act of 1986, as amended, and other applicable law.

§ 268.102 Definitions.

The definitions contained in this section shall have the following meanings throughout this part unless otherwise stated.

(a) *ADEA* means the Age Discrimination In Employment Act (29 U.S.C. 621 et seq.).

(b) *Agent of the class* means a class member who acts for the class during the processing of the class complaint under § 268.305 of this part.

(c) *Agreement of resolution* means the agreement referred to in § 268.305(f)(3) of this part.

(d) *Auxiliary aids* as used in subpart G of this part means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the Board. For example, auxiliary aids useful for persons with impaired vision include readers, Braille materials, audio recordings, telecommunication devices and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, note takers, written materials, and other similar services and devices.

(e) *Board* means the Board of Governors of the Federal Reserve System.

(f) *Class* as used in § 268.305 of this part means a group of Board employees, former employees or applicants for employment who allegedly have been or are being adversely affected by a personnel policy or practice of the Board that discriminates against the

group on the basis of their race, color, religion, sex, national origin, age or disability.

(g) *Class complaint* means a written complaint of discrimination filed on behalf of a class by the agent of the class alleging that:

(1) The class is so numerous that a consolidated complaint of the members of the class is impractical;

(2) There are questions of fact common to the class;

(3) The claims of the agent of the class are typical of the claims of the class; and

(4) The agent of the class, or, if represented, the representative, will fairly and adequately protect the interests of the class.

(h) *Commission* means the Equal Employment Opportunity Commission.

(i) *Complainant* means an aggrieved person who files an individual complaint pursuant to § 268.205 of this part, except that *complainant* shall mean a complainant, agent of the class or individual class claimant for purposes of §§ 268.209, 268.402 through 268.406 and subparts E and F of this part.

(j) *Complete complaint* as used in subpart G of this part means a written statement that contains the complainant's name and address and describes the Board's alleged discriminatory actions in sufficient detail to inform the Board of the nature and date of the alleged violation. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

(k) *EEOC decision* means the written decision issued by the Commission's Office of Federal Operations as described in § 268.405 of this part.

(l) *Facility* means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

(m) *Final decision* means the Board's decision described in § 268.209 of this part.

(n) *Has a record of such an impairment* means has a history of, or has been classified (or misclassified) as having, a physical or mental impairment that substantially limits one or more major life activities.

(o) *Individual with a disability* means a person who:

(1) Has a physical or mental impairment which substantially limits one or more of such person's major life activities;

(2) Has a record of such an impairment; or

(3) Is regarded as having such an impairment; and

(4) Shall not include an individual, a Board employee or applicant for employment, impaired while under the influence of illegal drugs, an individual disabled by alcoholism, or an individual with an infectious or communicable disease, as further defined in § 268.303(g) of this part.

(p) *Investigator* means an investigative officer or complaint examiner selected or appointed pursuant to §§ 268.103(c)(11) and 268.305(e)(3) of this part.

(q) *Is regarded as having an impairment* means:

(1) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the Board as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(3) Has none of the impairments defined in § 268.102(s) of this part, but is treated by the Board as having such an impairment.

(r) *Major life activities* means functions, such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.

(s) *Physical or mental impairment* means:

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(t) *Qualified individual with a disability* means:

(1) With respect to a Board program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with a disability who meets the essential eligibility requirements and who can achieve the purpose of the program or activity without modifications in the program or activity that the Board can determine on the basis of a written record would result in a fundamental alteration in its nature;

(2) With respect to any other program or activity, an individual with a disability who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; or

(3) With respect to employment, an individual with a disability who, with or without reasonable accommodation, can perform the essential functions of the position in question without endangering the health and safety of the individual or others, and who meets the experience or education requirements (which may include passing a written test) of the position in question.

(u) *Title VII* means Title VII of the Civil Rights Act (42 U.S.C. 2000e *et seq.*).

§ 268.103 Equal employment designations.

(a) *Administrative Governor.* The Administrative Governor, a member of the Board of Governors designated by the Chairman of the Board, is charged with overseeing the internal affairs of the Board and is empowered to make decisions and determinations on behalf of the Board when authority to do so is delegated to him or her.

(1) The Administrative Governor is hereby delegated the authority to make determinations adjudicating complaints of discrimination pursuant to §§ 268.206, 268.209, 268.305(i) and 268.709 of this part, unless a member of the Board of Governors has requested that the Board of Governors make the decision on the complaint pursuant to §§ 268.209(a) or 268.709(k) of this part, settlements pursuant to § 268.305(f) of this part and determinations regarding attorney fees pursuant to § 268.501(e) of this part. The Administrative Governor is further delegated the authority to order such corrective measures, including such remedial actions as may be required by subpart E of this part, as he or she may consider necessary, including such disciplinary action as is warranted by the circumstances when an employee has been found to have engaged in a discriminatory practice.

(2) The Administrative Governor may delegate to any officer or employee of the Board any of his or her duties or functions under this part.

(3) The Administrative Governor may refer to the Board of Governors for determination or decision any complaint of discrimination that the Administrative Governor would otherwise decide pursuant to §§ 268.206, 268.209, 268.305(i) and 268.709 of this part, settlements pursuant to § 268.305(f) of this part and determinations regarding attorney fees pursuant to § 268.501(e) of this part, and may make changes in programs and procedures designed to eliminate discriminatory practices or to improve

the Board's programs under this part, and may make any recommendation for remedial or disciplinary action with respect to managerial or supervisory employees who have failed in their responsibilities, or employees who have been found to have engaged in discriminatory practices, or with regard to any other matter which the Administrative Governor believes merits the attention of the Board of Governors.

(b) *Staff Director for Management.* The Staff Director for Management shall perform the following functions under this part:

(1) When so authorized by the Administrative Governor, the Staff Director for Management shall make any determinations on complaints of discrimination that would otherwise be made by the Administrative Governor under §§ 268.206, 268.209, 268.305(i) and 268.709 of this part, settlement pursuant to § 268.305(f) of this part and determinations regarding attorney fees pursuant to § 268.501(e) of this part. The Staff Director for Management shall order such corrective measures, including such remedial actions as may be required by subpart E of this part as he or she may consider necessary, and including the recommendation for such disciplinary action as is warranted by the circumstances when an employee is found to have engaged in a discriminatory practice.

(2) The Staff Director for Management shall review the record on any complaint under this part before a determination is made by the Board of Governors or the Administrative Governor on the complaint and make such recommendations as to the determination as he or she considers desirable, including any recommendation for such disciplinary action as is warranted by the circumstances when an employee is found to have engaged in a discriminatory practice.

(3) When authorized by the Administrative Governor, the Staff Director for Management may make changes in programs and procedures designed to eliminate discriminatory practices and improve the Board's program for equal employment opportunity.

(c) *EEO Programs Director.* The EEO Programs Director is appointed by the Board of Governors and shall perform the following functions under this part:

(1) Administer the Board's equal employment opportunity program and advise the Board, the Administrative Governor and the Staff Director for Management with respect to the preparation of equal employment opportunity plans, goals, objectives, procedures, regulations, reports, and other matters pertaining to the Board's program established under § 268.202 of this part;

(2) Advise and consult with the Chairman of the Board of Governors, when necessary, on any matter pertaining to the Board's equal employment opportunity program and its administration;

(3) Evaluate from time to time the sufficiency of the Board's total program for equal employment opportunity and report to the Board of Governors, the Administrative Governor and the Staff Director for Management, with recommendations as to any improvement or correction needed, including remedial or disciplinary action with respect to managerial, supervisory or other employees who have failed in their responsibilities;

(4) Recommend to the Staff Director for Management and the Administrative Governor changes in programs and procedures designed to eliminate discriminatory practices and improve the Board's program for equal employment opportunity;

(5) Appoint a Federal Women's Program Manager, a Hispanic Program Coordinator, a Disabled Persons Program Coordinator, and such EEO Counselor(s) as may be necessary to assist the EEO Programs Director in carrying out the functions described in this part. The EEO Programs Director shall ensure such managers, coordinators and counselor(s) shall receive full and proper training to implement their duties and responsibilities under this part;

(6) Publicize to Board employees and applicants for employment and post at all times on official Board bulletin boards:

(i) The names, business telephone numbers, business addresses and the equal employment opportunity responsibilities of the Staff Director for Management, the EEO Programs Director, the Federal Women's Program Manager, the Hispanic Program Coordinator, and the Disabled Persons Program Coordinator;

(ii) The names, business telephone numbers, business addresses of EEO Counselors, the segments of the Board for which they are responsible, the availability of EEO Counselors to counsel an employee or applicant for employment who believes that he or she has been discriminated against because or race, color, religion, sex, national origin, age, or physical or mental disability, and the requirement that an employee or applicant for employment must consult an EEO Counselor as provided by §§ 268.204 and 268.305(a) of this part; and

(iii) The time limits for contacting EEO Counselors;

(7) Provide to each employee annually (and the Division of Human Resource Management shall provide to each applicant for employment) a copy of a notice summarizing the general purposes of this part and specifying where copies of this part can be obtained. The EEO Programs Director shall ensure that copies of the summary of this part are posted in permanent locations in all Board facilities. The EEO Programs Director shall, on the request of any employee or applicant for employment provide that employee or applicant for employment with a copy of this part;

(8) Provide for counseling of aggrieved individuals and for the receipt and processing of individual and class complaints of discrimination;

(9) Provide for the receipt and investigation of individual complaints of discrimination, subject to §§ 268.204 through 268.209 of this part, and provide for the acceptance and processing and/or dismissal of class action complaints in accordance with § 268.305 of this part;

(10) Act as the Board's designee under § 268.305(c) of this part;

(11) Appoint any investigators as necessary to administer this part. The EEO Programs Director is authorized to request the loan or assignment of any investigators or administrative judges from any agency as necessary to administer this part. The EEO Programs Director shall obtain the concurrence of the Staff Director for Management for all appointments of and reimbursements to investigators, whether from the private sector or otherwise, which exceeds the EEO Programs Director's procurement authority;

(12) Assure that individual complaints are fairly and thoroughly investigated and that final decisions of the Board are issued in a timely manner in accordance with this part;

(13) Dismiss a complaint, or a portion of a complaint, pursuant to §§ 268.206 and 268.305(c) of this part;

(14) Suspend the complaint process when appropriate for any matter that is before the Merit Systems Protection Board for a determination; and

(15) Make recommendations based upon investigative reports, hearings and EEOC decisions which require the Board's final decision pursuant to § 268.209 of this part.

(d) *EEO Counselors.* The EEO Counselor(s) are appointed by the EEO Programs Director. EEO Counselors

shall carry out the functions set forth in § 268.204 of this part.

(e) *Federal Women's Program Manager.* The EEO Programs Director shall appoint a Federal Women's Program Manager. The Federal Women's Program Manager shall perform the following functions: Advise the Board of Governors, the Administrative Governor, the Staff Director for Management and the EEO Programs Director on matters affecting, and administer the Board's program with respect to, the employment and advancement of women.

(f) *Hispanic Program Coordinator.* The EEO Programs Director shall appoint a Hispanic Program Coordinator. The Hispanic Program Coordinator shall perform the following functions: Advise the Board of Governors, the Administrative Governor, the Staff Director for Management and the EEO Programs Director on matters affecting, and administer the Board's program with respect to, the employment and advancement of Hispanics.

(g) *Disabled Persons Program Coordinator.* The EEO Programs Director shall appoint a Disabled Persons Program Coordinator. The Disabled Persons Program Coordinator shall perform the following functions: Advise the Board of Governors, the Administrative Governor, the Staff Director for Management and the EEO Programs Director on matters affecting, and administer the Board's program with respect to, the employment and advancement of individuals with a disability.

Subpart B—Board Program to Promote Equal Opportunity

§ 268.201 General policy for equal opportunity.

(a) It is the policy of the Board to provide equal opportunity in employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, national origin, age or disability, and to promote the full realization of equal opportunity in employment through a continuing affirmative program.

(b) It is also the policy of the Board to insure equal opportunity for individuals with a disability in Board programs and activities consistent with section 504 of the Rehabilitation Act (29 U.S.C. 794) and to provide equal opportunity for all persons in accordance with the Immigration Reform and Control Act of 1986, as amended (8 U.S.C. 1324a).

(c) No person shall be subject to retaliation for opposing any practice prohibited by this part, or for participating in any stage of administrative or judicial proceedings under this part. The practices prohibited by this part include those made unlawful by Title VII, the ADEA, the Equal Pay Act (29 U.S.C. 206(d)) and the Rehabilitation Act (29 U.S.C. 791).

§ 268.202 Board program for equal employment opportunity.

(a) The Board, on the basis of a person's race, color, religion, sex or national origin, shall not:

(1) Fail or refuse to hire or discharge any person, or otherwise discriminate against any person with respect to his or her compensation, terms, conditions or privileges of employment; or

(2) Limit, segregate, or classify its employees or applicants for employment in any way which would deprive or tend to deprive any person of employment opportunities or otherwise adversely affect the person's status as an employee.

(b)(1) The Board, on the basis of a person's age, shall not:

(i) Fail or refuse to hire or discharge any person or otherwise discriminate against any person with respect to his or her compensation, terms, conditions or privileges of employment;

(ii) Limit, segregate or classify its employees or applicants for employment in any way which would deprive or tend to deprive any person of employment opportunities or otherwise adversely affect the person's status as an employee or applicant for employment;

(iii) Reduce the wage rate of any employee in order to comply with paragraph (b) of this section;

(iv) Discriminate against any employee or applicant for employment because such employee or applicant for employment has opposed any practice forbidden under paragraph (b) of this section, or because such employee or applicant for employment has made a charge, testified, assisted or participated in any manner in any investigation, proceeding or litigation involving paragraph (b) of this section or the ADEA; or

(v) Print or publish, or cause to be printed or published, any notice or advertisement relating to employment by the Board indicating any preference, limitation, specification or discrimination.

(2) An aggrieved person filing a complaint of discrimination on the basis of age under this subpart B or § 268.305 of this part must have been at least 40 years of age at the time the alleged discrimination occurred.

(c) The Board shall not discriminate among employees on the basis of sex by paying wages to employees at a rate less than the rate at which it pays wages to employees of the opposite sex for equal work on jobs the performance of which require equal skill, effort and responsibility, and which are performed under similar conditions, except where such payment is made pursuant to:

(1) A seniority system;

(2) A merit system;

(3) A system which measures earnings by quantity or quality or production; or

(4) A differential based on any factor other than sex or otherwise not prohibited by this part.

(d) The Board shall not discriminate against qualified individuals with a disability who are physically or mentally disabled. The Board's program regarding individuals with a disability in employment is fully described in § 268.303 of this part.

(e) The Board has established, maintains and carries out a continuing affirmative program designed to promote equal opportunity and to identify and eliminate discriminatory practices and policies. In support of its program, the Board:

(1) Provides sufficient resources to administer its equal opportunity program to ensure efficient and successful operation;

(2) Provides for the prompt, fair and impartial processing of complaints in accordance with this part, and consistent with guidance proffered by the Commission;

(3) Conducts a continuing campaign to eradicate every form of prejudice or discrimination from the Board's personnel policies, practices and working conditions;

(4) Communicates the Board's equal employment opportunity policy and program, and its employment needs to all sources of job candidates without regard to race, color, religion, sex, national origin, age, or physical or mental disability, and solicits their recruitment assistance on a continuing basis;

(5) Reviews, evaluates and controls managerial and supervisory performance in such a manner as to insure a continuing affirmative application and vigorous enforcement of the policy of equal employment opportunity, and provides orientation, training and advice to managers and supervisors to assure their understanding and implementation of the Board's equal employment opportunity policy and program;

(6) Takes appropriate disciplinary action against employees who engage in discriminatory practices;

(7) Makes reasonable accommodation to the religious needs of employees and

applicants for employment when those accommodations can be made without undue hardship on the operations of the Board;

(8) Makes reasonable accommodation to the known physical or mental limitations of qualified applicants and employees with disabilities unless the accommodation would impose an undue hardship on the operations of the Board;

(9) Reassigns, in accordance with § 268.303(f) of this part, nonprobationary employees who develop physical or mental limitations that prevent them from performing the essential functions of their positions even with reasonable accommodation;

(10) Provides recognition to employees, supervisors, managers and units demonstrating superior accomplishment in equal employment opportunity;

(11) Has established a system for periodically evaluating the effectiveness of the Board's overall equal employment opportunity effort;

(12) Provides the maximum feasible opportunity to employees to enhance their skills through on-the-job training, work-study programs and other training measures so that they may perform at their highest potential and advance in accordance with their abilities;

(13) Informs its employees and applicants for employment of the Board's affirmative equal opportunity policy and program, and enlists the cooperation of Board employees and other proper persons; and

(14) Participates at the community level with other employers, with schools and universities and with other public and private groups in cooperative action to improve employment opportunities and community conditions that affect employability.

(f) In order to implement its program, the Board:

(1) Develops the plans, procedures and regulations necessary to carry out its program;

(2) Appraises its human resources management operations at regular intervals to assure their conformity with the Board's program and this part, consistent with guidance proffered by the Commission;

(3) Assigns equal employment opportunity responsibilities as appropriate to the Administrative Governor and the Staff Director for Management, and designates an EEO Programs Director, EEO Counselors, a Federal Women's Program Manager, a Hispanic Program Coordinator and a Disabled Persons Program Coordinator, and clerical and administrative support, to carry out the functions of this part in all divisions and offices at the Board;

(4) Makes written materials available to all employees and applicants for employment informing them of the variety of equal employment opportunity programs, and administrative and judicial remedial procedures available to them, and prominently posts such written materials in its human resource management and EEO offices, and throughout the workplace;

(5) Ensures that full cooperation is provided by all Board employees to EEO Counselors, Board equal employment opportunity personnel and to investigators in the processing and resolution of pre-complaint matters and complaints filed with the Board, and that cooperation is provided to the Commission in connection with review of Board decisions, including granting the Commission routine access to relevant records of the Board as appropriate and consistent with applicable law, regulations and policies of the Board; and

(6) Publicizes to all employees and posts at all times the names, business telephone numbers and business addresses of the EEO Counselors, a notice of the time limits and necessity of contacting an EEO Counselor before filing a complaint, and the telephone numbers and addresses of the Staff Director for Management, EEO Programs Director, Federal Women's Program Manager, Hispanic Program Coordinator and Disabled Persons Program Coordinator.

§ 268.203 Complaints of discrimination covered under this part.

(a) Individual and class complaints of employment discrimination and retaliation prohibited by § 268.202(a) (discrimination on the basis of race, color, religion, sex and national origin), § 268.202(b) (discrimination on the basis of age when the aggrieved person is at least 40 years of age), § 268.303(a) (discrimination on the basis of a disability), or § 268.202(c) (sex-based wage discrimination) of this part shall be processed in accordance with this part. Complaints alleging retaliation prohibited under this part are considered to be complaints of discrimination for purposes of this part.

(b) Except as set forth in § 268.304 and in subpart G of this part, this part applies to all Board employees and applicants for employment at the Board, and to all Board personnel policies or practices affecting Board employees or applicants for employment at the Board.

§ 268.204 Pre-complaint processing.

(a) Aggrieved persons who believe they have been discriminated against on the basis of race, color, religion, sex, national origin, age or disability must consult an EEO Counselor prior to filing a complaint in order to try to informally resolve the matter.

(1) An aggrieved person must initiate contact with an EEO Counselor within 45 days of the date of the matter alleged to be discriminatory or, in the case of a personnel action, within 45 days of the date that the action was communicated to the aggrieved person.

(2) The Board shall extend the 45-day time limit in paragraph (a)(1) of this section when the individual shows that he or she was not notified of the time limits and was not otherwise aware of them, that he or she did not know and reasonably should not have known that the discriminatory matter or personnel action occurred, that despite due diligence he or she was prevented by circumstances beyond his or her control from contacting an EEO Counselor within the time limits, or for other reasons considered sufficient by the Board.

(b) At the initial counseling session, EEO Counselors must advise individuals in writing of their rights and responsibilities, including the right to request a hearing after the investigation by the Board, the right to file a notice of intent to sue pursuant to § 268.301(a) of this part and to file a lawsuit alleging a violation of the ADEA instead of an administrative complaint of age discrimination under this part, the duty to mitigate damages, administrative and court time frames, and that only the matter(s) raised in pre-complaint counseling (or issues like or related to issues raised in pre-complaint counseling) may be alleged in a subsequent complaint filed with the Board. EEO Counselors must advise individuals of their duty to keep the Board informed of their current address, to serve copies of requests for review by the Commission on the Board, and to keep the Commission informed of their current address in connection with any review of a Board action. The notice required by paragraphs (d) and (e) of this section shall include a notice of the right to file a class complaint. If the aggrieved person informs an EEO Counselor that he or she wishes to file a class complaint, the EEO Counselor shall explain the class complaint procedures and the responsibilities of the agent of the class.

(c) EEO Counselors shall conduct counseling activities in accordance with instructions promulgated by the EEO Programs Director, which shall be

consistent with the counseling guidelines contained in the Commission's "EEO Management Directives For 29 CFR part 1614". When advised that a complaint has been filed by an aggrieved person, the EEO Counselor shall submit a written report within 15 calendar days to the EEO Programs Director and to the aggrieved person concerning the issues discussed and actions taken during counseling.

(d) Unless the aggrieved person agrees to a longer counseling period under paragraph (e) of this section, the EEO Counselor shall conduct the final interview with the aggrieved person within 30 days of the date the aggrieved person brought the matter to the EEO Counselor's attention. If the matter has not been resolved, the aggrieved person shall be informed in writing by the EEO Counselor, not later than the 30th day after contacting the EEO Counselor, of the right to file a discrimination complaint with the Board. This notice shall inform the complainant of the right to file a discrimination complaint within 15 calendar days of receipt of the notice, of the appropriate official with whom to file a complaint and of the complainant's duty to assure that the EEO Programs Director is informed immediately if the complainant retains counsel or a representative.

(e) Prior to the end of the 30-day period, the aggrieved person may agree in writing with the Board to postpone the final interview and extend the counseling period for an additional period of no more than 60 days. If the matter has not been resolved before the conclusion of the agreed extension, the notice described in paragraph (d) of this section shall be issued.

(f) In the event the aggrieved person believes that he/she has been discriminated against and agrees to participate in an established Board alternative dispute resolution procedure, the pre-complaint processing period of this section will be 90 days. If the matter has not been resolved before the 90th day, the notice described in paragraph (d) of this section shall then be issued.

(g) The EEO Counselor shall not attempt in any way to restrain the aggrieved person from filing a complaint. The EEO Counselor shall not reveal the identity of an aggrieved person who consulted the EEO Counselor, except when authorized to do so by the aggrieved person, or until the Board has received a discrimination complaint under this part from that person involving the same matter.

§ 268.205 Individual complaints.

(a) A complaint alleging that the Board discriminated against the complainant must be filed with the Board.

(b) A complaint must be filed within 15 calendar days of receipt of the notice required by §§ 268.204 (d), (e) or (f) of this part.

(c) A complaint must contain a signed statement from the person claiming to be aggrieved or that person's attorney. This statement must be sufficiently precise to identify the aggrieved person and to describe generally the action(s) or practice(s) that form the basis of the complaint. The complaint must also contain a telephone number and address where the complainant or the complainant's representative can be contacted.

(d) The EEO Programs Director shall acknowledge receipt of a complaint in writing and inform the complainant of the date on which the complaint was filed. Such acknowledgement shall also advise the complainant that:

(1) The complainant has the right to file a request for review with the Commission with regard to the Board's final decision or dismissal of all or a portion of a complaint; and

(2) The Board is required to conduct a complete and fair investigation of the complaint within 180 days of the filing of the complaint unless the parties agree in writing to extend the period.

§ 268.206 Dismissals of complaints.

(a) The Board shall dismiss a complaint or a portion of a complaint:

(1) That fails to state a claim under §§ 268.203 and 268.205(c) of this part, or states the same claim that is pending before or has been decided by the Board or the Commission;

(2) That fails to comply with the applicable time limits contained in §§ 268.204, 268.205(b) and 268.305(b) of this part, unless the Board extends the time limits in accordance with § 268.604(c) of this part, or that raises a matter that has not been brought to the attention of an EEO Counselor and is not like or related to a matter that has been brought to the attention of an EEO Counselor;

(3) That is the basis of a pending civil action in a United States District Court in which the complainant is a party, provided that at least 180 days have passed since the filing of the administrative complaint, or that was the basis of a civil action decided by a United States District Court in which the complainant was a party;

(4) That is moot or alleges that a proposal to take a personnel action, or other preliminary step to taking a personnel action, is discriminatory;

(5) Where the complainant cannot be located, provided that reasonable efforts have been made to locate the complainant and the complainant has not responded within 15 calendar days to a notice of proposed dismissal sent to his or her last known address;

(6) Where the Board has provided the complainant with a written request to provide relevant information or otherwise proceed with the complaint, and the complainant has failed to respond to the request within 15 calendar days of its receipt or the complainant's response does not address the Board's request, provided that the request included a notice of the proposed dismissal. Instead of dismissing for failure to cooperate, the complaint may be adjudicated if sufficient information for that purpose is available; or

(7) If, prior to the issuance of the notice required by § 268.207(f) of this part, the complainant refuses within 30 days of receipt of an offer of settlement to accept the Board's offer of full relief containing a certification from the Board's Staff Director for Management, the General Counsel or a designee reporting directly to the Staff Director for Management or General Counsel (after consulting with the EEO Programs Director) that the offer constitutes full relief, provided that the offer gave notice that failure to accept would result in dismissal of the complaint. An offer of full relief under this paragraph (a)(7) is the appropriate relief in § 268.501 of this part.

(b) The Board shall inform the complainant of the right to file a request for review with the Commission with regard to the dismissal of the individual complaint pursuant to § 268.401 of this part, or to file a civil action. A copy of EEOC Form 573, notice of Appeal/Petition, shall be attached to the Board's decision to dismiss an individual complaint under this section.

§ 268.207 Investigation of complaints.

(a) The investigation of individual complaints shall be conducted by an investigator appointed by the EEO Programs Director.

(b) Consistent with guidance proffered by the Commission, the Board, through the EEO Programs Director, shall develop a complete and impartial factual record upon which to make findings on the matters raised by the written complaint. The investigator may use an exchange of letters or memoranda, interrogatories, investigations, fact-finding conferences or any other fact-finding methods that

efficiently and thoroughly address the matters at issue. The EEO Programs Director may incorporate alterative dispute resolution techniques into the investigation in order to promote early resolution of complaints.

(c) The procedures in paragraphs (c)(1) through (4) of this section apply to the investigation of complaints:

(1) The complainant, the Board and any employee of the Board shall produce such documentary and testimonial evidence as the investigator deems necessary, consistent with applicable laws, regulations and policies of the Board.

(2) The investigator may administer oaths. Statements of witnesses shall be made under oath or affirmation or, alteratively, by written statement under penalty of perjury.

(3) When the complainant, or the Board or its employees, fail without good cause shown to respond fully and in timely fashion to requests for documents, records, comparative data, statistics, affidavits or the attendance of witness(es), the investigator may note in the investigative record that the Board when rendering a final decision should, or the Commission on review may, in appropriate circumstances:

(i) Draw an adverse inference that the requested information, or the testimony of the requested witness, would have reflected unfavorably on the party refusing to provide the requested information;

(ii) Consider the matters to which the requested information or testimony pertains to be established in favor of the opposing party;

(iii) Exclude other evidence offered by the party failing to produce the requested information or witness;

(iv) Issue a decision fully or partially in favor of the opposing party; or

(v) Take such other actions as it deems appropriate.

(4) If documentary or testimonial evidence is needed by the investigator, and such documentary evidence is known to be contained in the files of another federal agency, or the testimony of an employee of another federal agency is needed, the EEO Programs Director shall, if necessary, contact the Commission for assistance in obtaining such documentary or testimonial evidence.

(d) The investigation shall be conducted by an investigator with appropriate security clearances.

(e) The Board shall complete its investigation within 180 days of the date of the filing of an individual complaint or within the time period contained in the determination of the Commission on review of a dismissal pursuant to § 268.206 of this part. By written agreement within those time periods, the complainant and the Board may voluntarily extend the time period for not more than an additional 90 days. The Board may unilaterally extend the time period or any period of extension for not more than 30 days where it must sanitize a complaint file that may contain confidential information of the Board under 12 CFR part 261, or other privileged information of the Board, provided the Board notifies the complainant of the extension.

(f) Within 180 days from the filing of the complaint, within the time period contained in a determination of the Commission's Office of Federal Operations on review of a dismissal, or within any period of extension provided for in paragraph (e) of this section, the Board shall notify the complainant that the investigation has been completed, shall provide the complainant with a copy of the investigative file, and shall notify the complainant that, within 30 days of the receipt of the investigative file, the complainant has the right to request a hearing before an administrative judge from the Commission or may receive an immediate final decision pursuant to § 268.209 of this part from the Board. In the absence of the required notice, the complainant may request a hearing under § 268.208 of this part at any time after 180 days has elapsed from the filing of the complaint.

§ 268.208 Hearings.

(a) *Requests.* When a complainant requests a hearing, the EEO Programs Director shall request the Commission to appoint an administrative judge to conduct a hearing in accordance with this section. Any hearing will be conducted by an administrative judge or hearing examiner with appropriate security clearances. Where the administrative judge determines that the complainant is raising or intends to pursue issues like or related to those raised in the complaint, but which the Board has not had an opportunity to address, the administrative judge shall remand any such issue for counseling in accordance with § 268.204 of this part or for such other processing as may be ordered by the administrative judge.

(b) *Discovery.* The administrative judge shall notify the parties of the right to seek discovery prior to the hearing and may issue such discovery orders as are appropriate. Unless the parties agree in writing concerning the methods and scope of discovery, the party seeking discovery shall request authorization from the administrative judge prior to commencing discovery. Both parties are entitled to reasonable development of evidence on matters relevant to the issues raised in the complaint, but the administrative judge may reasonably limit the quantity and timing of discovery. Evidence may be developed through interrogatories, depositions, and requests for admissions, stipulations or production of documents. It shall be grounds for objection to producing evidence that the information sought by either party is irrelevant, overburdensome, repetitious, privileged, or that production would be unlawful.

(c) *Conduct of hearing.* The Board shall provide for the attendance at a hearing of all Board employees approved as witnesses by an administrative judge. Attendance at hearings will be limited to persons determined by the administrative judge to have direct knowledge relating to the complaint. Hearings are part of the investigative process and are thus closed to the public. The administrative judge shall have the power to regulate the conduct of a hearing, limit the number of witnesses where testimony would be repetitious, and exclude any person from the hearing for contumacious conduct or misbehavior that obstructs the hearing. The administrative judge shall receive into evidence information or documents relevant to the complaint. Rules of evidence shall not be applied strictly, but the administrative judge shall exclude irrelevant or repetitious evidence. The administrative judge or the Commission may refer to the Disciplinary Committee of the appropriate Bar Association any attorney or, upon reasonable notice and an opportunity to be heard, suspend or disqualify from representing complainants or agencies in hearings raising claims of discrimination any representative who refuses to follow the orders of an administrative judge, or who otherwise engages in improper conduct. The Board in such circumstances may take whatever action it deems appropriate to suspend or disqualify any such attorney or representative from appearing or practicing before the Board.

(d) *Evidentiary procedures.* The procedures in paragraphs (d) (1) through (3) of this section apply to hearings of complaints:

(1) The complainant, the Board and any employee of the Board shall produce such documentary and testimonial evidence as the administrative judge deems necessary, consistent with applicable laws, regulations and policies of the Board. If documentary or testimonial evidence is

needed for the hearing, and such documentary evidence is known to be contained in the files of another federal agency, or if the testimony of an employee of another federal agency is needed, then the administrative judge may seek assistance from appropriate sources in obtaining such documentary or testimonial evidence for the hearing.

(2) Administrative judges are authorized to administer oaths. Statements of witnesses shall be made under oath or affirmation or, alternatively, by written statement under penalty of perjury.

(3) When the complainant, or the Board or its employees fail without good cause shown to respond fully and in timely fashion to requests for documents, records, comparative data, statistics, affidavits, or the attendance of witness(es), the administrative judge may, in appropriate circumstances:

(i) Draw an adverse inference that the requested information, or the testimony of the requested witness, would have reflected unfavorably on the party refusing to provide the requested information;

(ii) Consider the matters to which the requested information or testimony pertains to be established in favor of the opposing party;

(iii) Exclude other evidence offered by the party failing to produce the requested information or witness;

(iv) Issue a finding fully or partially in favor of the opposing party; or

(v) Take such other actions as appropriate.

(e) *Findings and conclusions without hearing.* (1) If a party believes that some or all material facts are not in genuine dispute and there is no genuine issue as to credibility, the party may, at least 15 calendar days prior to the date of the hearing or at such earlier time as required by the administrative judge, file a statement with the administrative judge prior to the hearing setting forth the fact or facts and referring to the parts of the record relied on to support the statement. The statement must demonstrate that there is no genuine issue as to any such material fact. The party shall serve the statement on the opposing party.

(2) The opposing party may file an opposition within 15 calendar days of receipt of the statement in paragraph (e)(1) of this section. The opposition may refer to the record in the case to rebut the statement that a fact is not in dispute or may file an affidavit stating that the party cannot, for reasons stated, present facts to oppose the request. After considering the submissions, the administrative judge may order that discovery be permitted on the fact or facts involved, limit the hearing to the issues remaining in dispute, issue findings and conclusions without a hearing or make such other ruling as is appropriate.

(3) If the administrative judge determines upon his or her own initiative that some or all facts are not in genuine dispute, he or she may, after giving notice to the parties and providing them an opportunity to respond in writing within 15 calendar days, issue an order limiting the scope of the hearing or issue findings and conclusions without holding a hearing.

(f) *Record of hearing.* The hearing shall be recorded and the Board shall arrange and pay for verbatim transcripts. All documents submitted to, and accepted by, the administrative judge at the hearing shall be made part of the record of the hearing. If the Board submits a document that is accepted, it shall furnish a copy of the document to the complainant. If the complainant submits a document that is accepted, the administrative judge shall make the document available to the Board's representative for reproduction.

(g) *Findings and conclusions.* Unless the administrative judge makes a written determination that good cause exists for extending the time for issuing findings of fact and conclusions of law, within 180 days of a request for a hearing being received by the Commission, an administrative judge shall issue findings of fact and conclusions of law on the merits of the complaint, and shall order appropriate relief where discrimination is found with regard to the matter that gave rise to the complaint. The administrative judge shall send copies of the entire record, including the transcript, and the findings and conclusions to the parties by certified mail, return receipt requested. Within 60 days of receipt of the findings and conclusions, the Board may reject or modify the findings and conclusions or the relief ordered by the administrative judge and issue a final decision in accordance with § 268.209 of this part. If the Board does not, within 60 days of receipt of the findings and conclusions, accept, reject or modify the findings and conclusions of the administrative judge, then the findings and conclusions of the administrative judge and the relief ordered shall become the final decision of the Board and the Board shall notify the complainant of the final decision in accordance with § 268.209 of this part.

§ 268.209 Final decisions.

(a) The EEO Programs Director shall notify the Board of Governors when a complaint is ripe for decision under this section. At the request of any member of the Board of Governors made within 3 business days of such notice, the Board of Governors shall make the decision on the complaint. If no such request is made, the Administrative Governor, or the Staff Director for Management if he or she is delegated the authority to do so under § 268.103(a)(2) of this part, shall make the decision on the complaint.

(b) The Board shall issue a final decision:

(1) Within 60 days of receiving notification that a complainant has requested an immediate decision in accordance with § 268.207(f) of this part;

(2) Within 60 days of the end of the 30-day period for the complainant to request a hearing or an immediate final decision where the complainant has not requested either a hearing or a final decision as provided by § 268.207(f) of this part;

(3) Within 60 days of receiving the findings and conclusions of an administrative judge under § 268.208(g) of this part;

(4) Within 30 days of receiving the written recommendation of an administrative judge to accept or reject the class complaint pursuant to § 268.305(c)(7) of this part;

(5) If it decides to vacate an agreement of resolution upon the selection of a member of the class pursuant to § 268.305(f)(4) of this part;

(6) Within 60 days of receiving findings and recommendations of an administrative judge following a class action hearing pursuant to the procedures stated under § 268.305(i) of this part;

(7) Within 90 days of receipt of a written claim by a class member pursuant to § 268.305(k)(3) of this part; or

(8) Within 30 days of receiving the EEOC decision pursuant to § 268.405(c) of this part.

(c) The final decision of the Board shall consist of findings by the Board on the merits of each issue in the complaint, or following review by the Commission, the reason or reasons for acceptance, modification or rejection of each finding in an EEOC decision. When discrimination is found and indicated in the final decision, appropriate remedies and relief in accordance with subpart E of this part will be addressed in the final decision.

(d) The final decision shall contain information regarding the right to file a request for review with the Commission of final decisions pursuant to paragraphs (b)(1) through (7) of this section and the procedures for filing a

request for review with the Commission, the right to file a civil action in a United States District Court, including the name of the proper defendant in any such lawsuit, and the applicable time limits for reviews and lawsuits. A copy of EEOC Form 573, Notice of Appeal/Petition, shall be attached to the final decision pursuant to paragraphs (b)(1) through (7) of this section.

Subpart C—Provisions Applicable to Particular Complaints

§ 268.301 Age Discrimination in Employment Act.

(a) As an alterative to filing a complaint of discrimination on the basis of age under this part, an aggrieved person may file a civil action in a United States District Court against the Board of Governors. The aggrieved person must give notice of his or her intent to file such action with the Commission, with a copy to the Board's EEO Programs Director, not less than 30 days prior to filing such civil action. The notice must be filed in writing with the Commission: Federal Sector Programs, Equal Employment Opportunity Commission, 1801 L Street, NW, Washington, DC 20507, within 180 days of the occurrence of the alleged unlawful practice.

(b) The Commission may exempt a position from the provisions of the ADEA if the Commission establishes a maximum age requirement for the position on the basis of a determination that age is a bona fide occupational qualification necessary to the performance of the duties of the position. The Board may adopt a Commission exemption for inclusion under this section.

(c) When an aggrieved person has filed a complaint under § 268.205 or § 268.305 of this part alleging age discrimination, administrative remedies will be considered to be exhausted for purposes of filing, a civil action:

(1) 180 days after the filing of an individual complaint if the Board has not issued a final decision and the complainant has not filed a request for review by the Commission, or 180 days after the filing of a class complaint if the Board has not issued a final decision;

(2) After the issuance of a final decision under § 268.209 of this part on an individual or class complaint if the individual has not filed a request for review with the Commission; or

(3) After the issuance of a final decision under § 268.209(a)(8) following an EEOC decision under § 268.405 of this part, or 180 days after the filing of a request for review under subpart D of this part if the Commission has not issued an EEOC decision.

§ 268.302 Equal Pay Act.

(a) Any employee who believes he or she has received unequal pay due to discrimination based on sex may seek recovery of withheld wages by filing a complaint of discrimination under subpart B of this part, if a complaint of individual discrimination, or under § 268.305 of this part if a class action, except that civil actions shall be filed pursuant to paragraph (b) of this section.

(b) A complainant, agent of the class or individual class claimant under this section may file a civil action against the Board pursuant to § 268.506 of this part in a United States District Court should the complainant, agent of the class or individual class claimant believe he or she has been denied equal pay.

(c) The Board shall preserve any records that are made in the regular course of business which relate to the payment of wages, wage rates, job evaluations, job descriptions, merit systems, seniority systems, description of practices, or other matters which describe or explain the basis for payment of any wage differential to employees of the opposite sex, and which may be pertinent to the determination of whether such differential is based on a factor other than sex. Such records are to be kept for at least 3 years.

(d) Wages withheld in violation of § 268.202(c) of this part have the status of unpaid minimum wage or unpaid overtime compensation.

§ 268.303 Rehabilitation Act.

(a) *General policy.* The Board shall give full consideration to the hiring, placement and advancement of qualified individuals with a disability who are physically or mentally disabled. The Board shall be a model employer of individuals with a disability. The Board shall not discriminate against individuals with a disability who are physically or mentally disabled.

(b) *Reasonable accommodation.* (1) The Board shall make reasonable accommodation to the known physical or mental limitations of an employee or applicant for employment who is a qualified individual with a disability unless the Board can demonstrate that the accommodation would impose an undue hardship on its operations.

(2) Reasonable accommodation may include, but shall not be limited to:

(i) Making facilities readily accessible to and usable by individuals with a disability; and

(ii) Job restructuring, part-time or modified work schedules, acquisition or modification of equipment or devices, appropriate adjustment or modification of examinations, the provision of readers and interpreters, and other similar actions.

(3) In determining whether, pursuant to paragraph (b)(1) of this section, an accommodation would impose an undue hardship on the operation of the Board, factors to be considered include:

(i) The overall size of the Board's operations with respect to the number of employees, number and type of facilities and size of budget;

(ii) The type of Board operation, including the composition and structure of the Board's work force; and

(iii) The nature and the cost of the accommodation.

(c) *Employment criteria.* (1) The Board shall not make use of any employment test or other selection criterion that screens out or tends to screen out qualified individuals with a disability or any class of individuals with a disability unless:

(i) The test score or other selection criterion is job-related for the position in question and consistent with business necessity; and

(ii) There are no available alterative job-related tests that do not screen out or tend to screen out as many individuals with a disability.

(2) The Board shall select and administer tests concerning employment so as to insure that, when administered to an employee or applicant for employment who has a disability that impairs sensory, manual, or speaking skills, the test results accurately reflect the employee's or applicant's ability to perform the position or type of position in question rather than reflecting the employee's or applicant's impaired sensory, manual, or speaking skill (except where those skills are the factors that the test purports to measure).

(d) *Pre-employment inquiries.* (1) Except as provided in paragraphs (d)(2) and (3) of this section, the Board shall not conduct a pre-employment medical examination and shall not make pre-employment inquiry of an applicant as to whether the applicant is an individual with a disability or as to the nature or severity of a disability. The Board may, however, make pre-employment inquiry into an applicant's ability to meet the essential functions of the job, or the medical qualification requirements if applicable, with or without reasonable accommodation, of the position in question, i.e., the minimum abilities necessary for safe

and efficient performance of the duties of the position in question.

(2) Nothing in this section shall prohibit the Board from conditioning an offer of employment on the results of a medical examination conducted prior to the employee's entrance on duty, provided that:

(i) All entering employees are subjected to such an examination regardless of disability or when the pre-employment medical questionnaire used for positions that do not routinely require medical examination indicates a condition for which further examination is required because of the job-related nature of the condition; and

(ii) The results of such an examination are used only in accordance with the requirements of this part.

(3) Nothing in this section shall be construed to prohibit the gathering of pre-employment medical information for the purpose of hiring individuals with a disability.

(4) To enable and evaluate affirmative action to hire, place or advance individuals with a disability, the Board may invite employees and applicants for employment to indicate whether and to what extent they are disabled, if:

(i) The Board states clearly on any written questionnaire used for this purpose or makes clear orally if no written questionnaire is used, that the information requested is intended for use solely in conjunction with affirmative action; and

(ii) The Board states clearly that the information is being requested on a voluntary basis, that refusal to provide it will not subject the employee or applicant for employment to any adverse treatment, and that it will be used only in accordance with this part.

(5) Information obtained in accordance with this section as to the medical condition or history of the employee or applicant for employment shall be kept confidential except that:

(i) Managers, selecting officials, and others involved in the selection process or responsible for affirmative action may be informed that the employee or applicant for employment is an individual with a disability;

(ii) Supervisors and managers may be informed regarding necessary accommodations;

(iii) First aid and safety personnel may be informed, where appropriate, if the condition might require emergency treatment;

(iv) Government officials investigating compliance with laws, regulations, and instructions relevant to equal employment opportunity and affirmative action for individuals with a disability shall be provided information upon request; and

(v) Statistics generated from information obtained may be used to manage, evaluate, and report on equal employment opportunity and affirmative action programs.

(e) *Physical access to buildings.* (1) The Board shall not discriminate against employees or applicants for employment who are qualified individuals with a disability due to the inaccessibility of its facility.

(2) It shall be the policy of the Board to comply with the provisions of the Rehabilitation Act, the Architectural Barriers Act of 1968 (42 U.S.C. 4151 *et seq.*) and the Americans With Disabilities Act of 1990 (42 U.S.C. 12183 and 12204).

(f) *Reassignment.* When a nonprobationary employee becomes unable to perform the essential functions of his or her position even with reasonable accommodation due to a disability, the Board shall offer to reassign the individual to a funded vacant position at the same grade level, the essential functions of which the employee would be able to perform with reasonable accommodation if necessary unless the reassignment would impose an undue hardship on the operation of the Board. In the absence of a position at the same grade level, an offer of reassignment to a vacant position at the highest available grade level below the employee's current grade level shall be made, but availability of such a vacancy shall not affect the employee's entitlement, if any, to disability retirement pursuant to any retirement plan in which the employee is enrolled. If the Board has already posted a notice or announcement seeking applications for a specific vacant position at the time the Board has determined that the nonprobationary employee is unable to perform the essential functions of his or her position even with reasonable accommodation, then the Board does not have an obligation under this section to offer to reassign the individual to that position, but the Board shall consider the individual on an equal basis with those who applied for the position.

(g) *Exclusion from definition of "individual with a disability"*—(1) *Illegal use of drugs.* (i) The term "individual with a disability" shall not include an individual who is currently engaging in the illegal use of drugs, when the Board acts on the basis of such use. The term "drug" means a controlled substance, as defined in Schedules I through V of Section 202 of the Controlled Substances Act (21 U.S.C. 812). The term "illegal use of drugs" means the use of drugs, the possession or distribution of which is unlawful under the Controlled Substances Act, but does not include the use of a drug taken under supervision by a licensed health care professional, or other uses authorized by the Controlled Substances Act or other provisions of federal law. This exclusion, however, does not exclude an individual with a disability who:

(A) Has successfully completed a supervised drug rehabilitation program and is no longer engaging in the illegal use of drugs, or has otherwise been rehabilitated successfully and is no longer engaging in such use;

(B) Is participating in a supervised rehabilitation program and is no longer engaging in such use; or

(C) Is erroneously regarded as engaging in such use, but is not engaging in such use.

(ii) Except that the Board may adopt and administer reasonable policies or procedures, including but not limited to drug testing, designed to ensure that an individual described in paragraphs (g)(1)(i) (A) and (B) of this section is no longer engaging in the illegal use of drugs.

(2) *Alcoholism.* The term "individual with a disability" does not include an employee who is an alcoholic whose current use of alcohol prevents the employee from performing the duties of his or her job, or whose employment by reason of such current alcohol use, would constitute a direct threat to the property or safety of others. In this regard, alcoholics shall meet the same performance and conduct standards to which all other Board employees must satisfy, even if an unsatisfactory performance is related to the alcoholism of the employee.

(3) *Infectious and communicable diseases.* If an individual with a disability has one of the listed diseases as determined by the Secretary of Health and Human Services under the Americans with Disabilities Act (42 U.S.C. 12113(d)(1)) and works in or applies for a position at the Board in food handling, the Board will seek reasonable accommodation under paragraph (b) of this section to eliminate the risk of transmitting the disease through the handling of food. If the individual with a disability is a nonprobationary employee and a reasonable accommodation cannot be made, the provisions contained in paragraph (f) of this section shall apply.

§ 268.304 Employment of noncitizens.

(a) *Definitions.* The definitions contained in this paragraph (a) shall apply only to this section.

(1) *Intending citizen* means a citizen or national of the United States, or a noncitizen who:

(i) Is a protected individual as defined in 8 U.S.C. 1324b(a)(3); and

(ii) Has evidenced an intention to become a United States citizen.

(2) *Noncitizen* means any person who is not a citizen of the United States.

(3) *Sensitive information* means:

(i) (A) Information that is classified for national security purposes under Executive Order No. 10450 (3 CFR, 1949–1953 Comp., p. 936), including any amendments or superseding orders that the President of the United States may issue from time to time;

(B) Information that consists of confidential supervisory information of the Board, as defined in 12 CFR 261.2(b); or

(C) Information the disclosure or premature disclosure of which to unauthorized persons may be reasonably likely to impair the formulation or implementation of monetary policy, or cause unnecessary or unwarranted disturbances in securities or other financial markets, such that access to such information must be limited to persons who are loyal to the United States.

(ii) For purposes of paragraph (a)(3)(i)(C) of this section, information may not be deemed sensitive information merely because it would be exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552) but sensitive information must be information the unauthorized disclosure or premature disclosure of which may be reasonably likely to impair important functions or operations of the Board.

(4) *Sensitive position* means any position of employment in which the employee will be required to have access to sensitive information.

(b) *Prohibitions*—(1) *Unauthorized aliens.* The Board shall not hire any person unless that person is able to satisfy the requirements of Section 101 of the Immigration Reform and Control Act of 1986.

(2) *Employment in sensitive positions.* The Board shall not hire any person to a sensitive position unless such person is a citizen of the United States or, if a noncitizen, is an intending citizen.

(3) *Preference.* Consistent with the Immigration Reform and Control Act of 1986, and other applicable law, applicants for employment at the Board who are citizens of the United States shall be preferred over equally qualified applicants who are not United States citizens.

(c) *Exception.* The prohibition of paragraph (b)(2) of this section does not apply to hiring for positions for which a security clearance is required under Executive Order No. 10450, including any subsequent amendments or superseding orders that the President of the United States may issue from time to time, where the noncitizen either has or can obtain the necessary security clearance. Any offer of employment authorized by this paragraph (c) shall be contingent upon receipt of the required security clearance in the manner prescribed by law.

(d) *Applicability.* This section applies to employment in all positions at the Board and to employment by Federal Reserve Banks of examiners who must be appointed, or selected and approved by the Board pursuant to 12 U.S.C. 325, 326, 338, or 625.

§ 268.305 Class complaints.

(a) *Pre-complaint processing.* An employee or applicant for employment who wishes to file a class complaint must seek counseling and be counseled in accordance with the procedures under § 268.204 of this part.

(b) *Filing and presentation of a class complaint.* (1) A class complaint must be signed by the agent of the class or representative, and must identify the personnel policy or practice adversely affecting the class as well as the specific action or matter affecting the agent of the class.

(2) The complaint must be filed with the Board not later than 15 calendar days after the agent of the class receives a notice from the EEO Counselor of the right to file a class complaint.

(3) The complaint shall be processed promptly by the Board, and the parties shall cooperate and shall proceed at all times without undue delay.

(c) *Acceptance or dismissal.* (1) Within 30 days of the Board's receipt of a class complaint, the Board shall designate a representative who shall monitor the class complaint on behalf of the Board and who shall be one of the individuals referenced in § 268.202(e)(3) of this part, and forward the class complaint, along with a copy of the EEO Counselor's report and any other information pertaining to timeliness or other relevant circumstances related to the class complaint, to the Commission's Office of Federal Operations. The Commission shall assign the class complaint to an administrative judge or complaints examiner who shall, if required, have a proper security clearance. The administrative judge may require the agent of the class or the Board to submit additional information relevant to the complaint.

(2) The administrative judge may recommend that the Board dismiss the class complaint, or any portion, for any of the reasons listed in § 268.206 of this part, or because it does not meet the prerequisites of a class complaint under § 268.102(g) of this part.

(3) If an allegation of discrimination in the class complaint is not included in the EEO Counselor's report, the administrative judge shall afford the agent of the class 15 calendar days to state whether the matter was discussed with the EEO Counselor and, if not, explain why it was not discussed. If the explanation is not satisfactory, the administrative judge shall recommend that the Board dismiss the allegation under § 268.206 of this part. If the explanation is satisfactory, the administrative judge shall refer the allegation to the Board for further counseling by an EEO Counselor with the agent of the class. After counseling, the allegation shall be consolidated with the class complaint.

(4) If an allegation of discrimination in the class complaint lacks specificity and detail, the administrative judge shall afford the agent of the class 15 calendar days to provide specific and detailed information. The administrative judge shall recommend that the Board dismiss the class complaint if the agent of the class fails to provide such information within the specified time period. If the information provided contains new allegations outside the scope of the complaint, the administrative judge shall advise the agent of the class how to proceed on an individual or class basis concerning these allegations.

(5) The administrative judge shall recommend that the Board extend the time limits for filing a class complaint and for consulting with an EEO Counselor in accordance with the time limit extension provisions contained in §§ 268.204(a)(2) and 268.604 of this part.

(6) When appropriate, the administrative judge may recommend that a class be divided into subclasses and that each subclass be treated as a class, and the provisions of this section shall then be construed and applied accordingly.

(7) The administrative judge's written recommendation to the Board on whether to accept or dismiss a class complaint and the complaint file shall be transmitted to the Board, and notification of that transmittal shall be sent to the agent of the class. The administrative judge's recommendation to accept or dismiss shall become the Board's decision unless the Board accepts, rejects or modifies the recommended decision within 30 days of the receipt of the recommended

decision and complaint file pursuant to § 268.209 of this part. The Board shall notify the agent of the class by certified mail, return receipt requested, and the administrative judge of its decision to accept or dismiss a class complaint. At the same time, the Board shall forward to the agent of the class copies of the administrative judge's recommendation and the complaint file. The dismissal of a class complaint shall inform the agent of the class either that the class complaint is being filed on that date as an individual complaint of discrimination and will be processed under subpart B of this part, or that the class complaint is also dismissed as an individual complaint in accordance with § 268.206 of this part. In addition, it shall inform the agent of the class of the right to file a request for review of the dismissal of the class complaint with the Commission pursuant to § 268.401 of this part, or to file a civil action. A copy of EEOC Form 573, notice of Appeal/Petition, shall be attached to the Board's decision to dismiss a class complaint pursuant to § 268.209(b)(4) of this part.

(d) *Notification.* (1) Within 15 calendar days of accepting a class complaint, the Board shall use reasonable means, such as delivery, mailing to last known address or distribution, to notify all class members of the acceptance of the class complaint.

(2) Such notice shall contain:

(i) The date of acceptance of the class complaint by the Board;

(ii) A description of the issues accepted as part of the class complaint;

(iii) An explanation of the binding nature of the Board's dismissal, final decision or resolution of the class complaint on class members; and

(iv) The name, address and telephone number of the agent of the class or, if represented, the representative.

(e) *Obtaining evidence concerning the complaint.* (1) Upon the acceptance of a class complaint by the Board, the administrative judge shall notify the agent of the class and the Board's representative of the time period that will be allowed both parties to prepare their case. This time period will include at least 60 days and may be extended by the administrative judge upon the request of either party. Both parties are entitled to reasonable development of evidence on matters relevant to the issues raised in the class complaint. Evidence may be developed through interrogatories, depositions, and requests for admissions, stipulations or production of documents. It shall be grounds for objection to producing evidence that the information sought by either party is irrelevant, overburdensome, repetitious, privileged, or that production would be unlawful.

(2) If mutual cooperation fails, either party may request the administrative judge to rule on a request to develop evidence. If a party fails without good cause shown to respond fully and in timely fashion to a request made or approved by the administrative judge for documents, records, comparative data, statistics or affidavits, and the information is solely in the control of one party, such failure may, in appropriate circumstances, cause the administrative judge:

(i) To draw an adverse inference that the requested information would have reflected unfavorably on the party refusing to provide the requested information;

(ii) To consider the matters to which the requested information pertains to be established in favor of the opposing party;

(iii) To exclude other evidence offered by the party failing to produce the requested information;

(iv) To recommend that a decision be entered in favor of the opposing party; or

(v) To take such other actions as the administrative judge deems appropriate.

(3) During the period for development of evidence, the administrative judge may, in his or her discretion, direct that an investigation of facts relevant to the class complaint or any portion be conducted.

(4) Both parties shall furnish to the administrative judge copies of all materials that they wish to be examined and such other material as may be requested.

(f) *Opportunity for resolution of the class complaint.* (1) The administrative judge shall furnish the agent of the class and the Board's representative a copy of all materials obtained concerning the class complaint and provide opportunity for the agent of the class to discuss the materials with the Board's representative and to attempt resolution of the class complaint.

(2) The class complaint may be resolved by agreement of the Board and the agent of the class at any time as long as the agreement is fair and reasonable.

(3) If the class complaint is resolved, the terms of the resolution shall be reduced to writing and signed by the agent of the class and the Board.

(4) Notice of the agreement of resolution shall be given to all class members in the same manner as notification of the acceptance of the class complaint and shall state the relief, if any, to be granted by the Board. An agreement of resolution shall bind all members of the class. Within 30 days of the date of the notice of the agreement of resolution, any member of the class may petition the Commission to vacate the agreement of resolution because it benefits only the agent of the class or is otherwise not fair and reasonable. Such a petition will be processed in accordance with paragraph (c) of this section and if the administrative judge finds that the agreement of resolution is not fair and reasonable, he or she shall recommend that the agreement of resolution be vacated and that the original agent of the class be replaced by the petitioner or some other class member who is eligible to be the agent of the class during further processing of the class complaint. The Board may determine, with respect to the petition, that the agreement of resolution is not fair and reasonable, which vacates any agreement between the former agent of the class and the Board. The Board's decision to vacate the agreement of resolution shall be communicated to the former agent of the class and to the petitioner, and shall inform them of their right to file a request for review with the Commission under § 268.401 of this part. A copy of EEOC Form 573, notice of Appeal/Petition, shall be attached to the Board's decision pursuant to § 268.209(b)(5) of this part.

(g) *Hearing.* On expiration of the period allowed for preparation of the case, the administrative judge shall set a date for a hearing. The hearing shall be conducted in accordance with §§ 268.208(a) through (f) of this part.

(h) *Report of findings and recommendations.* (1) The administrative judge shall transmit to the Board a report of findings and recommendations on the class complaint, including a recommended decision, systemic relief for the class and any individual relief, where appropriate, with regard to the personnel policy or practice that gave rise to the class complaint.

(2) If the administrative judge finds no class relief appropriate, he or she shall determine if a finding of individual discrimination is warranted and, if so, shall recommend appropriate relief.

(3) The administrative judge shall notify the Board of the date on which the report of findings and recommendations was forwarded to the Board.

(i) *Board decision.* (1) Within 60 days of receipt of the report of findings and recommendations issued under § 268.305(h) of this part, the Board shall issue a final decision pursuant to § 268.209 of this part, which shall accept, reject, or modify the findings

and recommendations of the administrative judge.

(2) The final decision of the Board shall be in writing and shall be transmitted to the agent of the class by certified mail, return receipt requested, along with a copy of the report of findings and recommendations of the administrative judge.

(3) When the Board's final decision is to reject or modify the findings and recommendations of the administrative judge, the Board's final decision shall contain specific reasons for the Board's final decision.

(4) If the Board has not issued a final decision within 60 days of its receipt of the administrative judge's report of findings and recommendations, those findings and recommendations of the administrative judge shall become the Board's final decision. The Board shall transmit the final decision to the agent of the class within 5 calendar days of the expiration of the 60-day period.

(5) The final decision of the Board shall require any relief authorized by law and determined to be necessary or desirable to resolve the issue of discrimination.

(6) The final decision of the Board shall, subject to subpart E of this part, be binding on all members of the class and the Board.

(7) The final decision shall inform the class agent of the right to seek review by the Commission, or to file a civil action, in accordance with subpart E of this part, and of the applicable time limits.

(j) *Notification of decision.* The Board shall notify class members of the Board's final decision and relief awarded, if any, through the same media employed to give notice of the existence of the class complaint. The notice, where appropriate, shall include information concerning the rights of class members to seek individual relief, and of the procedures to be followed. Notice shall be given by the Board within 10 calendar days of the transmittal of the final decision to the agent of the class.

(k) *Relief for individual class members.* (1) When the Board finds class discrimination, the Board shall eliminate or modify the personnel policy or practice out of which the complaint arose and provide individual relief, including an award of attorney's fees and costs, to the agent of the class in accordance with § 268.501(e) of this part.

(2) When class-wide discrimination is not found, but it is found that the agent of the class is a victim of discrimination, § 268.501 of this part shall apply. The Board shall also, within 60 days of the issuance of its final decision finding no class-wide discrimination, issue the acknowledgement of receipt of an individual complaint as required by § 268.205(d) of this part and process in accordance with the provisions of subpart B of this part, each individual complaint that was subsumed into the class complaint.

(3) When class-wide discrimination is found in a final decision of the Board, and a class member believes that he or she is entitled to individual relief, the class member may file a written claim with the Board's EEO Programs Director within 30 days of receipt of notification by the Board of its final decision. The claim must include a specific, detailed showing that the claimant is a class member who was affected by a personnel action or matter resulting from the discriminatory personnel policy or practice, and that this discriminatory action took place within the period of time for which the Board found class-wide discrimination in its final decision. The period of time for which the Board finds class-wide discrimination shall begin not more than 45 days prior to the initial contact by the agent of the class with the EEO Counselor and shall end not later than the date when the Board eliminates the personnel policy or practice found to be discriminatory in the Board's final decision. The Board shall issue a final decision on each such claim within 90 days of filing. Such decision must include a notice of the right to file a request for review with the Commission or a civil action in accordance with subpart E of this part and the applicable time limits. A copy of EEOC Form 573, notice of Appeal/Petition, shall be attached to the Board's decision pursuant to § 268.209(b)(7) of this part.

Subpart D—Review by the Equal Employment Opportunity Commission

§ 268.401 Review by the Equal Employment Opportunity Commission.

(a) An individual complainant may file a request for review with the Commission of a final decision issued by the Board under § 268.209 of this part, or a dismissal by the Board of all or a portion of an individual complaint under § 268.206 of this part.

(b) An agent of the class may file a request for review with the Commission of a dismissal of all or a portion of a class complaint rendered by the Board under § 268.305(c) of this part, or a final decision of the Board accepting or rejecting all or a portion of a report of findings and recommendations of an administrative judge with regard to a class complaint pursuant to § 268.305(i) of this part. A class member may file a request for review with the Commission of a final decision by the Board on a claim for individual relief under a class complaint pursuant to § 268.305(k) of this part. Both an agent of the class and a class member may file a request for review with the Commission of a final decision of the Board on a petition pursuant to § 268.305(f)(4) of this part.

(c) A complainant, agent of the class or individual class claimant may file a request for review with the Commission of the Board's alleged noncompliance with a settlement agreement or final decision in accordance with § 268.504 of this part.

§ 268.402 Time limits for review by the Equal Employment Opportunity Commission.

(a) Any dismissal of a complaint or a portion of a complaint, or any final decision of the Board, as set forth in paragraphs (b)(1) through (7) of § 268.209 of this part, may be reviewed by the Commission if a request for review is filed with the Commission within 30 days of the complainant's receipt of the dismissal or final decision. In the case of class complaints any final decision of the Board received by an agent of the class, petitioner or any individual class claimant may be reviewed by the Commission if a request for review is filed with the Commission within 30 days of its receipt. Where a complainant has notified the EEO Programs Director of alleged noncompliance with a settlement agreement in accordance with § 268.504 of this part, the complainant may file a request for review with the Commission within 35 days after notification to the EEO Programs Director under § 268.504(a) of this part of such noncompliance, but the complainant must file a request for review within 30 days of receipt of the Board's determination.

(b) If the complainant is represented by an attorney of record, then the 30 day time period provided in paragraph (a) of this section within which to file a request for review shall be calculated from the receipt of the notification required under § 268.504(a) of this part by the attorney. In all other instances, the time within which to file a request for review with the Commission shall be calculated from the receipt of the notification required under § 268.504(a) of this part by the complainant.

§ 268.403 How to seek review.

(a) The complainant must file a request for review with the Commission by sending EEOC Form 573, notice of Appeal/Petition, to the Director, Office of Federal Operations, Equal

Employment Opportunity Commission, P.O. Box 19848, Washington, DC 20036, or by personal delivery or facsimile. The complainant should indicate what matters he or she is requesting the Commission to review.

(b) The complainant shall furnish a copy of the request for review to the Board's EEO Programs Director at the same time that he or she files the request for review with the Commission. In or attached to the request for review by the Commission, the complainant must certify the date and method by which service was made on the Board.

(c) If a complainant does not file a request for review with the Commission within the time limits of this subpart D, the request for review shall be untimely and shall be dismissed by the Commission.

(d) Any statement or brief in support of the request for review must be submitted to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, and to the Board within 30 days of the filing of the request for review. Following receipt of the request for review, and any brief in support of the request for review, the Director, Office of Federal Operations, Equal Employment Opportunity Commission, shall request the complaint file from the Board. The Board shall submit the complaint file and any Board statement or brief in opposition to the request for review to the Director, Office of Federal Operations, Equal Employment Opportunity Commission, within 30 days of receipt of the Commission's request for the complaint file. A copy of the Board's statement or brief shall be served on the complainant at the same time.

§ 268.404 Procedure on review.

(a) The Commission's Office of Federal Operations shall review the complaint file and all written statements and briefs from either party. The Commission may supplement the record by an exchange of letters or memoranda, investigation, remand to the Board or other procedures.

(b) If the Commission's Office of Federal Operations requests information from one or both of the parties to supplement the record, each party providing information shall send a copy of the information submitted to the Commission to the other party.

§ 268.405 Decisions on review.

(a) The Commission's Office of Federal Operations shall issue a written decision (the EEOC decision) setting forth its reasons for the decision. The Commission shall dismiss requests for review in accordance with §§ 268.206, 268.403(c) and 268.507 of this part. The EEOC decision shall be based on the preponderance of the evidence. If the EEOC decision contains a finding of discrimination, appropriate remedy(ies) shall be included and, where appropriate, the entitlement to interest, attorney's fees or costs shall be indicated. The EEOC decision shall reflect the date of its issuance, inform the complainant of his or her civil action rights, and be transmitted to the complainant and to the Board by certified mail, return receipt requested.

(b) The EEOC decision issued under paragraph (a) of this section is final, subject to paragraph (c) of this section, within the meaning of § 268.406(d) of this part unless:

(1) Either party files a timely request for reconsideration pursuant to § 268.406 of this part; or

(2) The Commission on its own motion reconsiders the case.

(c) The Board, within 30 days of receiving the EEOC decision, shall issue final decision pursuant to § 268.209 of this part based upon the EEOC decision.

§ 268.406 Reconsideration.

(a) Within a reasonable period of time, the Commission may, in its discretion, reconsider an EEOC decision issued under § 268.405(a) of this part, notwithstanding any other provisions of this part.

(b) A party may request reconsideration of an EEOC decision issued under § 268.405(a) of this part provided that such request is made within 30 days of receipt of an EEOC decision or within 20 days of receipt of another party's timely request for reconsideration. Such request, along with any supporting statement or brief, shall be submitted to the Commission's Office of Review and Appeals, and to all parties with proof of such submission. All other parties shall have 20 days from the date of service in which to submit to all other parties, with proof of submission, any statement or brief in opposition to the request.

(c) The request for reconsideration or the statement or brief in support of the request shall contain arguments or evidence which tend to establish that:

(1) New and material evidence is available that was not readily available when the EEOC decision was issued;

(2) The EEOC decision involved an erroneous interpretation of law, regulation or material fact, or misapplication of established policy; or

(3) The EEOC decision is of such exceptional nature as to have substantial precedential implications.

(d) A decision on a request for reconsideration by either party is final and there shall be no further right by either party to request reconsideration of an EEOC decision.

Subpart E—Remedies, Enforcement and Civil Actions

§ 268.501 Remedies and relief.

(a) *General procedures.* When the Board finds discrimination when issuing its final decision pursuant to § 268.209 of this part, the Board shall consider the following elements in providing full relief to complainants:

(1) Notification to all employees of the Board of their right to be free of unlawful discrimination and assurance that the particular types of discrimination found will not recur;

(2) Commitment that corrective, curative or preventive action will be taken, or measures adopted, to ensure that violations of law and this part similar to those found unlawful will not recur;

(3) An unconditional offer to each identified victim of discrimination of placement in the position the person would have occupied but for the discrimination suffered by that person, or a substantially equivalent position;

(4) Payment to each identified victim of discrimination on a make whole basis for any loss of earnings the person may have suffered as a result of the discrimination; and

(5) Commitment that the Board shall cease from engaging in the specific unlawful employment practice found in the case.

(b) *Relief for an applicant.* (1) (i) When it is determined in a final decision that an applicant for employment has been discriminated against, the Board shall offer the applicant for employment the position that the applicant for employment would have occupied absent discrimination or, if justified by the circumstances, a substantially equivalent position unless clear and convincing evidence indicates that the applicant for employment would not have been selected even absent the discrimination. The offer to the applicant for employment shall be made in writing. The applicant for employment shall have 15 days from receipt of the offer within which to accept or decline the offer. Failure to accept the offer within the 15-day period will be considered a declination of the offer, unless the applicant for employment can show that circumstances beyond his or her control prevented a response within the time limit.

(ii) If the offer is accepted, appointment shall be retroactive to the date the applicant for employment would have been hired. Back pay, computed in the manner prescribed in 5 CFR 550.805 shall be awarded from the date the applicant for employment would have entered on duty until the date the applicant for employment actually enters on duty unless clear and convincing evidence indicates that the applicant would not have been selected even absent discrimination. Interest on back pay shall be included in the back pay computation where sovereign immunity has been waived. An applicant for employment shall be deemed to have performed service at the Board during such period for all purposes except for meeting service requirements for completion of a required probationary period.

(iii) If the offer of employment is declined, the Board shall award the applicant for employment a sum equal to the back pay he or she would have received, computed in the manner prescribed in 5 CFR 550.805 from the date he or she would have been appointed until the date the offer was declined, subject to the limitation of paragraph (b)(3) of this section. Interest on back pay shall be included in the back pay computation. The Board shall inform the applicant for employment, in its offer of employment, of the right to this award in the event the offer of employment is declined.

(2) When it is determined in a final decision that discrimination existed at the time the applicant for employment was considered for employment but also by clear and convincing evidence that the applicant would not have been hired even absent discrimination, the Board shall nevertheless take all steps necessary to eliminate the discriminatory practice and ensure it does not recur.

(3) Back pay under this paragraph (b) for complaints under Title VII or the Rehabilitation Act may not extend from a date earlier than two years prior to the date on which the complaint was initially filed by the applicant for employment.

(c) *Relief for an employee.* When it is determined in a final decision that an employee of the Board was discriminated against, the Board shall provide relief, which shall include, but need not be limited to, one or more of the following actions:

(1) Nondiscriminatory placement, with back pay computed in the manner prescribed in 5 CFR 550.805 unless clear and convincing evidence contained in the record demonstrates that the personnel action would have been taken even absent the discrimination. Interest on back pay shall be included in the back pay computation where sovereign immunity has been waived. The back pay liability under Title VII or the Rehabilitation Act is limited to the two years prior to the date the discrimination complaint was filed;

(2) If clear and convincing evidence indicates that, although discrimination existed at the time the personnel action was taken, the personnel action would have been taken even absent discrimination, the Board shall nevertheless eliminate any discriminatory practice and ensure it does not recur;

(3) Cancellation of an unwarranted personnel action and restoration of the employee;

(4) Expunction from the Board's records of any adverse materials relating to the discriminatory practice; and

(5) Full opportunity to participate in the employee benefit denied (e.g., training, preferential work assignments, overtime scheduling).

(d) *Mitigation of damages.* The Board shall not decline to grant relief based upon failure to mitigate damages unless it has clear and convincing evidence that the employee or applicant for employment has failed to mitigate damages. The Board shall have the burden of proving by a preponderance of the evidence that the complainant has failed to mitigate his or her damages.

(e) *Attorney's fees or costs*—(1) *Awards of attorney's fees or costs.* The provisions of this paragraph (e) relating to the award of attorney's fees or costs shall apply to allegations of discrimination prohibited by Title VII and the Rehabilitation Act. In a notice of final action or a decision, the employee or applicant for employment may be awarded reasonable attorney's fees or costs (including expert witness fees) incurred in the processing of the complaint. In this regard:

(i) A finding of discrimination raises a presumption of entitlement to an award of attorney's fees;

(ii) Attorney's fees are allowable only for the services of members of the Bar and law clerks, paralegals or law students under the supervision of members of the Bar, except that no award is allowable for the services of any employee of the Federal Government; and

(iii) Attorney's fees shall be paid only for services performed after the filing of a written complaint and after the complainant has notified the Board that he or she is represented by an attorney, except that fees allowable for a reasonable period of time prior to the notification of representation for any services performed in reaching a determination to represent the complainant. Written submissions to the Board that are signed by the representative shall be deemed to constitute notice of representation.

(2) *Amount of awards.* (i) When the attorney's fees or costs are awarded, the complainant's attorney shall submit a verified statement of costs and attorney's fees (including expert witness fees), as appropriate, to the Board within 30 days of receipt of the final decision, unless a request for review or reconsideration is filed. A statement of attorney's fees shall be accompanied by an affidavit executed by the attorney of record itemizing the attorney's charges for legal services and both the verified statement and the accompanying affidavit shall be made a part of the complaint file. The amount of attorney's fees or costs to be awarded the complainant shall be determined by agreement among the complainant, the complainant's representative and the Board. Such agreement shall immediately be reduced to writing.

(ii) (A) If the complainant, the complainant's representative and the Board cannot reach an agreement on the amount of attorney's fees or costs within 20 days of the Board's receipt of the verified statement and accompanying affidavit, the Board shall issue a decision determining the amount of attorney's fees or costs due within 30 days of receipt of the statement and affidavit. The decision of the Board shall include the specific reasons for determining the amount of the award. The complainant or the complainant's representative may file a request for review with the Commission of the Board's decision, and the Board's notice to the complainant and his or her representative shall include EEOC Form 573, notice of Appeal/Petition.

(B) The amount of attorney's fees shall be calculated in accordance with existing case law using the following standards: The starting point shall be the number of hours reasonably expended multiplied by a reasonable hourly rate. This amount may be reduced or increased in consideration of the following factors, although ordinarily many of these factors are subsumed within the calculation set forth in this paragraph (e)(2)(ii)(B): The time and labor required, the novelty and difficulty of the questions, the skill requisite to perform the legal service properly, the attorney's preclusion from other employment due to acceptance of the case, the customary fee, whether the fee is fixed or contingent, time limitations imposed by the client or the

circumstances, the amount involved and the results obtained, the experience, reputation, and ability of the attorney, the undesirability of the case, the nature and length of the professional relationship with the client, and the awards in similar cases. Only in cases of exceptional success should any of these factors be used to enhance an award computed by the formula set forth in this paragraph (e)(2)(ii)(B).

(C) The costs that may be awarded are those authorized by 28 U.S.C. 1920 to include: Fees of the reporter for all or any of the stenographic transcript necessarily obtained for use in the case; fees and disbursements for printing and witnesses; and fees for exemplification and copies necessarily obtained for use in the case.

(iii) Witness fees shall be awarded in accordance with the provisions of 28 U.S.C. 1821, except that no award shall be made for a federal employee who is in a duty status when made available as a witness.

§ 268.502 Compliance with EEOC decisions.

(a) The relief ordered in an EEOC decision, if accepted pursuant to § 268.209 of this part as a final decision, or not acted upon by the Board within the time periods of § 268.209 of this part, shall be binding upon the Board. Failure to implement its final decision, or the EEOC decision in such circumstances, shall be grounds for the complainant to file a civil action under §§ 268.505 and 268.506 of this part.

(b) Notwithstanding paragraph (a) of this section, when the Board requests reconsideration, when the case involves an employee's removal, separation, or suspension continuing beyond the date of the request for reconsideration, and when the EEOC decision recommends retroactive restoration, the Board shall comply with the EEOC decision only to the extent of the temporary or conditional restoration of the employee to duty status in the position recommended by the Commission, pending the outcome of the Board's request for reconsideration.

(1) Service under the temporary or conditional restoration provisions of this paragraph (b) shall be credited toward the completion of a probationary or trial period, or eligibility for a within-grade increase, if the EEOC decision is upheld.

(2) The Board shall notify the Commission and the employee in writing, at the same time it requests reconsideration, that the relief it provides is temporary or conditional.

(c) Relief shall be provided in full no later than 60 days after all administrative proceedings have ended.

§ 268.503 Enforcement of EEOC decisions.

(a) *Petition for enforcement.* As set forth in this section, a complainant may petition the Commission for enforcement of an EEOC decision issued under the review process of this part. The petition shall be submitted to the Office of Federal Operations, Equal Employment Opportunity Commission. The petition shall specifically set forth the reasons that lead the complainant to believe that the Board is not complying with the EEOC decision.

(b) *Compliance.* The Commission's Office of Federal Operations may take appropriate action to ascertain whether the Board should have adopted the EEOC decision pursuant to § 268.209 of this part. If the Commission determines that the Board has failed to comply with the EEOC decision in full, the Commission may undertake the efforts set forth in paragraphs (c) and (d) of this section to obtain compliance by the Board.

(c) *Clarification.* The Commission's Office of Federal Operations may, on its own motion or in response to the petition for enforcement or in connection with a timely request for reconsideration, issue a clarification of an EEOC decision. A clarification may not change the result of a prior EEOC decision or enlarge or diminish the relief contained in the EEOC decision, but it may further explain the meaning or intent of the EEOC decision. The Commission may also send a notice to the Board seeking an explanation why the Board failed to adopt the EEOC decision as its final decision under § 268.209 of this part, and the Board shall respond to such request within 30 days of receipt of the notice addressing the issue raised by the Commission.

(d) *Notification to complainant of completion of administrative efforts.* Where the Commission has determined that the Board has failed to adopt the EEOC decision as its final decision, the Commission may notify the complainant who has petitioned the Commission under paragraph (a) of this section of his or her right to file a civil action under § 268.505 of this part for failure of the Board to adopt the EEOC decision as its final decision.

§ 268.504 Compliance with settlement agreements and final decisions.

(a) Any settlement agreement knowingly and voluntarily agreed to by the Board and a complainant, reached at any stage of the complaint process, shall be binding on both parties. A final decision of the Board that has not been the subject of review by the Commission, or in a civil action, shall nonetheless be binding on the Board. If the complainant believes that the Board has failed to comply with the terms of a settlement agreement or a final decision, the complainant shall notify the EEO Programs Director, in writing, of the alleged noncompliance within 30 days of when the complainant knew or should have known of the alleged noncompliance. The complainant may request that the Board implement the terms of the settlement agreement or final decision or alteratively, that the complaint be reinstated for further processing from the point processing ceased.

(b) The Board shall attempt to resolve the matter brought to the Board's attention by the complainant in paragraph (a) of this section, and respond to the complainant, in writing. If the Board has not responded to the complainant, in writing, or if the complainant is not satisfied with the Board's attempt to resolve the matter, the complainant may request the Commission to review whether the Board has complied with the terms of the settlement agreement or the final decision. The complainant may file such request for review 35 days after he or she has served the Board with the notice of allegations of noncompliance, but must file the request for review with the Commission within 30 days of his or her receipt of a Board's determination. The complainant must serve a copy of the request for review on the Board and the Board may submit a response to the Commission within 30 days of receiving notice of request for review.

(c) Prior to rendering its determination, the Commission may request that the parties submit whatever additional information or documentation they deem necessary, or it may direct that an investigation or hearing on the matter be conducted. If the Commission determines that the Board is not in compliance and the noncompliance is not attributable to acts or conduct of the complainant, it may order that the complaint be reinstated for further processing from the point processing ceased. Allegations that subsequent acts of discrimination violate a settlement agreement shall be processed as separate complaints under §§ 268.205 or 268.305 of this part, as appropriate, rather than under this section.

§ 268.505 Civil action: Title VII, Age Discrimination in Employment Act and Rehabilitation Act.

A complainant who has filed an individual complaint, an agent of the class who has filed a class complaint or a claimant who has filed a claim for individual relief pursuant to a class complaint may file a civil action in an appropriate United States District Court alleging violations of Title VII, the ADEA or the Rehabilitation Act:

(a) Within 90 days of receipt of the Board's final decision on an individual or class complaint, whether or not a request for review has been filed with the Commission;

(b) After 180 days from the date of filing an individual or class complaint if a request for review by the Commission has not been filed and a final decision of the Board has not been issued;

(c) Within 90 days of receipt of an EEOC decision; or

(d) After 180 days from the date of filing a request for review with the Commission if an EEOC decision has not been issued by the Commission.

§ 268.506 Civil action: Equal Pay Act.

A complainant may file a civil action under section 16(b) of the Fair Labor Standards Act (29 U.S.C. 216(b)) in a court of competent jurisdiction within two years or, if the violation is willful, three years of the date of the alleged violation of the Equal Pay Act regardless of whether he or she pursued any administrative complaint processing (29 U.S.C. 225). Recovery of back wages under the Equal Pay Act is limited to two years prior to the date of filing suit, or to three years if the violation is deemed willful. Liquidated damages in an equal amount may also be awarded. The filing of a complaint or request for review with the Commission under this part shall not toll the time for filing a civil action.

§ 268.507 Effect of filing a civil action.

Filing a civil action under §§ 268.505 or 268.506 of this part shall terminate the Commission's processing of any request for review. If a private suit is filed subsequent to the filing of a request for review, the parties shall notify the Commission of such filing in writing.

Subpart F—Matters of General Applicability

§ 268.601 EEO group statistics.

(a) The Board shall collect and maintain accurate employment information on the race, national origin, sex and disabilities of its employees.

(b) Data on race, national origin and sex shall be collected by voluntary self-identification. If an employee does not voluntarily provide the requested information, the Board shall advise the employee of the importance of the data and of the Board's obligation to report it. If the employee still refuses to provide the information, the Board shall make a visual identification and inform the employee of the data it will be reporting. If the Board believes that information provided by an employee is inaccurate, the Board shall advise the employee that the purpose for which the data is being collected is solely statistical, of the need for accuracy, of the Board's recognition of the sensitivity of the information, and of the existence of procedures to prevent its unauthorized disclosure. If, thereafter, the employee declines to change the apparently inaccurate self identification, the Board shall accept it.

(c) Subject to applicable law, the information collected under paragraph (b) of this section shall be disclosed only in the form of gross statistics. The Board will not collect or maintain any information on the race, national origin, or sex of individual employees except in accordance with applicable law and when an automated data processing system is used in accordance with standards and requirements prescribed by the Commission to insure individual privacy and the separation of that information from the employee's personnel record.

(d) The Board's system shall incorporate the following controls:

(1) Only those categories of race and national origin approved by the Commission shall be used; and

(2) Only the specific procedures for the collection and maintenance of data that are prescribed or approved by the Commission shall be used.

(e) The Board shall use the data only in studies and analyses that contribute affirmatively to achieving the objectives of the Board's equal employment opportunity program. The Board shall not establish quotas for the employment of persons on the basis of race, color, religion, sex, or national origin.

(f) Data on disabilities shall also be collected by voluntary self-identification. If an employee does not voluntarily provide the requested information, the Board shall advise the employee of the importance of the data and of the Board's obligation to report it. If an employee who has been appointed pursuant to the Board's affirmative action program for hiring individuals with a disability still refuses to provide the requested information, the Board shall identify the employee's disability based upon the records supporting the appointment. If any other employee still refuses to provide the requested information or provides information that the Board believes to be inaccurate, the Board shall report the employee's disability status as unknown.

(g) The Board shall report to the Commission on employment by race, national origin, sex and disability in the form and at such times as the Board and Commission shall agree.

§ 268.602 Reports to the Equal Employment Opportunity Commission.

(a) The Board shall report to the Commission information concerning pre-complaint counseling and the status, processing, and disposition of complaints under this part at such times and in such manner as the Board and Commission shall agree.

(b) The Board shall advise the Commission whenever it is served with a federal court complaint based upon a complaint that is pending review at the Commission.

(c) The Board shall prepare annually equal employment opportunity plans of actions, in the form requested by the Commission, and shall submit such plans for review and advice by the Commission. The plans of action shall include:

(1) Provision for the establishment of training and education programs designed to provide maximum opportunity for employees to advance so as to perform at their highest potential;

(2) Description of the qualifications, in terms of training and experience relating to equal employment opportunity, of the principal and operating officials concerned with administration of the Board's equal employment opportunity program; and

(3) Description of the allocation of personnel and resources proposed by the Board to carry out its equal employment opportunity program.

§ 268.603 Voluntary settlement attempts.

The Board shall make reasonable efforts to settle, voluntarily, complaints of discrimination as early as possible in and throughout, the administrative processing of complaints, including the pre-complaint counseling stage. Any settlement reached shall be reduced to writing and shall be signed by both parties and shall identify the allegations resolved.

§ 268.604 Filing and computation of time.

(a) All time periods in this part that are stated in terms of days are calendar days unless otherwise stated.

(b) A document shall be deemed timely filed if it is delivered in person, or sent via U.S. mail and postmarked before the expiration of the applicable filing period; or, in the absence of a legible postmark, if it is received via U.S. mail within five days of the expiration of the applicable filing period.

(c) The time limits in this part are subject to waiver, estoppel, and equitable tolling.

(d) The first day counted shall be the day after the event from which the time period began to run and the last day of the period shall be included, unless it falls on a Saturday, Sunday, or Federal holiday, in which case the period shall be extended to include the next business day.

§ 268.605 Representation and official time.

(a) At any stage in the processing of a complaint, including the counseling stage under § 268.204 of this part, the complainant shall have the right to be accompanied, represented and advised by a representative of complainant's choice.

(b) If the complainant is an employee of the Board, he or she shall have a reasonable amount of official time, if otherwise on duty, to prepare the complaint and to respond to Board and Commission requests for information. If the complainant is an employee of the Board and he or she designates another employee of the Board as his or her representative, the representative shall have a reasonable amount of official time, if otherwise on duty, to prepare the complaint and respond to Board and Commission requests for information. The Board is not obligated to change work schedules, incur overtime wages, or pay travel expenses to facilitate the choice of a specific representative or to allow the complainant and representative to confer. The complainant and the representative, if employed by the Board and otherwise in a pay status, shall be on official time, regardless of their tours of duty, when their presence is authorized or required by the Board or the Commission during the investigation, informal adjustment, or hearing on the complaint.

(c) In cases where the representation of a complainant or the Board would conflict with the official or collateral duties of the representative, the Board may, after giving the representative an opportunity to respond, disqualify the representative.

(d) Unless the complainant states otherwise in writing, after the Board has received written notice of the name, address and telephone number of a representative, all official correspondence shall be with the representative with copies to the complainant. When the complainant designates an attorney as representative, service of documents and decisions on the complaint shall be made on the attorney and not on the complainant, and time frames for receipt of materials by the complainant shall be computed from the time of receipt by the attorney. The complainant must serve all official correspondence on the designated representative of the Board.

(e) The complainant shall at all times be responsible for proceeding with the complaint whether or not he or she has designated a representative.

(f) Witnesses who are Board employees shall be in a duty status when their presence is authorized or required in connection with a complaint.

§ 268.606 Joint processing and consolidation of complaints.

Complaints of discrimination filed by two or more complainants consisting of substantially similar allegations of discrimination or relating to the same matter, or two or more complaints of discrimination from the same complainant, may be consolidated by the Board for joint processing after appropriate notification to the parties. The date of the first filed complaint controls the applicable time frames under subpart B of this part.

Subpart G—Prohibition Against Discrimination In Board Programs and Activities Because of a Physical or Mental Disability

§ 268.701 Purpose and application.

(a) *Purpose.* The purpose of this subpart G is to prohibit discrimination on the basis of a disability in programs or activities conducted by the Board.

(b) *Application.* (1) This subpart G applies to all programs and activities conducted by the Board. Such programs and activities include:

(i) Holding open meetings of the Board or other meetings or public hearings at the Board's office in Washington, DC;

(ii) Responding to inquiries, filing complaints, or applying for employment at the Board's office;

(iii) Making available the Board's library facilities; and

(iv) Any other lawful interaction with the Board or its staff in any official matter with people who are not employees of the Board.

(2) This subpart G does not apply to Federal Reserve Banks or to financial institutions or other companies supervised or regulated by the Board.

§ 268.702 Notice.

The Board shall make available to employees, applicants for employment, participants, beneficiaries, and other interested persons information regarding the provisions of this subpart G and its applicability to the programs and activities conducted by the Board, and make this information available to them in such manner as the Board finds necessary to apprise such persons of the protections against discrimination assured them by this subpart G.

§ 268.703 Prohibition against discrimination.

(a) No qualified individual with a disability shall, on the basis of a disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination in any program or activity conducted by the Board.

(b)(1) The Board, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of a disability:

(i) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that provide to others;

(ii) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits, or services to individuals with a disability or to any class of individuals with a disability than is provided to others unless such action is necessary to provide qualified individuals with a disability with aid, benefits, or services that are as effective as those provided to others;

(v) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) The Board may not deny a qualified individual with a disability the opportunity to participate in programs or activities that are not separate or different, despite the

existence of permissibly separate or different programs or activities.

(3) The Board may not, directly or through contractual or other arrangements, utilize criteria or methods of administration, the purpose or effect of which would:

(i) Subject qualified individuals with a disability to discrimination on the basis of a disability; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with a disability.

(4) The Board may not, in determining the site or location of a facility, make selections the purpose or effect of which would:

(i) Exclude individuals with a disability from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the Board; or

(ii) Defeat or substantially impair the accomplishment of the objectives or a program or activity with respect to individuals with a disability.

(5) The Board, in the selection of procurement contractors, may not use criteria that subject qualified individuals with a disability to discrimination on the basis of a disability.

(6) The Board may not administer a licensing or certification program in a manner that subjects qualified individuals with a disability to discrimination on the basis of a disability, nor may the Board establish requirements for the programs and activities of licensees or certified entities that subject qualified individuals with a disability to discrimination on the basis of a disability. However, the programs and activities of entities that are licensed or certified by the Board are not, themselves, covered by this subpart G.

(c) The exclusion of individuals who do not have a disability from the benefits of a program limited by Federal statute or Board order to individuals with a disability or the exclusion of a specific class of individuals with a disability from a program limited by Federal statute or Board order to a different class of individuals with a disability is not prohibited by this subpart G.

(d) The Board shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with a disability.

§ 268.704 Employment.

No qualified individual with a disability shall, on the basis of a disability, be subjected to discrimination in employment under any program or activity conducted by the Board. The requirements and procedures of § 268.303 of this part shall apply to discrimination in employment under this subpart G.

§ 268.705 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 268.706 of this part, no qualified individual with a disability shall, because the Board's facilities are inaccessible to or unusable by individuals with a disability, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the Board.

§ 268.706 Program accessibility: Existing facilities.

(a) *General.* The Board shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with a disability. This paragraph (a) does not:

(1) Necessarily require the Board to make each of its existing facilities accessible to and usable by individuals with a disability; or

(2) Require the Board to take any action that it can determine, based on a written record, would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where the Board believes that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Board shall establish a written record showing that compliance with this paragraph (a) would result in such alterations or burdens. The decision that compliance would result in such alterations or burdens shall be made by the Board of Governors or their designee after considering all Board resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the Board shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with a disability receive the benefits and services of the program or activity.

(b) *Methods.* The Board may comply with the requirements of this subpart G through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to individuals with a disability, home visits, delivery of service at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with a disability. The Board is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this subpart G. In choosing among available methods for meeting the requirements of this subpart G, the Board gives priority to those methods that offer programs and activities to qualified individuals with a disability in the most integrated setting appropriate.

(c) *Time period for compliance.* The Board shall comply with any obligations established under this subpart G as expeditiously as possible.

§ 268.707 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the Board, shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with a disability.

§ 268.708 Communications.

(a) The Board shall take appropriate steps to ensure effective communication with applicants for employment, participants, personnel of other Federal entities, and members of the public.

(1) The Board shall furnish appropriate auxiliary aids where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the Board.

(i) In determining what type of auxiliary aid is necessary, the Board shall give primary consideration to the requests of the individual with a disability.

(ii) The Board need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where the Board communicates with employees and others by telephone, telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems shall be used.

(b) The Board shall ensure that interested persons, including persons with impaired vision or hearing, can obtain information as to the existence

and location of accessible services, activities, and facilities.

(c) The Board shall provide signs at a primary entrance to any inaccessible facility, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This subpart G does not require the Board to take any action that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where the Board believes that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the Board shall establish a written record showing compliance with this subpart G would result in such alterations or burdens. The determination that compliance would result in such alterations or burdens shall be made by the Board of Governors or their designee after considering all Board resources available for use in the funding and operation of the conducted program or activity, and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this subpart G would result in such an alteration or such burdens, the Board shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with a disability receive the benefits and services of the program or activity.

§ 268.709 Compliance procedures.

(a) *Applicability.* Notwithstanding any other provision of this part, this section, except as provided in paragraph (b) of this section, rather than subpart B and § 268.305 of this part, shall apply to all allegations of discrimination on the basis of a disability in programs or activities conducted by the Board.

(b) *Employment complaints.* The Board shall process complaints alleging discrimination in employment on the basis of a disability in accordance with subpart B and § 268.305 of this part.

(c) *Responsible official.* The EEO Programs Director shall be responsible for coordinating implementation of this section.

(d) *Filing the complaint*—(1) *Who may file.* Any person who believes that he or she has been subjected to discrimination prohibited by this subpart G may, personally or by his or her authorized representative, file a complaint of discrimination with the EEO Programs Director.

(2) *Confidentiality.* The EEO Programs Director shall not reveal the identity of any person submitting a complaint, except when authorized to do so in writing by the complainant, and except to the extent necessary to carry out the purposes of this subpart G, including the conduct of any investigation, hearing, or proceeding under this subpart G.

(3) *When to file.* Complaints shall be filed within 180 days of the alleged act of discrimination. The EEO Programs Director may extend this time limit for good cause shown. For the purpose of determining when a complaint is timely filed under this paragraph (d), a complaint mailed to the Board shall be deemed filed on the date it is postmarked. Any other complaint shall be deemed filed on the date it is received by the Board.

(4) *How to file.* Complaints may be delivered or mailed to the Administrative Governor, the Staff Director for Management, the EEO Programs Director, the Federal Women's Program Manager, the Hispanic Program Coordinator, or the Disabled Persons Program Coordinator. Complaints should be sent to the EEO Programs Director, Board of Governors of the Federal Reserve System, 20th and C Street NW., Washington, DC 20551. If any Board official other than the EEO Programs Director receives a complaint, he or she shall forward the complaint to the EEO Programs Director.

(e) *Acceptance of complaint.* (1) The EEO Programs Director shall accept a complete complaint that is filed in accordance with paragraph (d) of this section and over which the Board has jurisdiction. The EEO Programs Director shall notify the complainant of receipt and acceptance of the complaint.

(2) If the EEO Programs Director receives a complaint that is not complete, he or she shall notify the complainant, within 30 days of receipt of the incomplete complaint, that additional information is needed. If the complainant fails to complete the complaint within 30 days of receipt of this notice, the EEO Programs Director shall dismiss the complaint without prejudice.

(3) If the EEO Programs Director receives a complaint over which the Board does not have jurisdiction, the EEO Programs Director shall notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate government entity.

(f) *Investigation/conciliation.* (1) Within 180 days of the receipt of a complete complaint, the EEO Programs Director shall complete the investigation of the complaint, attempt informal resolution of the complaint, and if no informal resolution is achieved, the EEO Programs Director shall forward the investigative report to the Staff Director for Management.

(2) The EEO Programs Director may request Board employees to cooperate in the investigation and attempted resolution of complaints. Employees who are requested by the EEO Programs Director to participate in any investigation under this section shall do so as part of their official duties and during the course of regular duty hours.

(3) The EEO Programs Director shall furnish the complainant with a copy of the investigative report promptly after completion of the investigation and provide the complainant with an opportunity for informal resolution of the complaint.

(4) If a complaint is resolved informally, the terms of the agreement shall be reduced to writing and made a part of the complaint file, with a copy of the agreement provided to the complainant. The written agreement may include a finding on the issue of discrimination and shall describe any corrective action to which the complainant has agreed.

(g) *Letter of findings.* (1) If an informal resolution of the complaint is not reached, the EEO Programs Director shall transmit the complaint file to the Staff Director for Management. The Staff Director for Management shall, within 180 days of the receipt of the complete complaint by the EEO Programs Director, notify the complainant of the results of the investigation in a letter sent by certified mail, return receipt requested, containing:

(i) Findings of fact and conclusions of law;

(ii) A description of a remedy for each violation found;

(iii) A notice of right of the complainant to appeal the letter of findings under paragraph (k) of this section; and

(iv) A notice of right of the complainant to request a hearing.

(2) If the complainant does not file a notice of appeal or does not request a hearing within the times prescribed in paragraph (h)(1) and (j)(1) of this section, the EEO Programs Director shall certify that the letter of findings under this paragraph (g) is the final decision of the Board at the expiration of those times.

(h) *Filing an appeal.* (1) Notice of appeal, with or without a request for hearing, shall be filed by the complainant with the EEO Programs Director within 30 days of receipt from

the Staff Director for Management of the letter of findings required by paragraph (g) of this section.

(2) If the complainant does not request a hearing, the EEO Programs Director shall notify the Board of Governors of the appeal by the complainant and that a decision must be made under paragraph (k) of this section.

(i) *Acceptance of appeal.* The EEO Programs Director shall accept and process any timely appeal. A complainant may appeal to the Administrative Governor from a decision by the EEO Programs Director that an appeal is untimely. This appeal shall be filed within 15 calendar days of receipt of the decision from the EEO Programs Director.

(j) *Hearing.* (1) Notice of a request for a hearing, with or without a request for an appeal, shall be filed by the complainant with the EEO Programs Director within 30 days of receipt from the Staff Director for Management of the letter of findings required by paragraph (g) of this section. Upon a timely request for a hearing, the EEO Programs Director shall request that the Board of Governors, or its designee, appoint an administrative law judge to conduct the hearing. The administrative law judge shall issue a notice to the complainant and the Board specifying the date, time, and place of the scheduled hearing. The hearing shall be commenced no earlier than 15 calendar days after the notice is issued and no later than 60 days after the request for a hearing is filed, unless all parties agree to a different date.

(2) The hearing, decision, and any administrative review thereof shall be conducted in conformity with 5 U.S.C. 554–557. The administrative law judge shall have the duty to conduct a fair hearing, to take all necessary actions to avoid delay, and to maintain order. He or she shall have all powers necessary to these ends, including (but not limited to) the power to:

(i) Arrange and change the dates, times, and places of hearings and prehearing conferences and to issue notice thereof;

(ii) Hold conferences to settle, simplify, or determine the issues in a hearing, or to consider other matters that may aid in the expeditious disposition of the hearing;

(iii) Require parties to state their positions in writing with respect to the various issues in the hearing and to exchange such statements with all other parties;

(iv) Examine witnesses and direct witnesses to testify;

(v) Receive, rule on, exclude, or limit evidence;

(vi) Rule on procedural items pending before him or her; and

(vii) Take any action permitted to the administrative law judge as authorized by this subpart G or by the provisions of the Administrative Procedure Act (5 U.S.C. 554–557).

(3) Technical rules of evidence shall not apply to hearings conducted pursuant to this paragraph (j), but rules or principles designed to assure production of credible evidence and to subject testimony to cross-examination shall be applied by the administrative law judge wherever reasonably necessary. The administrative law judge may exclude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties, and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence except to the extent the substance thereof is stipulated for the record. All decisions shall be based upon the hearing record.

(4) The costs and expenses for the conduct of a hearing shall be allocated as follows:

(i) Employees of the Board shall, upon the request of the administrative law judge, be made available to participate in the hearing and shall be on official duty status for this purpose. They shall not receive witness fees.

(ii) Employees of other Federal agencies called to testify at a hearing, at the request of the administrative law judge and with the approval of the employing agency, shall be on official duty status during any absence from normal duties caused by their testimony, and shall not receive witness fees.

(iii) The fees and expenses of other persons called to testify at a hearing shall be paid by the party requesting their appearance.

(iv) The administrative law judge may require the Board to pay travel expenses necessary for the complainant to attend the hearing.

(v) The Board shall pay the required expenses and charges for the administrative law judge and court reporter.

(vi) All other expenses shall be paid by the parties incurring them.

(5) The administrative law judge shall submit in writing recommended findings of fact, conclusions of law, and remedies to the complainant and the EEO Programs Director within 30 days, after the receipt of the hearing transcripts, or within 30 days after the conclusion of the hearing if no transcripts are made. This time limit may be extended with the permission of the EEO Programs Director.

(6) Within 15 calendar days after receipt of the recommended decision of the administrative law judge, the complainant may file exceptions to the recommended decision with the EEO Programs Director. On behalf of the Board, the EEO Programs Director may, within 15 calendar days after receipt of the recommended decision of the administrative law judge, take exception to the recommended decision of the administrative law judge and shall notify the complainant in writing of the Board's exception. Thereafter, the complainant shall have 10 calendar days to file reply exceptions with the EEO Programs Director. The EEO Programs Director shall retain copies of the exceptions and replies to the Board's exception for consideration by the Board. After the expiration of the time to reply, the recommended decision shall be ripe for a decision under paragraph (k) of this section.

(k) *Decision.* (1) The EEO Programs Director shall notify the Board of Governors when a complaint is ripe for decision under this paragraph (k). At the request of any member of the Board of Governors made within 3 business days of such notice, the Board of Governors shall make the decision on the complaint. If no such request is made, the Administrative Governor, or the Staff Director for Management if he or she is delegated the authority to do so under § 268.103(a)(2) of this part, shall make the decision on the complaint. The decision shall be made based on information in the investigative record and, if a hearing is held, on the hearing record. The decision shall be made within 60 days of the receipt by the EEO Programs Director of the notice of appeal and investigative record pursuant to paragraph (h)(1) of this section or 60 days following the end of the period for filing reply exceptions set forth in paragraph (j)(6) of this section, whichever is applicable. If the decision-maker under this paragraph (k) determines that additional information is needed from any party, the decision-maker shall request the information and provide the other party or parties an opportunity to respond to that information. The decision-maker shall have 60 days from receipt of the additional information to render the decision on the appeal. The decision-maker shall transmit the decision by letter to all parties. The decision shall set forth the findings, any remedial actions required, and the reasons for the decision. If the decision is based on a hearing record, the decision-maker shall consider the recommended decision of

the administrative law judge and render a final decision based on the entire record. The decision-maker may also remand the hearing record to the administrative law judge for a fuller development of the record.

(2) The Board shall take any action required under the terms of the decision promptly. The decision-maker may require periodic compliance reports specifying:

(i) The manner in which compliance with the provisions of the decision has been achieved;

(ii) The reasons any action required by the final Board decision has not been taken; and

(iii) The steps being taken to ensure full compliance.

(3) The decision-maker may retain responsibility for resolving disputes that arise between parties over interpretation of the final Board decision, or for specific adjudicatory decisions arising out of implementation.

By order of the Board of Governors of the Federal Reserve System, March 30, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–8006 Filed 4–5–94; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 27654; Amdt. No. 1592]

Standard Instrument Approach Procedures: Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Area of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The Provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled. The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPs criteria were applied to only these specific conditions existing at the affected airports.

This amendment to part 97 contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPs. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports Navigation (air).

Issued in Washington, DC on March 25, 1994.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective	State	City	Airport	FDC No.	SIAP
03/14/94 ...	GA	Reidsville	Reidsville	FDC 4/1205	NDB Rwy 11 Amdt 6.
03/15/94 ...	SC	Spartanburg	Spartanburg Downtown Memorial	FDC 4/1232	VOR–B Amdt 2.
03/15/94 ...	SC	Spartanburg	Spartanburg Downtown Memorial	FDC 4/1233	Loc Rwy 4 Amdt 2.
03/15/94 ...	SC	Spartanburg	Spartanburg Downtown Memorial	FDC 4/1234	RNAV Rwy 4 Amdt 6.
03/15/94 ...	SC	Spartanburg	Spartanburg Downtown Memorial	FDC 4/1235	NDB–A Amdt 8.
03/16/94 ...	CT	New Haven	Tweed-New Haven	FDC 4/1251	VOR Rwy 2 Amdt 22.
03/16/94 ...	CT	New Haven	Tweed-New Haven	FDC 4/1252	VOR–A Amdt 2.
03/17/94 ...	FL	Miami	Kendall-Tamiami Executive	FDC 4/1325	ILS Rwy 9R Amdt 7.
03/17/94 ...	FL	Miami	Kendall-Tamiami Executive	FDC 4/1326	NDB Rwy 9R Orig.
03/17/94 ...	MI	Battle Creek	W.K. Kellogg	FDC 4/1338	ILS Rwy 23 Amdt 17A.
03/21/94 ...	ME	Waterville	Waterville Robert LaFleur	FDC 4/1382	VOR/DME Rwy 5 Amdt 7.
03/23/94 ...	TX	Marshall	Harrison County	FDC 4/1401	VOR/DME–A Amdt 4.

New Haven

Tweed-New Haven

Connecticut

VOR Rwy 2 Amdt 22...
Effective: 03/16/94

FDC 4/1251/HVN/ FI/P Tweed-New Haven, New Haven, CT. VOR Rwy 2 Amdt 2...Add Note... When LCL ALSTG not Received, use ISLIP ALSTG. This is VOR Rwy 2 Amdt 22A.

New Haven

Tweed-New Haven

Connecticut

VOR–A Amdt 2...
Effective: 03/16/94

FDC 4/1252/HVN/ FI/P Tweed-New Haven, New Haven, CT. VOR–A Amdt 2...Add Note... When LCL ALSTG not Received, use ISLIP ALSTG. This is VOR–A Amdt 2A.

Miami

Kendall-Tamiami Executive

Florida

ILS Rwy 9R Amdt 7...
Effective: 03/17/94

FDC 4/1325/TMB/ FI/P Kendall-Tamiami Executive, Miami, FL. ILS Rwy 9R Amdt 7...Terminal Routes... Delete BSY VORTAC to Qeezy LOM Feeder Establish AEW NDB/DME to Qeezy LOM Feeder... CRS/DIST 257.22/19.34 NM ALT 2100. Minimum Altitude at Qeezy LOM 1300. Minimum Glide Slope Intercept Altitude 1300. Glide Slope Altitude at OM 1230. Circling MDA CAT A 440 HAA 430. This Becomes ILS Rwy 9R Amdt 7A.

Miami

Kendall-Tamiami Executive

Florida

NDB Rwy 9R Orig...
Effective: 03/17/94

FDC 4/1326/TMB/ FI/P Kendall-Tamiami Executive, Miami, FL. NDB Rwy 9R Orig... Terminal Routes... Delete BSY VORTAC To Qeezy LOM Feeder Establish AEW NDB/DME to Qeezy LOM Feeder... CRS/Dist 257.22/19.34 NM ALT 2100. Minimum Alt at Qeezy LOM 1300. Circling MDA Cat A 440 HAA 430. This Becomes NDB Rwy 9R Orig-A.

Reidsville

Reidsville

Georgia

NDB Rwy 11 Amdt 6...

Effective: 03/14/94

FDC 4/1205/RVJ/ FI/P Reidsville, Reidsville, GA. NDB Rwy 11 Amdt 6...Add Note... Proc NA at Night. This Becomes NDB Rwy 11 Amdt 6A.

Waterville

Waterville Robert LaFleur

Maine

VOR/DME Rwy 5 Amdt 7...

Effective: 03/21/94

FDC 4/1382/WVL/ FI/P Waterville Robert LaFleur, Waterville, ME. VOR/DME Rwy 5 Amdt 7...Circling Mins... CATS A/B/C MDA 820. This is VOR/DME Rwy 5 Amdt 7A.

Battle Creek

W.K. Kellogg

Michigan

ILS Rwy 23 Amdt 17A...
Effective: 03/17/94

FDC 4/1338/BTL/ FI/P W.K. Kellogg, Battle Creek, MI. ILS Rwy 23 Amdt 17A...Battle Creek ALSTG Mins S–ILS 23 DH 1129/HAT 200 all Cats. Delete Notes... ILS Unusable From MM Inbound. DH Increased to 1179 for Inoperative MM. This IS ILS Rwy 23 Amdt 17B.

Spartanburg

Spartanburg Downtown Memorial

South Carolina

VOR–B Amdt 2...
Effective: 03/15/94

FDC 4/1232/SPA/ FI/P Spartanburg Downtown Memorial, Spartanburg, SC. VOR–B Amdt 2...Change all References Rwy 4–22 to Rwy 5–23. This Becomes VOR–B Amdt 2A.

Spartanburg

Spartanburg Downtown Memorial

South Carolina

LOC Rwy 4 Amdt 2...
Effective: 03/15/94

FDC 4/1233/SPA/ FI/P Spartanburg Downtown Memorial, Spartanburg, SC. Loc Rwy 4 Amdt 2...Change all Reference Rwy 4–22 to Rwy 5–23. This Becomes Loc Rwy 5 Amdt 2A.

Spartanburg

Spartanburg Downtown Memorial

South Carolina

RNAV Rwy 4 Amdt 6...
Effective: 03/15/94

FDC 4/1234/SPA/ FI/P Spartanburg Downtown Memorial, Spartanburg, SC. RNAV Rwy 4 Amdt 6...Change all Reference Rwy 4–22 to Rwy 5–23. This Becomes RNAV Rwy 5 Amdt 6A.

Spartanburg

Spartanburg Downtown Memorial

South Carolina

NDB–A Amdt 8...
Effective: 03/15/94

FDC 4/1235/SPA/ FI/P Spartanburg Downtown Memorial, Spartanburg, SC. NDB–A Amdt 8...Change all Reference Rwy 4–22 to Rwy 5–23. This Becomes NDB–A Amdt 8A.

Marshall

Harrison County

Texas

VOR/DME–A Amdt 4...
Effective: 03/23/94

FDC 4/1401/ASL/ FI/P Harrison County, Marshall, TX. VOR/DME–A Amdt 4...CHG Missed Approach Point to Read... GGG R–068/23.3 This is VOR/DME–A Amdt 4A.

[FR Doc. 94–7917 Filed 4–5–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 101 and 122

[T.D. 94–34]

Customs Service Field Organization; Santa Teresa, NM

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations governing the Customs field organization by establishing Santa Teresa, New Mexico, as a port of entry. The document also establishes the Santa Teresa Airport, which is within the boundaries of the port of entry, as a designated airport for the purposes of report of arrival and Customs clearance. Currently, Santa Teresa is a temporary Customs station, and Santa Teresa Airport is operating as a landing rights airport. Because of the traffic in the area which already exists, and the anticipated growth in that traffic, Customs has determined that a need exists to create a port of entry at Santa Teresa. Through this change, the general public and importers will be served better and Customs personnel and resources will be more efficiently utilized.

EFFECTIVE DATE: May 6, 1994.

FOR FURTHER INFORMATION CONTACT: Brad Lund, Office of Workforce Effectiveness and Development, Office of Inspection and Control, U.S. Customs Service, (202) 927–0192.

SUPPLEMENTARY INFORMATION:

Background

As part of its continuing program to obtain more efficient use of its personnel, facilities and resources, and to provide better service to carriers, importers and the public, Customs is amending § 101.3, Customs Regulations (19 CFR 101.3), by establishing a port of entry at Santa Teresa, New Mexico and is amending § 122.24(b) by adding the Santa Teresa Airport to the list of airports designated as airports at which private aircraft arriving in the Continental U.S. via the U.S. - Mexican border from a foreign place in the Western Hemisphere south of the U.S. can land.

Customs published a Notice of Proposed Rulemaking in the **Federal Register** (57 FR 33462) on July 29, 1992, proposing these actions and inviting the public to comment.

No comments were received in response to the proposal. After further review, Customs has determined to amend the regulations as proposed. Until this amendment becomes effective, the only port of entry along the New Mexico-Mexico border is located in the far western portion of the state. Because the amount of traffic in the Santa Teresa area has increased recently, Customs has established, as an interim measure, a temporary Customs station at Santa Teresa under the authority of § 101.4(d), Customs Regulations. The airport at Santa Teresa, which recently lost its status as a user fee airport by operation of law, is now operating as a landing rights airport.

Establishing Santa Teresa as a Port of Entry

The criteria for determining whether a port of entry should be established by Customs was initially identified in T.D. 82–37 on March 9, 1982 (47 FR 10137). The criteria in that T.D. were subsequently revised by T.D. 86–14 (February 5, 1986, 51 FR 4559) and T.D. 87–65 (May 4, 1987, 52 FR 16328).

The criteria used by Customs in determining whether a port of entry shall be established are whether the community requesting creation of the port can: (1) Demonstrate that the benefits to be derived justify the Federal Government expense involved; (2) be serviced by at least two major modes of transportation (rail, air, water, or highway); and (3) has a minimum population of 300,000 within the immediate service area (approximately a 70-mile radius). In addition, T.D. 82–37 provides that the actual or potential Customs workload (minimum number of transactions per year) must meet one of several alternate criteria, one of which is 2,500 consumption entries (each valued over $1000.00) of which no more than half can be attributed to one private party. Finally, T.D. 82–37 provides that the facilities at the location must include adequate warehousing space for secure storage of imported cargo pending final Customs inspection and release, and administrative office space, inspection areas, storage areas and other space necessary for regular Customs operations.

The Regional Commissioner of the Southwest Region has reported to

Customs Headquarters that the Santa Teresa area is well served by air, rail, and highway modes of transportation. The population within a 70-mile radius of the port is contained in a variety of jurisdictional units and communities. Both El Paso, Texas and Juarez, Mexico are within that radius, as are several smaller communities. The 1990 El Paso County estimated population was over 606,000, while Dona Ana County, New Mexico added another 15,000. The estimated 1990 population of Juarez, Mexico is 1.2 million. All these figures are expected to grow significantly in the coming years. Creation of a port of entry at Santa Teresa will more evenly distribute the vehicular traffic which is currently forced to pass through El Paso, Texas. There is significant construction taking place in and around the vicinity of Santa Teresa to build inspection booths and stations, administration buildings and other support facilities to allow Customs to perform its mission in a safe and efficient manner. The Mexican Government was instrumental in assisting construction of a new paved road to the border from Mexico which was completed in early October 1993. Customs has received commitments from several corporate importers that they will utilize Santa Teresa as a port of entry once it becomes operational. Studies conducted by several sources have indicated that, once the port becomes operational, over 25,000 commercial vehicles will use the port per year, and approximately 6,000 consumption entries will be filed per year at the land border port. The local Chamber of Commerce reports that several corporations have expressed interest in locating in the area in anticipation of Santa Teresa's being designated a port of entry by Customs. Economic benefits, in the form of additional employment, are already being felt in the community.

During the period Santa Teresa has been operating as a temporary Customs station, Customs has achieved notable results in obtaining commitments from the trade community regarding their use of electronic data input for the processing of entries. Currently, most of the brokers or importers filing entries are automated. No current importer dominates the scene, and, as the surrounding infrastructure continues to improve, additional entities have expressed their intentions to utilize the port.

Currently, the only port of entry along the New Mexico-Mexico border is located in the far western portion of the state. Diplomatic negotiations have been held with the Government of Mexico concerning the creation of a port of entry at Santa Teresa, and both governments are in agreement with such an action.

Port of Entry Boundaries

The boundaries of the port of entry of Santa Teresa are as follows:

Beginning at the junction of the boundary between Texas and New Mexico with the U.S.-Mexico border, west, along the Mexico-U.S. border until it intersects the range line between Range 1 East and Range 2 East, New Mexico Principal Meridian; at that point, north along that range line until it reaches the line between Township 27 South and Township 28 South; then east along the Township line until it reaches the Texas-New Mexico border; then south-east along the Texas-New Mexico border to the beginning point.

Santa Teresa Airport

In this action, Customs is also amending § 122.24(b) by adding the Santa Teresa Airport, which is within the boundaries of the port of entry, to the list of airports designated as airports at which private aircraft arriving in the Continental U.S. must report intended arrival pursuant to § 122.23(b) and land for Customs processing in accordance with § 122.24(b). Section 122.23(b) provides, essentially, that all private aircraft arriving in the Continental U.S. via the U.S.-Mexican border, from a foreign place in the Western Hemisphere south of 33 degrees north latitude, or from any place in Mexico, shall furnish notice of intended arrival to Customs at the nearest designated airport to the point of crossing for the first landing in the U.S. § 122.24 provides that such aircraft shall land for Customs processing at the nearest designated airport to the border or coastline crossing point. At present, there is no designated airport in the State of New Mexico. The identification of the Santa Teresa Airport as a designated airport by Customs will benefit the flying public by increasing the options available for reporting arrival and obtaining Customs processing. The addition of this airport will also reduce delays at existing designated airports by permitting a better distribution of the inspection burden.

Regulatory Flexibility Act and Executive Order 12866

Customs routinely establishes, expands, and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Although this document is being issued after notice for public comment, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553 because it relates to agency management and organization. Accordingly, this document is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this document relates to agency organization and management, it is not subject to Executive Order 12866.

Drafting Information

The principal author of this document was Peter T. Lynch, Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 101

Customs duties and inspection, Exports, Imports, Organizations and functions (Government agencies).

19 CFR Part 122

Airports, Aircraft, Customs duties and inspection, Drug traffic control, Security measures.

Amendments to the Regulations

Accordingly, parts 101 and 122 of the Customs Regulations (19 CFR parts 101 and 122) are amended as follows:

PART 101—GENERAL PROVISIONS

1. The authority citation for Part 101 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1623, 1624.

§ 101.3 [Amended]

2. Section 101.3(b) containing the list of Customs regions, districts and ports of entry is amended by adding in the Southwest Region, under the column headed "Ports of entry", "Santa Teresa, N.Mex. (T.D. 94–34)" in the appropriate alphabetical order opposite "El Paso, Tex."

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for Part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1433, 1436, 1459, 1590, 1594, 1624, 1644; 49 U.S.C. App. 1509.

§ 122.24 [Amended]

2. Section 122.24(b) is amended by adding in appropriate alphabetical order in the column headed "Location", the words "Santa Teresa, N.Mex.", and directly opposite, in the column headed

"Name", the words "Santa Teresa Airport".

George J. Weise,

Commissioner of Customs.

Approved: March 9, 1994.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 94-8088 Filed 4-5-94; 8:45 am]

BILLING CODE 4820-02-P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 90 and 91

[RINs 0790-AF61 and 0790-AF62]

Revitalizing Base Closure Communities and Community Assistance

AGENCY: Department of Defense.

ACTION: Interim final rule.

SUMMARY: The interim final rule promulgates guidance required by section 2903 of the National Defense Authorization Act for Fiscal Year 1994, and provides interpretive guidance concerning other changes to the base realignment and closure process generated by Title XXIX of the Act. This document also establishes policy and procedure, assigns responsibilities, and delegates authority under the President's Five-Part Plan, "A Program to Revitalize Base Closure Communities", July 2, 1993. Because such guidance must be issued and effective to enable the Department to perform various acts required by the law to be accomplished by May 30, 1994, such guidance is being issued as an interim final rule and is effective upon publication.

EFFECTIVE DATE: This document is effective April 6, 1994. Comments must be received by July 5, 1994.

ADDRESSES: Comments must be forwarded to the Office of the Assistant Secretary of Defense for Economic Security, Room 3D854, The Pentagon, Washington, DC 20301.

FOR FURTHER INFORMATION CONTACT: Steven Kleiman or Frank Savat, telephone (703) 614-5356.

SUPPLEMENTARY INFORMATION: The Department of Defense is engaged in a major downsizing, resulting in less land and buildings needed to support defense missions. Congressional legislation in 1988 (Pub. L. 100-526) and 1990 (Pub. L. 101-510) provided for non-partisan Commissions to assess the closure recommendations of the Secretary of Defense, and make base closure and realignment recommendations to the President and the Congress. The bases recommended for closure and realignment by the 1988, 1991, 1993 Commissions were all approved under this process. Another Commission will meet in 1995. As a result of the 1988, 1991 and 1993 actions, the Department of Defense is now in the process of closing 70 major installations throughout the United States.

Even in large cities a military base often represents a major employment center and a significant economic stimulus for the local economy. With its multimillion dollar payrolls a base closure can be a serious blow to the local community. The Department of Defense recognizes that the manner in which real and personal property at closing bases is disposed of can have a dramatic impact on the local community's prospects for economic recovery. In the past, the traditional property disposal methods focused on maximizing proceeds from the sale of real and personal property with little regard for enhancing the prospects for economic recovery in the community. Recognizing that the old way of doing business was not designed to dispose of major military installations in a way that would revitalize base closure communities, President Clinton announced, on July 2, 1993, a major new program to speed the economic recovery of communities where military bases are slated to close. In a sharp departure from the past, the Clinton Administration pledged to give top priority to early reuse of the base's valuable assets. Rapid redevelopment and the creation of new jobs in base closure communities are the goals of the new initiative.

In announcing the program, the President outlined the following five parts of his community reinvestment program:

- Jobs-centered property disposal that puts local economic redevelopment first.
- Fast-track environmental cleanup that removes needless delays while protecting human health and the environment.
- Transition coordinators at major bases slated for closure.
- Easy access to transition and redevelopment help for workers and communities.
- Larger economic development planning grants to base closure communities.

While the task of remaking the economic foundation of a community is never easy, a closed military base can be a community's single greatest asset in charting a new future. An airfield, a port, or the land, buildings, furniture and equipment on a base can be a catalyst for new economic activity. The Administration's plan to make base property more affordable to communities for the purpose of job creation is a fundamental change. It allows communities that have viable plans for economic redevelopment to obtain property at prices within their means. The President's Five-Part Plan was an important step in steering the base closure and reuse process toward rapid job creation.

In announcing the community revitalization program, President Clinton recognized that existing Federal law required the Department of Defense to charge full price when closed bases will be used for job-creating economic development, yet it can transfer bases for free for a variety of "public" uses, including recreation, aviation, education and health. President Clinton stated that the Administration would seek to change the law, to enable the Department of Defense to transfer property for free or at a discount for economic development purposes, when community development plans meet a strict test for economic viability and job creation. Accordingly, the President asked the National Economic Council (NEC) an interagency coordinating arm of the White House and the Department of Defense to draft a proposal that puts economic development at the center of base closure asset disposition. The NEC convened an interagency working group that created the following framework for base disposal:

—Where a ready market exists, sell properties quickly for public or private development to speed up job creation.

—Where a ready market does not exist, make property available to the local redevelopment authority, without initial cost, for economic development.

—Share the net profits between the Department of Defense and the local redevelopment authority if a property conveyed without initial cost for economic development is subsequently sold.

The Congress, mindful of the need to reform this process, endorsed the President's plan by authorizing Title XXIX of Public Law 103-160, Base Closure Communities Assistance, the so-called "Pryor Amendment". Based largely on legislation sponsored by Senator Pryor, the provisions of Title XXIX provide the legal authority to carry out the President's plan by, among other things, authorizing conveyances of

real and personal property at or below fair market value to local redevelopment authorities, and sharing of profits on subsequent sales and leases.

Public Law 103–160 required the Secretary of Defense to prescribe regulations to implement the provisions of the law. This is being accomplished under the Administrative Procedures Act which allows for the public to comment on the regulations. Due to the need to begin acting on the proposed regulations, the Department of Defense has issued them as interim final rules which allow actions at closing bases to begin before the regulations are made final after the public comment period. The section related to the conveyance of property in consideration of environmental restoration costs, is issued as a proposed rule and cannot be exercised until a final rule is published following public comment.

The following is a summary of the major elements of the rules.

1. Real Property Screening

When the Department of Defense no longer needs to retain real property at a closing base, the Department is required to dispose of the property in accordance with the prescribed screening process in the General Services Administration property disposal regulations and the new expedited process authorized in Title XXIX. This process permits DoD entities, other Federal Agencies and homeless providers to identify property they would like to acquire when the base closes.

The screening process for real property requires the Department of Defense to identify first what it needs to retain. Any property excess to the Department of Defense is then made available to other Federal Agencies. Property not needed by other Federal Agencies is then identified as surplus and reported to the Department of Housing and Urban Development (HUD) for a determination of suitability for homeless use and publication of such properties in the **Federal Register**. Property that has no homeless interest, as determined by the Department of Health and Human Services (HHS), will then be available for transfer by either direct sale to the public, negotiated conveyance to the local redevelopment authority, public benefit conveyances for airports, schools, ports, etc., or the new economic development conveyance discussed in paragraph 5. of this summary. The Military Departments will work with the other Department of Defense Components, Federal Agencies, homeless providers and reuse planners, early in the closure process, to sort out these requests. This new process will provide for the early identification of property which will become available for reuse. This information is critical to the local redevelopment authority's ability to design a realistic redevelopment plan. Agreement with proposed uses, other than for McKinney Act homeless use, is at the discretion of the Military Departments who have been delegated disposal authority.

2. McKinney Act Screening

The Stewart B. McKinney Homeless Assistance Act is a statute designed to permit recognized providers of assistance to the homeless to receive a high priority in acquiring unneeded land and buildings on Federal properties. Buildings and land on closing bases provide excellent opportunities for homeless providers to acquire the infrastructure they need to establish their programs. This section of the interim final rule describes the new process, specifically tailored for base closure properties, that will expedite the screening process with homeless providers and will result in the early identification of their needs. The expedited screening process will be pursued in a proactive manner. The Military Departments will work with communities to identify eligible entities and conduct timely outreach seminars to educate homeless providers with respect to the land and buildings that will be made available and the process for making a formal application to HHS to acquire such land and buildings. The early identification of homeless assistance requirements will permit communities to develop reuse plans that fully accommodate homeless needs, while permitting early identification of the remaining property for quick sale to create jobs, a Federally-sponsored public benefit conveyance, or conveyance to a local redevelopment authority for economic development purposes.

3. Local Redevelopment Plan

The early formation of a local redevelopment authority is critical to the successful reuse of the base. The primary focus of the local redevelopment authority should be developing a comprehensive local redevelopment plan. This plan should embrace the range of feasible reuse options that will result in rapid job creation. The local redevelopment plan will generally be used as the proposed action when the disposing Military Department conducts the environmental analyses required by the National Environmental Policy Act (NEPA).

4. Jobs-Centered Property Disposal

The new property disposal process described in this section and in paragraphs 5. and 6. of this summary, is designed to rapidly create new jobs. In most cases, that will occur through conveyances for economic development, without initial cost, as described in paragraph 5. However, in a few cases, an entire base or a substantial portion of it will have a high value and hence a ready market for development. In such cases, market sale of the property may be the most effective way to rapidly create new jobs.

The Military Department will identify properties having a ready market and begin the appraisal process as soon as possible but not later than 6 months after completion of the new expedited McKinney Act screening process in paragraph 2. of this summary. The appraisals should take into consideration uncertainties and the associated risks in property development as well as the impact of the base closure on market conditions. Moreover, the appraisal will reflect the most likely range of uses consistent with local interests rather than highest and best use.

To assist in determining the estimated fair market value, the Military Departments will solicit for expressions of interest for the entire or a substantial portion of the base for a period no longer than 6 months. The results will be shared with the local redevelopment authority. Expressions of interest will be solicited simultaneously with other screening and disposal actions and will not cause a delay in the disposal process. The Military Departments will analyze each expression of interest and determine if it represents a reasonable proposal that is likely to lead to rapid development and job creation. If after consulting extensively with the local community, the Military Department makes a favorable determination, the Department may decide to offer the property for sale. The local redevelopment authority will be promptly notified of the decision and may challange the decision. If the Military Department nevertheless decides to proceed with the sale, potential bidders will be strongly encouraged to work with the local redevelopment authority so that their proposals are compatible with the local redevelopment plan. Identifying a substantial portion of the base for sale, however, does not preclude the community's acquisition of the property through a negotiated sale with the Department of Defense.

In the event that a base or substantial portion thereof, is identified as potentially valuable but does not sell due to the absence of a ready market, the property will then be available for conveyance for public benefit or, economic development purposes.

Throughout this process, the Military Departments will make maximum effort to give community considerations a high priority.

5. Economic Development Conveyances

Closing military bases often have a great deal of land that may not be readily developable or marketable due to its location. Additionally, closing bases often have buildings that may need to be demolished in order to encourage redevelopment and economic revitalization. Historically, the process of selling bases, or parts thereof, for fair market value has been time consuming and the proceeds from the few sales of base closure properties have been less than originally anticipated. In the past, the law permitted the Department of Defense to convey property at a discount of up to 100 percent (free of charge) for specific public purposes such as health, aviation, recreation, and education—but not for economic development. The new authority permits the DoD to convey land and buildings to redevelopment authorities initially for free, after it is determined that the base, or significant portions thereof, cannot be sold in accordance with the rapid job creation concept. Such conveyances may help induce a market for the property, thereby, enhancing economic recovery. Redevelopment authorities requesting an economic development conveyance, shall submit a simple written request containing four basic elements as described in the interim rule. Generally, installations will be conveyed at no initial cost with a recoupment provision that will permit the Department of Defense to share in any future profits should the base be later leased or sold. Bases in rural areas shall be conveyed under this authority at no cost and with no recoupment if they meet the standards as detailed in the interim rule. The conveyance for economic development should be used by local redevelopment authorities to gain control of large areas of the base, not just individual buildings. The income received from some of the higher value property should help offset the maintenance and marketing costs of the less desirable parcels. In order for this conveyance to spur redevelopment, large parcels must be used to provide an income stream to assist the long term development of the property.

6. Profit Sharing

When real property is conveyed as described in paragraph 5. of this summary, DoD shall generally share in the division of future profits should the property be subsequently sold or leased. The division of profits shall be based on net profits and the share shall generally favor the local redevelopment authority. There shall be a 15-year time limit on the share of the profits. The government's portion of the receipts from the profit shall not exceed the estimated fair market value of the property at the time of conveyance to the local redevelopment authority.

7. Leasing of Real Property

Leasing of real property early in the reuse process is an effective way to quickly attract new jobs to replace those that have been lost by the base closing. In the past, the requirement to lease at fair market value discouraged the creation of new jobs. The new leasing process, at less than fair market value, will provide new incentives for redevelopment authorities and businesses alike to spur job creation and speed economic redevelopment. Inasmuch as the Department cannot convey contaminated property until clean-up measures are in place, leasing is often the only means to allow suitable economic reuse to occur on substantial portions of closing bases.

8. Personal Property

Personal property located on closing bases is often very useful to the redevelopment of the real property. This section of the interim final rule outlines procedures to allow transfer of personal property with the real property in many cases. It provides for completing an inventory soon after the base is approved for closure and consultation with local officials. This consultation may include a walkthrough of the base to familiarize local officials with potentially available property. The community can then identify the personal property it wishes to retain in its redevelopment plan. The Department of Defense will keep a great deal of the personal property at the base while the redevelopment plan is being put together. Only valid exemptions will be made to this freeze, usually involving specific military requirements or property which the base does not own. Emissions trading procedures will be issued separately and are not covered by the interim final rule.

9. Minimum Level of Maintenance and Repair To Support Non-Military Purposes

Facilities and equipment located on closing bases are often important to the eventual reuse. This section of the interim rule below provides procedures to protect their condition while the redevelopment plan is being put together. The level of maintenance will be determined in consultation with the redevelopment authority.

DoD Directive 4165.aa [1] (32 CFR Part 90) establishes basic policies to carry out the President's plan and the Base Closure Community Assistance Act. DoD Instruction 4165.bb [2] (32 CFR Part 91) provides procedural guidance for implementation. In addition to property disposal, the document addresses fast-track environmental cleanup and increased economic development planning support for communities. It provides for on-site transition coordinators, responsible directly to the Secretary of Defense, at major closing bases in order to minimize red tape and keep environmental cleanup and base disposal activities on a fast track.

The Department of Defense has determined that this interim rule is not a significant regulatory action, as defined by Executive Order 12866. The rule does not:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. It provides for transfer of paid-for federal installations no longer needed for economic development purposes. This will benefit the economy and the communities in which the closing bases are located.

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof;

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12886.

It has been certified that this interim final rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because the interim final rule will not have a significant economic impact on a

[1] Draft document. When signed, this document will be available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

[2] See footnote 1.

substantial number of small entities. The primary effect of the interim final rule will be to reduce the burden on local communities of the Government's property disposal process at closing military installations and to accelerate the economic recovery of the relatively small number of communities that will be affected by the closure of nearby military installations.

The rule is not subject to the Paperwork Reduction Act because it imposes no obligatory information requirements beyond internal DoD use.

List of Subjects in 32 CFR Parts 90 and 91

Community development, Government employees, Military personnel, Surplus Government property.

Accordingly, Title 32, Chapter I, Subchapter C, is amended as follows:

1. Part 90 is added to read as follows:

PART 90—REVITALIZING BASE CLOSURE COMMUNITIES

Sec.
90.1 Purpose.
90.2 Applicability.
90.3 Definitions.
90.4 Policy.
90.5 Responsibilities.

Authority: 10 U.S.C. 2687 note.

§ 90.1 Purpose.

This part:

(a) Establishes policy and assigns responsibilities under the President's Five-Part Plan, "A Program to Revitalize Base Closure Communities",[1] July 2, 1993, to speed the economic recovery of communities where military bases are slated to close.

(b) Implements the National Defense Authorization Act for fiscal year 1994, Title XXIX, 107 Stat. 1909.

§ 90.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Unified Combatant Commands, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

§ 90.3 Definitions.

(a) *Closure.* All missions of the base have ceased or have been relocated. All personnel (military, civilian and contractor) have either been eliminated or relocated, except for personnel required for caretaking and disposal of the base or personnel remaining in authorized enclaves.

(b) *Base realignment and closure cleanup plan.* A plan for the expeditious environmental cleanup necessary to facilitate conveyance of the property to communities for economic redevelopment.

(c) *Base realignment and closure cleanup team.* A team established for each DoD closing or realigning base where property is available for transfer to the community. The team has the authority, responsibility, and accountability for environmental cleanup programs at these installations, emphasizing those actions which are necessary to facilitate reuse and redevelopment.

(d) *Realignment.* Any action that both reduces and relocates functions and DoD civilian personnel positions, but does not include a reduction in force resulting from workload adjustments, reduced personnel or funding levels, skill imbalances, or other similar cause. A realignment may terminate the DoD requirement for the land and facilities on part of an installation. That part of the installation shall be treated as "closed" for purposes of this part.

(e) *Redevelopment authority.* Any entity, including an entity established by a State or local government, recognized by the Secretary of Defense as the entity responsible for developing the redevelopment plan with respect to the installation and for directing implementation of the plan.

§ 90.4 Policy.

It is DoD policy to:

(a) Help communities impacted by base closures achieve rapid economic recovery through effective reuse of the assets of closing bases—more quickly, more effectively and in ways based on local market conditions and locally developed reuse plans—by implementing the President's Five-Part Plan that encourages:

(1) Transferring real and personal property expeditiously to local redevelopment authorities and in ways that enhance economic development and job creation or other public benefits. This can best be accomplished by:

(i) Making transfers of property to a redevelopment authority for economic development affordable, when necessary to foster community redevelopment plans. The use of existing public benefit conveyances should be considered, where appropriate, before the use of a public benefit conveyance for economic development.

(ii) Accelerating the property screening process early in the disposal process to determine other potential Federal uses of the property, including the identification of the needs of homeless providers. This will determine how much of the property is available for early economic development and/or other community reuse.

(iii) Informing communities, as early as possible after the base closure decision is final, if an installation will be considered for "economic development" conveyances under Pub. L. No. 103–160, Title XXIX and will not be offered for sale, instead. Such decisions shall be based on a determination that the existence of a ready market for the property indicates that public or private developers can not be relied upon as the preferable mechanism to spur economic redevelopment and the creation of new jobs.

(iv) Encouraging interim leases at less than the estimated fair market value in order to facilitate State or local economic redevelopment efforts.

(v) Delegating authority to approve interim leases and simple land transfers.

(vi) Considering the personal property requirements of the community redevelopment plan when making decisions on the disposition of base equipment.

(2) Ensuring fast-track environmental cleanup of closing bases to permit earlier determination of property suitable for either conveyance or lease. The key elements of this initiative are to:

(i) Establish a base realignment and closure cleanup team composed of members from the Department of Defense, the Environmental Protection Agency and State regulatory agencies, at every base where property is available for transfer and reuse. The team shall prepare the base realignment and closure cleanup plan and make decisions to expedite the process.

(ii) Quickly identify and document uncontaminated real property parcels to permit timely reuse.

(iii) Identify opportunities to convey property quickly to those willing to pay the cost of cleaning up the contaminated property.

(iv) Ensure analyses required by the National Environmental Policy Act (Pub. L. 91–190; 10 U.S.C. 4332 et. seq.) process are produced in a timely manner.

(v) Establish procedures for identifying and documenting parcels of real property that are environmentally suitable for lease, even if needed mitigation precludes conveyance.

(vi) Improve public involvement in the environmental cleanup by establishing and seeking public

[1] Document available from the Office of the Assistant Secretary of Defense (Economic Security), Pentagon, Washington, DC 20301.

participation in Restoration Advisory Boards.

(3) Providing full time base transition coordinators at major installations slated for closure or substantial realignment. The principal functions of the coordinators shall be to:

(i) Assist in cutting through red tape on property disposal.

(ii) Assist in keeping the environmental cleanup on a fast track.

(iii) Assist the DoD Office of Economic Adjustment (OEA) in helping communities identify sources of Federal assistance for developing and implementing economic redevelopment plans.

(4) Providing easy access to transition and redevelopment help for workers and communities by targeting major sources of Federal funding assistance to base closure communities.

(5) Providing larger economic development planning grants to base closure communities. Planning grants should be approved quickly. The Department of Defense's Office of Economic Adjustment will move beyond the traditional role of providing grants for planning to helping communities transition from planning to implementation by funding a portion of the staff required for implementation of the local redevelopment plan.

(b) Follow the following framework in implementing Title XXIX of Pub. L. 103–160:

(1) Where a ready market exists, complete screening and then sell properties quickly for public or private development to speed up job creation.

(2) Where a ready market does not exist, make property available to the local redevelopment authority without initial consideration, for economic development.

(3) Share the net profits between the Department of Defense and the local redevelopment authority if a property conveyed without initial consideration for economic development is subsequently leased or sold.

(c) This regulation does not create any rights or remedies and may not be relied upon by any person, organization, or other entity to allege a denial of any rights or remedies other than those provided by Pub. L. 103–160, Title XXIX.

§ 90.5 Responsibilities.

(a) The Under Secretary of Defense for Acquisition and Technology shall issue DoD Instructions as necessary, to further implement the President's Five-Part Plan and applicable public law, and shall monitor compliance with this part. All authorities of the Secretary of Defense in Pub. L. 103–160, Title XXIX, in section 2905 of Pub. L. 100–526, Title II, and in section 204 of Pub. L. 101–510, Title XXIX are hereby delegated to the Under Secretary of Defense for Acquisition and Technology and may be redelegated.

(b) The Heads of the DoD Components shall advise personnel with responsibilities related to base closures of the policies set forth in this directive.

2. Part 91 is added to read as follows:

PART 91—REVITALIZING BASE CLOSURE COMMUNITIES—BASE CLOSURE COMMUNITY ASSISTANCE

Sec.
91.1 Purpose.
91.2 Applicability.
91.3 Definitions.
91.4 Policy.
91.5 Responsibilities.
91.6 Delegations of authority.
91.7 Procedures.

Appendix A to Part 91—Flow Chart for Base Closure Community Assistance

Appendix B to Part 91—Closure and Transition Timeline for a Notional BRAC 1993 Base That Closes on September 30, 1997

Authority: 10 U.S.C. 2687 note.

§ 91.1 Purpose.

This part prescribes procedures to implement "Revitalizing Base Closure Communities" (Part 90), the President's five-part community reinvestment program,[1] and real and personal property disposal to assist the economic recovery of communities impacted by base closures. The expeditious disposal of real and personal property will help communities get started with reuse early and is therefore critical to timely economic recovery.

§ 91.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Unified Combatant Commands, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

§ 91.3 Definitions.

(a) *Base Closure Law.* The provisions of Title II of the Defense Authorization Amendments and Base Closure and Realignment Act (Pub. L. 100–526; 10 U.S.C. 2687 note), or The Defense Base Closure and Realignment Act of 1990 (Part A of Title XXIX of the Pub. L. 101–510; 10 U.S.C. 2687 note).

(b) *Closure.* All missions of the base have ceased or have been relocated. All personnel (military, civilian, and contractor) have either been eliminated or relocated except for personnel required for caretaking and disposal of the base or personnel remaining in authorized enclaves.

(c) *Consultation.* Fully explaining and discussing an issue and carefully considering objections, modifications, and alternatives; but without a requirement to reach agreement.

(d) *Date of approval.* The date on which the authority of Congress to disapprove Defense Base Closure and Realignment Commission recommendations for closures or realignments of installations expires under Title XXIX of P.L. 101–510, as amended.

(e) *Excess property.* Any property under the control of a Military Department that the Secretary concerned determines is not required for the needs of the Department of Defense. Authority to make this determination rests with the Military Departments after screening the property with the other Military Departments.

(f) *Realignment.* Any action that both reduces and relocates functions and DoD civilian personnel positions, but does not include a reduction in force resulting from workload adjustments, reduced personnel or funding levels, skill imbalances, or other similar cause. A realignment may terminate the DoD requirement for the land and facilities on part of an installation. That part of the installation shall be treated as "closed" for this document.

(g) *Redevelopment authority.* Any entity, including an entity established by a State or local government, recognized by the Secretary of Defense as the entity responsible for developing the redevelopment plan with respect to the installation and for directing implementation of the plan.

(h) *Rural.* An area outside a Metropolitan Statistical Area.

(i) *Surplus property.* Any excess property not required for the needs and the discharge of the responsibilities of Federal Agencies. Authority to make this determination, after screening with all Federal Agencies, rests with the Military Departments.

(j) *Vicinity.* The county in which the installation is located and the adjacent counties. An incorporated municipality shall be deemed to be a county for this purpose, when, under State law, it is not part of a county.

§ 91.4 Policy.

It is DoD policy to help communities affected by base closures achieve rapid economic recovery through effective

[1] Document available from the Office of the Assistant Secretary of Defense (Economic Security), Pentagon, Washington, DC 20301.

reuse of the assets of closing bases—more quickly, more effectively and in ways based on local market conditions and locally developed reuse plans. This will be accomplished by:

(a) Selling properties quickly for public or private development to speed up job creation where a ready market exists.

(b) Making property available without initial consideration for economic development where a ready market does not exist.

(c) Sharing the net profits between the DoD and the local redevelopment authority if a property conveyed without initial consideration for economic development is subsequently sold or leased.

§ 91.5 Responsibilities.

(a) The Assistant Secretary of Defense for Economic Security, after coordination with the General Counsel of the Department of Defense and other officials as appropriate, may issue such guidance and instructions as may be necessary to implement Laws, Directives and Instructions on the retention or disposal of real and personal property at closing or realigning bases.

(b) The Heads of the DoD Components shall ensure compliance with this part and guidance issued by the Assistant Secretary of Defense for Economic Security on revitalizing base closure communities.

§ 91.6 Delegations of authority.

(a) The authority provided by sections 202 and 203 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 483 *et seq.*) for disposal of property at closing and realigning bases has been delegated by the Administrator, GSA, to the Secretary of Defense by delegations dated March 1, 1989; October 9, 1990; and, September 13, 1991.[2] Authority under these delegations has been previously redelegated to the Secretaries of the Military Departments, who may redelegate further.

(b) Authorities delegated to the Under Secretary of Defense for Acquisition and Technology by 32 CFR 90.5 are hereby redelegated to the Secretaries of the Military Departments, unless otherwise provided within this part. These authorities may be redelegated further.

§ 91.7 Procedures.

(a) Real property screening.

(1) When the Department of Defense no longer needs to retain real property, the Department is required to dispose of the property in accordance with the prescribed screening process in the General Services Administration property disposal regulations and the expedited process described in this part. This process permits DoD entities, other Federal Agencies and homeless providers to identify property they would like to acquire when the base closes. The Secretary concerned will work with the other DoD Components, Federal Agencies, homeless providers and reuse planners, early in the closure process, to sort out these requests. This process will provide for the early identification of property which will become available for reuse that is critical to the local redevelopment authority's ability to develop a realistic reuse plan.

(2) The Military Departments should complete the internal DoD real property screening of closing and realigning base property:

(i) By April 1, 1994, for 1988, 1991 and 1993 closures and realignments.

(ii) Within 4 months of the date of approval of the 1995 closures and realignments.

(3) Military Departments should seek local redevelopment authority input in making determinations on the retention of property and should consider their input, if provided. Transfer of real property at closing and realigning bases between any of the Military Departments, or retention of real property at a closing base by a Military Department, must be approved by the Assistant Secretary of Defense for Economic Security, unless such a transfer has already been approved by the Secretary of the Military Department concerned.

(4) Formal screening of real property excess to the DoD with other Federal Agencies must be completed:

(i) By June 1, 1994, for 1988, 1991, and 1993 closures and realignments unless the community requests a postponement of the surplus determination as provided in paragraph (a)(7) of this section.

(ii) Within 6 months of the date of approval of the 1995 closures and realignments unless the community requests a postponement as provided in paragraph (a)(7) of this section.

(5) These timeframes afford Federal Agencies sufficient time to assess their needs, submit initial expressions of interest to the Department of Defense, and apply for the property. During this period, Agencies sponsoring public benefit conveyances should also consider the suitability for such purposes. The Military Departments should provide other Federal Agencies as full and complete information as practicable on the property in the Notice of Availability. Requests for transfers of property submitted by other Federal Agencies will normally be accommodated. Decisions on the transfer of property to other Federal Agencies shall be made by the Military Department concerned in consultation with the local redevelopment authority.

(6) Military Departments should make the notices of availability available to the local redevelopment authorities, State and local governments.

(7) Within the 6 month screening period in paragraph (a)(4) of this section, the Military Departments shall consult with the local redevelopment authority and make appropriate final determinations whether a Federal Agency has identified a use for, or shall accept transfer of, any portion of the property. If no Federal Agency requests the property, the property shall be declared surplus. However, the local redevelopment authority may request the Military Department concerned to delay this final surplus declaration. All requests for delay must be in writing and made before May 1, 1994 for 1988, 1991 and 1993 closures and realignments and within 5 months of the approval of the 1995 base closures and realignments. If there is a Federal Agency request for transfer, the Secretary concerned may postpone the determination to transfer and the Secretary may also postpone the determination of surplus for all or any part of the property at the installation for such period as the Secretary concerned determines is in the best interest of the communities affected by the closure of the installation.

(8) Screening of real property with State and local government agencies shall take place concurrently with McKinney Act screening. The screening notice should state:

Uses to assist the homeless shall take precedence unless the Secretary concerned or the Secretary of Health and Human Services (HHS) determines that a competing request under 40 U.S.C. 484(k) is so meritorious and compelling as to outweigh the needs of the homeless.

(9) Withdrawn public domain lands are those lands which have been transferred from the Department of Interior to a Military Department for its temporary use.

(i) These lands on closing or realigning bases are to be returned to the Secretary of Interior when the Secretary of the Military Department concerned no longer has need for these lands, if they are still suitable for the programs of the Secretary of Interior.

[2] These documents available from the Office of the Assistant Secretary of Defense (Economic Security), Pentagon, Washington, DC 20301.

(ii) The Military Department concerned will notify the Secretary of Interior, normally through the Bureau of Land Management (BLM), when withdrawn public domain lands are included within an installation to be closed.

(iii) The Bureau of Land Management will screen these lands within the Department of Interior to determine if these lands are suitable for return to the Department of Interior.

(iv) If the lands are not suitable for the programs of the Secretary of Interior, the Bureau of Land Management will so notify the Military Department and state that these lands should be processed as the other real property on the base.

(v) The Military Department will notify the Bureau of Land Management that it concurs with the determination and will proceed in accordance with the real property screening procedures described in this section.

(b) McKinney Act Screening.

(1) The Stewart B. McKinney Homeless Assistance Act, as amended (42 U.S.C. 11301), is a statute designed to permit HHS-approved providers of assistance to the homeless to receive a high priority in acquiring unneeded land and buildings on Federal properties. Buildings and land on closing bases provide excellent opportunities for homeless providers to acquire the land and buildings they need to establish their programs. This section describes the new process specifically tailored for base closure properties that will expedite the screening process with homeless providers and will result in the early identification of their needs. The Military Departments will work with communities to identify eligible entities and conduct timely outreach seminars to educate homeless providers with respect to the land and buildings that will be made available and the process for making a formal application to the Department of Health and Human Services (HHS). The early identification of homeless assistance requirements for land and buildings at closing bases will permit communities to develop reuse plans that fully accommodate homeless needs, while permitting early identification of the remaining property for either quick sale for job creation, a federally sponsored public benefit conveyance or conveyance to a local redevelopment authority for economic development purposes.

(2) The Department of Housing and Urban Development (HUD) is required to publish by February 15 of each year a list of all the properties which were published in accordance with the McKinney Act in the previous calendar year. For the purpose of reporting properties to HUD pursuant to the new expedited McKinney screening process described in this section, the Military Departments should report only those properties which remain available as of the reporting date. For the purposes of the new expedited McKinney Act screening process:

(i) Properties listed by HUD in the annual report for which an expression of interest has been received by HHS from a homeless provider, but a final HHS determination has not yet been made, shall be reported for screening under the new procedures in paragraphs (b) (3) through (11) of this section.

(ii) Properties listed by HUD in the annual report for which no expression of interest has been received by HHS from a homeless provider and for which the Department of Defense has received no expression of interest or bona fide offer in accordance with the provisions of section 501(c)(4)(C) of the McKinney Act, shall be reported in accordance with the procedures in paragraphs (b) (3) through (11) of this section.

(iii) Properties listed by HUD in the annual report for which no expression of interest has been received by HHS from a homeless provider and for which the Department of Defense has received an expression of interest or bona fide offer in accordance with the provisions of section 501(c)(4)(C) of the McKinney Act, shall not be reported in accordance with the procedures in paragraphs (b) (3) through (11) of this section.

(iv) 1988 and 1991 base closure and realignment properties which remain available shall be reported to HUD in accordance with the new expedited procedures in paragraphs (b) (3) through (11) of this section.

(3) Under the new expedited McKinney Act screening process, the Military Departments shall sponsor a workshop or seminar in communities having closing or realigning bases before reporting to HUD. All available property at closing and realigning bases that will become surplus to Federal Agency needs will be reported to HUD:

(i) By June 1, 1994, for the 1988, 1991, and 1993 closures and realignments, unless the community requests a postponement of the declaration of surplus under paragraph (a)(7) of this section.

(ii) Within 6 months of the date of approval of the 1995 base closures and realignments unless the community requests a postponement of the declaration of surplus under paragraph (a)(7) of this section.

(4) HUD shall make a determination of the suitability of each property to assist the homeless in accordance with the McKinney Act. Within 60 days from the date of receipt of the information from the Department of Defense, HUD shall publish a list of suitable properties that shall become available when the base closes.

(5) Providers of assistance to the homeless shall then have 60 days in which to submit to HHS expressions of interest in any of the listed properties. If a provider indicates an interest in a listed property, it shall have an additional 90 days after submission of its written notice of interest to submit a formal application to HHS, a period which HHS can extend. HHS shall then have 25 days after receipt of a completed application to review and complete all actions on such applications.

(6) During the new expedited McKinney Act property screening process (from 60 to 175 days following **Federal Register** publication, as appropriate), disposal agencies shall take no final disposal action or allow reuse of property that HUD has determined suitable and that may become available for homeless assistance, unless and until:

(i) No timely expressions of interest from providers are received by HHS.

(ii) No timely applications from providers expressing interest are received by HHS.

(iii) HHS rejects all applications received for a specific property.

(7) If no provider expresses an interest to HHS in a property within the allotted 60 days, the Military Department should promptly inform the affected local redevelopment authority, the Governor of the State, the local governments, and Federal Agencies that support authorized public benefit conveyances, of the date the surplus property will be available for community reuse. The local redevelopment authority shall then have 1 year to submit a written expression of interest to incorporate the remainder of the property into its redevelopment plan.

(8) If there are expressions of interest by homeless assistance providers, but no application is received by HHS from such a provider within the subsequent 90-day application period (or within the longer application period if HHS has granted an extension), the Military Department should promptly inform the local redevelopment authority, the Governor of the State, and Federal Agencies that support authorized public benefit conveyances, of the date the surplus property will be available for community reuse. The local redevelopment authority shall then have 1 year to submit a written expression of interest to incorporate the remainder of

the property into its redevelopment plan for the base.

(9) If at any time during the 25 day HHS review period HHS rejects all applications for a specific property, the Military Department should promptly inform the local redevelopment authority, the Governor of the State, and Federal Agencies that support authorized public benefit conveyances, of the date the surplus property will be available for community reuse. The local redevelopment authority shall then have 1 year to submit a written expression of interest to incorporate the remainder of the property into its redevelopment plan for the base.

(10) During the allotted 1-year period for the local redevelopment authority to submit a written expression of interest for the property, surplus properties not already approved for homeless reuse shall not be available for homeless assistance, unless such homeless assistance is included in the local redevelopment authority's plan. The surplus properties will also not be advertised by HUD as suitable during these 1-year periods. The surplus property may be available for interim leases to any entity, including local redevelopment authorities as deemed appropriate by the Secretary of the Military Department concerned.

(11) If the local redevelopment authority does not express in writing its interest in a specific property during the allotted 1-year period, the disposal agency shall again notify HUD of the date of availability of the property for homeless assistance. HUD may then list the property in the **Federal Register** as suitable and available after the base closes following the previous McKinney Act procedures.

(12) The listing of base closure property from the 1991 and subsequent rounds of base closures reported to HUD shall contain the following statement:

The properties contained in this listing are closing or realigning military installations. This report is being accomplished pursuant to Pub. L. 103–160, section 2905(b). In accordance with section 2905(b), this property is subject to a one-time publication under the McKinney Act, after which property not provided to homeless assistance providers will not be published again unless there is no expression of interest submitted by the local redevelopment authority in the one-year period following the end of the McKinney screening process pursuant to this publication.

(13) The list of 1988 base closure properties that will be reported to HUD shall contain the same statement as paragraph (b)(12) of this section, and shall refer to section 2905(a) of the Act (107 Stat. 1916).

(c) *Local redevelopment plan.*

(1) The early formation of a redevelopment authority is critical to the successful reuse of the base. The primary focus of the redevelopment authority should be developing a comprehensive local redevelopment plan. This plan should embrace the range of feasible reuse options that will result in rapid job creation. The local redevelopment plan will generally be used as the proposed action in conducting environmental analyses required by the National Environmental Policy Act of 1969 (NEPA), (42 U.S.C. 4332 *et seq.*).

(2) Although the statute only requires the local redevelopment authority to submit a written expression of interest within 1 year after the date the property is released from McKinney Act screening, the local redevelopment plan should be prepared within that 1 year period. The plan should at a minimum identify:

(i) Parcels recommended to be transferred to other Federal Agencies (whether or not a specific request for such transfer was made by the Agency during the screening period) and their intended uses.

(ii) Parcels recommended to be transferred or conveyed for uses such as homeless assistance, public benefit purposes, or other qualifying public purpose conveyance programs and their intended uses.

(iii) Parcels, and their intended uses, recommended to be conveyed by:

(A) Negotiated sale at estimated fair market value.

(B) Conveyance without initial consideration to local redevelopment authorities, with or without recoupment, as provided in this part.

(iv) The plan should discuss how it will enhance the prospects for economic development and job creation, if the redevelopment authority intends to request an economic development conveyance.

(d) Jobs-centered property disposal.

(1) The new property disposal process described in this section and in paragraphs (e) and (f) of this section which follow, is designed to rapidly create new jobs, either by taking advantage of a ready market for development of valuable property or by inducing a market through conveyances for economic development, initially without consideration. The procedures described below generally apply to 1993 and 1995 base closures and may not apply to 1988 and 1991 closures which may be well along in the disposal process.

(2) The Military Departments should identify properties with potential for rapid job creation and begin, as soon as possible, but not later than completion of the new expedited McKinney Act screening (paragraph (b) of this section), an appraisal or other estimate of the property's fair market value. Such appraisals or estimates should address a range of likely market values taking into account: feasible uses for the property; the uncertainties in property development; and, current market conditions (i.e., recognizing the state of the market after a closure announcement). The appraisals should not be based on the replacement cost of the properties, since they may not be readily adaptable for civilian use. Additionally, the appraisal should not be based on the highest and best use, but the most likely range of uses consistent with local interests. The above appraisal may be accomplished for 1988 and 1991 closures if it is determined that it would be beneficial to do so and will not delay the disposal process.

(3) To assist in the appraisal/estimation of fair market value of properties with a potential for rapid job creation, and to determine if interests exist in properties not originally identified for rapid job creation, the Military Departments shall, for 1993 and 1995 closures, advertise for expressions of interest in all or any substantial part of each closing installation. For the 1993 and 1995 closures, the Military Departments shall advertise at the completion of the new expedited McKinney Act screening process (see paragraph (b) of this section). The Military Departments may advertise for expressions of interest in all or any substantial part of each closing installation on the 1988 or 1991 closure lists if it is determined that it would be beneficial to do so and will not delay the disposal process.

(i) Advertisements for expressions of interest shall be open for 6 months. Expressions of interest received should detail the intended use, the site plan, the jobs estimated to be created, the schedule for development and hiring, and an evaluation of the worth of the land and buildings. Expressions of interest will be shared with the local redevelopment authority. Advertisements for expressions of interest will be conducted simultaneously with all other disposal actions and are not an additional step in the disposal process.

(ii) The Military Departments shall analyze each expression of interest and determine within 30 days of receipt if it is made in good faith and represents a

reasonable development proposal. If the Military Department decides that an expression of interest received demonstrates the existence of a ready market, the prospect of job creation, and offers proceeds consistent with the range of estimated fair market value, it may decide to offer the property for sale. The property proposed for sale shall promptly be publicly identified, and the redevelopment authority shall be notified. The redevelopment authority may request reconsideration of this decision under paragraph (d)(5) of this section. Potential offerors will be encouraged to work with the redevelopment authority so that their development goals will be compatible with the local redevelopment plan.

(iii) If a redevelopment plan has not been completed, the redevelopment authority will be encouraged to include the potential for sale of the property identified by the Military Department under paragraph (d)(3) of this section, in the plan. The DoD Component will evaluate whether the potential sale of the identified property is covered by any ongoing environmental analyses required by the National Environmental Policy Act (NEPA). Based on this evaluation, consideration can be given to integrating the potential sale into the existing analyses or preparing additional analyses required by law or otherwise deemed appropriate. The environmental impact statement shall, to the extent practicable, be completed within 12 months, or a Finding of No Significant Impact issued within 6 months, of the public announcement identifying the property proposed for sale.

(4) A few high value installations for which a ready market apparently exists may, nevertheless, not have generated any expressions of interest during the allotted 6 month period. Regardless, such installations provide an opportunity for private sector rapid job creation which should be pursued. In these cases, the Military Departments, based on completed appraisals or other estimates of the fair market value, shall inform redevelopment authorities that the property is expected to be offered for sale and an economic development conveyance should not be anticipated. Redevelopment authorities shall be so informed as soon as possible, but not later than 6 months after completion of the McKinney Act screening process. In making these determinations, airport, port, and school property may be excluded if it appears that they are likely to be converted to public airports, ports or schools under existing public benefit conveyance programs. The determination that an installation will be sold under paragraph (d)(4) of this section has 2 components:

(i) The property must have a high value.

(ii) There must be a ready market. Ready market means that offers to purchase at or near the estimated range of fair market value from the private sector covering all or most of the installation could be expected within 6 months of advertising the base for public sale.

(5) Within 60 days of the announcement by the Secretary of the Military Department concerned of the intention to sell property in accordance with paragraph (d)(3) or (d)(4) of this section, the authorized local redevelopment authority may request, in writing, that this determination be reconsidered. The Secretary shall consider the request, provide a final determination in writing to the local redevelopment authority and announce this determination publicly.

(6) Identification of an installation or property for sale under this section does not preclude a community's acquisition of property for the estimated fair market value.

(7) The provisions of this section may not be appropriate for some of the 1988 and 1991 base closures and realignments because these bases are so far along in the property disposal process that certain actions have been taken or agreed to that are inconsistent with the new procedures. In cases of 1988 and 1991 closures where this new property disposal process is considered not appropriate, the Secretary concerned shall request a waiver from the ASD(ES) before proceeding with the disposition of the property.

(e) *Economic development conveyances.*

(1) Closing military bases often have a great deal of land that may not be readily developable or marketable due to its location. Additionally, closing bases often have buildings that may need to be demolished in order to encourage redevelopment and economic revitalization. Historically, the process of selling bases, or parts thereof, for fair market value has been time consuming and the proceeds from the sales of base closure properties have been less than originally anticipated. In the past, the law permitted the Department of Defense to convey property at a discount of up to 100% (free of charge) for specific public purposes such as health, aviation, recreation, and education—but not for economic development. The new process that follows permits the DoD to convey land and buildings to redevelopment authorities with no consideration, subject to recoupment, after it is determined that the base, or significant portions thereof, cannot be sold in accordance with the rapid job creation concept. Such conveyances may help induce a market for the property, thereby, enhancing economic recovery. Redevelopment authorities shall submit a simple written request containing four basic elements as described in paragraphs (e)(5)(i) through (e)(5)(iv) of this section. Generally, installations will be conveyed at no initial cost with a recoupment provision that shall permit DoD to share in any future profits should the base be later leased or sold. Bases in rural areas shall be conveyed under this authority with no recoupment if they meet the standards in paragraph (e)(6) of this section. The conveyance for economic development should be used by local redevelopment authorities to gain control of large areas of the base, not just individual buildings. The income received from some of the higher value property should help offset the maintenance and marketing costs of the less desirable parcels. In order for this conveyance to spur redevelopment, large parcels must be used to provide an income stream to assist the long term development of the property.

(2) The Secretary of Defense is authorized by Pub. L. 103–160, Section 2903 to convey real property at an installation to be closed to the local redevelopment authority for economic development (an economic development conveyance). The conveyance of property may be for consideration at or below the estimated fair market value, or without consideration. The consideration, if any, can be paid in cash or in kind. Property to be transferred pursuant to Public Law 103–160, section 2903, will be conveyed with no consideration, subject to recoupment as described in paragraph (f) of this section.

(3) The economic development conveyance authority is an addition to existing public benefit authorities and, generally, should not be used when these public benefit authorities would apply. The Military Departments shall prepare a written explanation why a transfer was made using this economic development conveyance authority for what appears to be a purpose covered by an existing public benefit authority.

(4) Before making an economic development conveyance of real property, an appraisal or other estimate of the property's fair market value shall be made, based on the proposed reuse of the property. The Military Department shall consult with the local redevelopment authority on appraisal

assumptions, guidelines and on instructions given to the appraiser, but shall be fully responsible for completion of the appraisal. When a property is conveyed for economic development with no initial consideration, the Military Department shall prepare a written explanation why the estimated fair market value was not received and retain it in their real property files.

(5) Property may be conveyed under Pub. L. No. 103–160 to an authorized local redevelopment authority for economic development following submission of a written request to the Secretary of the Military Department concerned disposing of the property. The requests should contain the following elements:

(i) Description of the property to be conveyed.

(ii) Statement of the local redevelopment authority's legal authority to acquire and dispose of property under the laws of the governing State.

(iii) A redevelopment plan that includes economic development and job creation.

(iv) A statement explaining why existing public benefit conveyance authorities are not appropriate.

(6) Installations located in rural areas are of particular concern. An economic development conveyance may be made without consideration and without recoupment in a rural area when the base closure will have a substantial adverse impact on the economy of the local community and on the prospect of its economic recovery from the closure. To determine whether a rural community is eligible for transfer under this section, the Secretary concerned shall first determine whether the closure will have a substantial adverse impact on the prospect for economic recovery by determining whether there is a market for the property. The closure may be determined to have substantial adverse impact if after advertising for expressions of interest pursuant to paragraph (d) of this section, no expressions of interest are received. No expressions of interest to purchase the property signifies that public or private developers will not be able to provide jobs and economic growth sufficient to provide timely recovery from closure without assistance. The second step requires the Secretary concerned to make a determination that the base closure will have a substantial adverse impact on the economy of the communities in the vicinity of the installation. In these cases, the base shall be offered to the local redevelopment authority for conveyance without consideration and without recoupment (subject to paragraph (f)(5) of this section).

(7) The provisions of this section may not be appropriate for some of the 1988 and 1991 base closures and realignments, because these bases are so far along in the property disposal process that certain actions have been taken or agreed to that are inconsistent with the new procedures. In cases where the new property disposal process is not appropriate, the Secretary concerned shall request a waiver from the ASD(ES) before proceeding with the disposition of the property.

(f) *Profit sharing.*

(1) When real property is conveyed as described in paragraph (e) of this section, the Department of Defense shall generally share in the division of future profits should the property be subsequently sold or leased. The division of profits shall be based on net profits and the share shall generally favor the local redevelopment authority. There shall be a 15-year time limit on the share of the profits. The government's portion of the receipts from the profit shall not exceed the fair market value of the property at the time it was conveyed to the local redevelopment authority.

(2) Properties conveyed under the authority of Pub.L. 103–160, section 2903, to local redevelopment authorities under an economic development conveyance that are subsequently sold or leased shall be subject to recoupment (profit sharing) by the Department of Defense, except as provided in paragraph (e)(6) of this section. In the absence of a determination by the Secretary of the Military Department concerned that a different division of the net profits is appropriate because of special circumstances, the net profits shall be shared on a basis of 60 percent to the local redevelopment authority and 40 percent to the Department of Defense. The purpose of this recoupment policy is to allow the local redevelopment authority to benefit from the success of its efforts and from value created from zoning. Eliminating the requirement for initial consideration also frees the local redevelopment authority's income stream for use in funding infrastructure improvements needed to develop the property and increase its value. Sharing the profits, when they occur, will provide a return to the taxpayers for the property they originally paid for, without unduly burdening the community.

(3) The total recoupment by the Government shall not exceed the fair market value of the property (or the top end of the range of values) calculated at the time of conveyance to the local redevelopment authority.

(4) The standard excess profits covenant promulgated by the General Services Administration (GSA) at 41 CFR 101–47.4908 shall be used as a model deed provision to implement this recoupment policy, recognizing that the GSA provision will require tailoring for each parcel. The following changes and additions are required:

(i) The deed provision will express the profit sharing established under paragraph (f)(2) of this section, unless explicitly modified by the Secretary of the Military Department concerned.

(ii) The term of this deed provision in economic development conveyances will be 15 years unless released earlier by the government upon satisfaction of the recoupment requirement. The disposing Military Department will provide a statement, for use at any settlement, on the local redevelopment authority's compliance with the deed provision. The Military Department will formally release the provision when the government has received its share of the sale proceeds.

(iii) The deed provision will forbid "straw" transactions (sales or leases to a cooperating party at a nominal price), transactions at other than arm's length, and other devices designed to circumvent the Government's recovery of its share of the net profits. The purpose of this clause of the deed provision is to provide a basis for the government to intervene if it appears that a transaction may adversely affect its interests.

(iv) In calculating the amount of any net profit from a sale or lease, the local redevelopment authority may include:

(A) Capital costs, as provided in 41 CFR 101–47.4908(b).

(B) Direct and indirect costs related to the particular property and transaction that are otherwise allowable under 48 CFR part 31 including the allocable costs of operation of the local redevelopment authority with regard to that property.

(v) The annual report required by the GSA provision will be deleted, and a clause requiring notification to the disposing Military Department of sales or leases will be substituted. The notice of sale or lease will be accompanied by an accounting or financial analysis indicating the net profit, if any, from a sale, or the estimated annual profit from a lease. The accounting or financial analysis, and any other aspect of a transaction by the local redevelopment authority with respect to property transferred under this part, is subject to Department of Defense audit.

(5) The Military Department concerned is authorized to negotiate an up-front settlement of projected recoupment revenues from a conveyance under this section when such settlement is requested by the redevelopment authority.

(6) The provisions of this section may not be appropriate for some of the 1988 and 1991 base closures and realignments, because these bases are so far along in the property disposal process that certain actions have been taken or agreed to that are inconsistent with the new procedures. In cases where the new property disposal process is not appropriate, the Secretary concerned shall request a waiver from the ASD(ES) before proceeding with the disposition of the property.

(g) *Leasing of real property.*

(1) Leasing of real property is an effective way to quickly attract new jobs to replace those that have been lost by the base closing. In the past, the requirement to lease at fair market value discouraged the creation of new jobs. The new process of leasing, at less than fair market value, where appropriate, will provide new incentives for redevelopment authorities and businesses alike to spur job creation and speed economic redevelopment.

(2) The Secretaries of the Military Departments are authorized by Pub. L. 103–160, section 2906 to lease real and personal property at closing or realigning bases for consideration of less than the estimated fair market value, if the Secretary concerned determines:

(i) That a public interest will be served as a result of the lease.

(ii) That securing the estimated fair market rental value from the lease is not compatible with such public interest.

(3) The Military Departments shall determine the environmental suitability of property to be leased using the procedures in the DoD policy entitled "Procedures for Finding of Suitability to Lease (FOSL)" contained in the Deputy Secretary of Defense Memorandum,[2] "Fast Track Cleanup at Closing Installations", September 9, 1993, and any amendments thereto. Regulatory consultation (Environmental Protection Agency (EPA) and State government) must be completed before entering into any leases, as specified in the FOSL guidance and when approved, the Memorandum of Understanding between DoD and EPA will confirm the FOSL process.

(4) The Military Departments are encouraged to redelegate leasing authority to the level that can best respond to local redevelopment needs and still exercise prudent and consistent stewardship over these public assets.

(h) *Personal property.*

(1) Personal property located on closing bases is often very useful to the redevelopment of the real property. This section outlines procedures to allow transfer of personal property with the real property in many cases. It provides for completing an inventory soon after the base is approved for closure, consulting with local officials, and a walkthrough of the base. The community can then identify the personal property it wishes to retain in its redevelopment plan. The Department of Defense will keep a great deal of the personal property at the base while the redevelopment plan is being put together. Only valid exemptions will be made to this freeze, usually involving specific military requirements or property which the base does not own. Emissions trading procedures will be issued separately and are not covered by the part.

(2) Each Military Department and Defense Agency, as appropriate, shall take an inventory of the personal property, to include its condition, at closing or realigning bases as early in the closure process as possible. At realigning bases, the inventory shall be limited to the personal property located on the real property to be disposed of by the Military Department or Defense Agency. The purpose of the inventory is to identify personal property—any property except land, fixed-in-place buildings, ships, and Federal records—that could enhance the reuse potential of real property that may be conveyed to the local redevelopment authority for supporting the economic redevelopment of the base. The exempted categories of personal property listed in paragraph (h)(5) of this section shall not be subject to review by the community. The inventory must be completed by June 1, 1994, for 1988, 1991 and 1993 closures and realignments or within 6 months after the date of approval of 1995 closures.

(3) The inventory shall be taken in consultation with local redevelopment authority officials. If no local redevelopment authority exists, consultation shall be offered to the local government in whose jurisdiction the installation is wholly located, or a local government agency or State government agency designated for the purpose of such consultation by the chief executive officer of the State. Based on these consultations, the base commander is responsible for determining the items or category of items potentially enhancing the reuse of the real property and needed to support the redevelopment plan. When the inventory is completed, base personnel shall offer a "walkthrough" with representatives of the local redevelopment authority so that they can see the type and condition of the property available for reuse. Disagreements should be resolved within the chain-of-command, with final authority on resolving personal property issues resting with the Secretary of the Military Department or Defense Agency Director responsible for the real property. This authority may be further delegated.

(4) The Military Departments should make every reasonable effort to assist affected communities in obtaining the personal property needed to convert the bases into economically-viable enterprises. Personal property not subject to the exemptions in paragraph (h)(5) of this section shall remain at a closing or realigning base until one of the following time periods expire (whichever comes first):

(i) One week after the date on which the redevelopment plan is submitted to the applicable Military Department.

(ii) The date on which the local redevelopment authority notifies the applicable Military Department that a plan will not be submitted.

(iii) Twenty-four months after the dates referred to in paragraph (h)(2) of this section which for 1988, 1991 and 1993 base closures and realignments is November 30, 1995, or 24 months after the date of approval of the 1995 closures and realignments.

(iv) Ninety days before the date of the closure or realignment of the installation.

(5) Personal property may be removed without regard to these time periods upon approval of the base commander, or higher authority within the Military Department, and after notice to the local redevelopment authority, if the property:

(i) Is required for the operation of a unit, function, component, weapon, or weapon system transferring to another installation. A transferring unit or function may take with it any property needed to function properly as soon as it arrives, provided that suitable replacement equipment will not be readily obtainable there and moving it is cost-effective. In addition to this authority for the transferring unit or function to remove personal property, the major command having jurisdiction over the installation (e.g., the Army's Forces Command or the Air Force's Air Combat Command), or the major claimant having jurisdiction over the installation (e.g., the Navy's U.S.

[2] Document available from the Office of the Deputy Under Secretary of Defense (Environmental Security), Pentagon, Washington, DC 20301.

Atlantic Fleet) also may remove property that is needed immediately and is indispensable to an organization under its jurisdiction at another installation for carrying out the organization's primary mission.

(ii) Is uniquely military in character, and is likely to have no civilian use (other than use for its material content or as a source of commonly used components). Classified items; nuclear, biological, chemical items; weapons and munitions; museum property or items of significant historic value that are maintained or displayed on loan; and similar military items fit this exception.

(iii) Is not required for the reutilization or redevelopment of the installation (as jointly determined by the Military Department concerned and the redevelopment authority).

(iv) Is stored at the installation for distribution (including spare parts or stock items). This exception includes materials or parts used in a manufacturing or repair function but does not include maintenance spares for equipment to be left in place.

(v) Meets known requirements of an authorized program of another Federal Department or Agency for which expenditures for similar property would be necessary, and is the subject of a written request received from the head of the Department or Agency. In this context, "expenditures" means the Federal Department or Agency intends to obligate funds in the current quarter or next six fiscal quarters. The Federal Department or Agency must pay packing, crating, handling, and transportation charges associated with such transfers of personal property.

(vi) Belongs to nonappropriated fund instrumentalities (NAFI). NAFI property may be removed at the Military Departments' discretion, because NAFI property belongs to the Service members collectively and is not government property. Therefore, it may not be transferred to the local redevelopment authority under this section. Separate arrangements for communities to purchase NAFI property are possible and may be negotiated with the Military Department concerned.

(vii) Is needed elsewhere in the national security interest of the United States, as determined by the Secretary of the Military Department concerned. This authority may not be redelegated.

(6) Personal property to be transferred to the local redevelopment authority in support of its redevelopment plan is not subject to sections 202 and 203 of Public Law 81–152, "Federal Property and Administrative Services Act of 1949, as amended" of June 30, 1949, 40 U.S.C. 483–484. If the real property is transferred without consideration, the personal property shall also be transferred without consideration. If the real property is transferred at or near estimated fair market value, the value of the personal property shall be included in the estimated fair market value of the real property. If the property is conveyed separately from the real property, the value of the personal property shall be that at which it is carried on the installation's property account or estimated fair market value as agreed to between the parties at the time of transfer.

(7) In addition to the exemptions in paragraph (h)(5) of this section, the Military Department or Defense Agency is authorized to substitute an item similar to one requested by the redevelopment authority. The substitute items may be drawn from another installation or from the Defense Reutilization and Marketing Service. It is the responsibility of the Military Department or Defense Agency that owns the property to find a similar item that may be suitable as a substitute. In this context, "similar" means the original and the proposed substitute item are designed and constructed for the same specific purpose. However, before substituting another item for the one being requested, the base commander shall consult with the redevelopment authority.

(8) Personal property that is not needed by a major command (or its subordinates), a Federal Agency, or a local redevelopment authority (or a State or local jurisdiction in lieu of a local redevelopment authority) shall be transferred to a Defense Reutilization and Marketing Office for processing in accordance with the Federal Property and Administrative Services Act of 1949, as amended, 40 U.S.C. 483 *et seq.*

(i) Minimum level of maintenance and repair to support nonmilitary purposes.

(1) Facilities and equipment located on closing bases are often important to the eventual reuse. This section provides procedures to protect their condition while the redevelopment plan is being put together. The level of maintenance will be determined in consultation with the redevelopment authority.

(2) Public Law 103–160, section 2902 states that the Secretary may not reduce the level of maintenance and repair of facilities or equipment at the installation below the minimum levels required to support the use of such facilities or equipment for nonmilitary purposes, except when the Secretary of the Military Department concerned determines that such reduction is in the National Security interest of the United States. This requirement remains in effect until one of the time periods in paragraph (h)(4) of this section has expired.

(3) The initial minimum level of maintenance and repair to support non-military purposes shall be determined during consultation between the Military Department and the redevelopment authority. This level and the property to which it applies shall be reviewed with the local redevelopment authority when it presents its final development plan. Where agreement cannot be reached, the Secretary of the Military Department concerned shall determine the level of maintenance required. In no case shall the level of maintenance and repair:

(i) Exceed the standard at the time of approval of the closure or realignment.

(ii) Require any improvements to the property to include construction, alteration, or demolition, except that required by environmental restoration.

(4) The negotiated minimum maintenance agreement must be tailored to the specific non-military uses, but shall include the following:

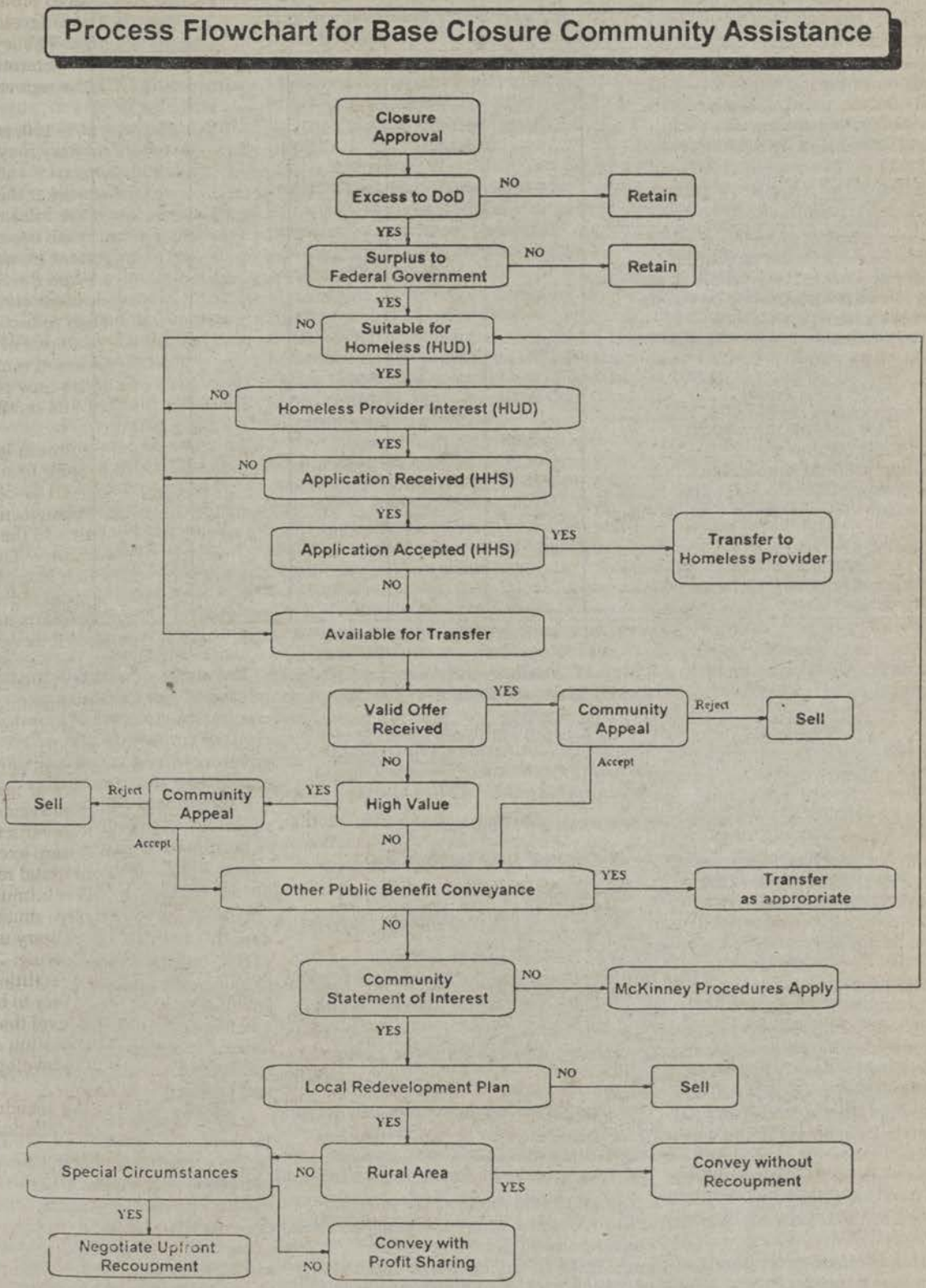
(i) Maintaining the facilities and equipment that are likely to be utilized in the near term at a level that shall prevent undue deterioration and allow transfer to the local redevelopment authority.

(ii) Not delaying the scheduled closure date of the installation.

Dated: March 31, 1994.

BILLING CODE 5000-04-M

Appendix A to Part 91



BILLING CODE 5000-04-C

APPENDIX B TO PART 91.—CLOSURE AND TRANSITION TIMELINE FOR A NOTIONAL BRAC 1993 BASE THAT CLOSES ON SEPTEMBER 30, 1997

[Dates are completion dates—First of the month]

	1993	1994	1995	1996	1997	1998	1999
1. Closure approved	Dec.						
2. Real property screening:							
a. Within DoD		Apr.					
b. With other Federal Agenices		June.					
c. State and Local (public benefit conveyances)		June.					
3. McKinney Act screening:							
a. MiDeps report surplus to HUD		June.					
b. HUD publishes list of suitable prop		Aug.					
c. Providers express interest		Oct.					
d. Applications submitted to HHS			Jan.				
e. HHS approves/disapproves application			Feb.				
f. RDA expresses interest in unclaimed property (remaining surplus property relisted by HUD).				Feb.			
4. Jobs-centered property disposal:							
a. Begin appraisals of properties with job potential		June.					
b. Advertise for expressions of interest		Oct.					
c. MilDeps notify RDA of bases to be sold			Apr.				
d. RDA ask MilDep to reconsider			June.				
5. Local redevelopment plan completed				Feb.			
6. Conveyance of real property:							
a. Leases (FOSL), as available		June.					
b. Clean parcel (CERFA) identification			Dec.				
c. EIS Completed (ROD)					Feb.		
d. Transfer/Sale (FOST)—parcels or whole, as available.						Mar.	(and beyond).
7. Personal property:							
a. Inventory complete		June.					
b. Longest personal property can be frozen				June.			
8. Base Closes (missions leave)						Sept.	

[FR Doc. 94-8114 Filed 4-5-94; 8:45 am]

BILLING CODE 5000-04-M

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32 CFR Part 199

[DoD 6010.8-R]

RIN 0720-AA24

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Continued Health Care Benefit Program

AGENCY: Office of the Secretary, DoD.

ACTION: Interim rule.

SUMMARY: This rule establishes a Continued Health Care Benefit Program (CHCBP) for certain DoD health care beneficiaries who lose eligibility for health care in the Military Health Services System (MHSS). It provides for use of the CHAMPUS benefit structure and CHAMPUS rules and procedures for the CHCBP and seeks public comments on our plan to implement the Continued Health Care Benefit Program.

DATES: This rule is effective October 1, 1994. Written comments must be received on or before June 6, 1994.

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

FOR FURTHER INFORMATION CONTACT: Mr. Gunther J. Zimmerman, Office of the Assistant Secretary of Defense (Health Affairs), (703) 695-3331.

SUPPLEMENTARY INFORMATION:

I. Overview of the Proposed Rule

Implementation of the Continued Health Care Benefit Program (CHCBP) was directed by Congress in section 4408 of the National Defense Authorization Act for Fiscal Year 1993, Public Law 102-484, which amended title 10, United States Code, by adding section 1078a. This law directed the implementation of a program of temporary continued health benefits coverage for certain former beneficiaries of DoD, comparable to the health benefits provided for former civilian employees of the Federal government.

Congress also directed the program start by October 1, 1994, and replace the conversion health care programs authorized in section 1086a and 1145(b) of title 10. Conversion health care is provided via a Department of Defense (DoD) contract with Mutual of Omaha and is scheduled to end September 30, 1994.

The status directs that the benefits offered by the CHCBP must be comparable to those offered to former civilian employees of the Federal government. As is the case for those employees, the costs will be borne by the beneficiary who will pay the entire premium charge. Additionally, the DoD is permitted to charge up to an additional ten percent of the premium charge to cover administrative expenses.

Under section 4408(b), eligibility to enroll in the CHCBP includes members of the uniformed services who are discharged or released (voluntarily or involuntarily as long as not under adverse conditions) and their dependents; certain unremarried former spouses of a member or former member; and emancipated children.

Health care coverage in the CHCBP is for a specific time period, which varies by the category of beneficiary. Coverage periods are as follows: Former uniformed services members and their dependents—up to 18 months; unremarried former spouses—up to 36 months; emancipated children (age 21 if not in college or up to age 23 if in college)—up to 36 months. Eligible beneficiaries generally will have 60 days to elect coverage after they are notified of their opportunity to enroll.

The Department of Defense considered three alternatives to implement this program: first, integration of the program within the Federal Employee Health Benefit Program (FEHBP) health care plans under arrangement with the Office of Personnel Management (OPM); second, competitive procurement of a private insurer to administer this program; and lastly, continued CHAMPUS-type coverage, paid for by the beneficiary, with a third party administrator collecting the premiums and performing eligibility and verification functions. The first option was rejected based on the difficulties of making the transition from a DoD administered benefit to an OPM program. The second option was not selected based on the likelihood that an acquisition process involving a beneficiary group of such unpredictable size and characteristics would not result in a vendor willing to underwrite this program. Contractors would be wary that health care costs would exceed the capped premium. Thus, we propose to offer this program directly through the established mechanisms of CHAMPUS.

Under this approach, beneficiaries will continue to make use of existing CHAMPUS rules and administrative structures to receive their medical care and have medical claims paid. This feature will allow enrollees to make use of discounts and reduced copayments and provider arrangements already part of CHAMPUS in some locations. As previously noted, a third party administrator (TPA) will act as a central agent for the program. The functions of this TPA will be to: receive applications for enrollment of beneficiaries; verify eligibility and approve enrollment; notify the Defense Enrollment and Eligibility Reporting Systems (DEERS) of enrollment; collect premiums; and provide administrative services. CHCBP eligibles will obtain information concerning the program and the application process and other TPA functions at their local base transition office or through the nearest military treatment facility's (MTF) Health Benefits Advisory (HBA).

It is expected that premium rates for this program will be comparable to the premium rates of a mid-range Health Maintenance Organization (HMO) offered in the FEHBP. The Department of Defense has contracted with a private sector actuarial firm to help develop premium rates. It is anticipated these rates will include individual and family premiums, but will not be age/sex adjusted. (Similar to FEHBP premium schedules). Premium rates for fiscal year 1995 are currently being calculated, however, it is expected that these quarterly rates will be in the range of $250 self and $625 for family.

II. Rulemaking Procedures

Executive Order 12866 requires certain regulatory assessments for any "significant regulatory action," defined as one which would result in an annual effect on the economy of $100 million or more, or have other substantial impacts.

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

This is not a significant regulatory action under the provisions of Executive Order 12866, and it would not have a significant impact on a substantial number of small entities.

The proposed rule will impose additional information collection requirements on the public under the Paperwork Reduction Act of 1980 (44 USC 3501–3511), because beneficiaries will be required to enroll. Request for approval and review has been submitted.

This is a proposed rule. Public comments are invited. All comments will be considered. A discussion of the major issues received by public comments will be included with issuance of the final rule, anticipated approximately 60 days after the end of the comment period.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

Accordingly, 32 CFR Part 199 is amended as follows:

PART 199—[AMENDED]

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

Authority: 10 U.S.C. Chapter 55, 5 U.S.C. 301.

2. A new § 199.20 is added to read as follows:

§ 199.20 Continued Health Care Benefit Program (CHCBP).

(a) *Purpose.* The CHCBP is a premium based temporary health care coverage program that will be available to qualified beneficiaries (set forth in paragraph (d)(1) of this section). Medical coverage under this program will mirror the benefits offered via the basic CHAMPUS program. Premium costs for this coverage are payable by enrollees to a Third Party Administrator. The CHCBP is not part of the CHAMPUS program. However, as set forth in this section, it functions under most of the rules and procedures of CHAMPUS. Because the purpose of the CHCBP is to provide a continuation health care benefit for DoD beneficiaries losing eligibility, it will be administered so that it appears, to the maximum extent possible, to be part of CHAMPUS.

(b) *General provisions.* Except for any provisions the Director, OCHAMPUS may have, the general provisions of section 199.1 shall apply to the Continued Health Care Benefit Program as they do to CHAMPUS.

(c) *Definitions.* Except as may be specifically provided in this section, to the extent terms defined in section 199.2 are relevant to the administration of the Continued Health Care Benefit Program, the definitions contained in that section shall apply to the CHCBP as they do to CHAMPUS.

(d) *Eligibility and enrollment.*

(1) *Eligibility.* Enrollment in the Continued Health Care Benefit Program is open to the following individuals:

(i) Members of armed forces, who:

(A) Are discharged or released from active duty (or full time National Guard duty), whether voluntarily or involuntarily, under other than adverse conditions;

(B) Immediately preceding that discharge or release, were entitled to medical and dental care under 10 U.S.C. 1074(a) (except in the case of a member discharged or released from full time National Guard duty); and,

(C) After that discharge or release and any period of transitional health care provided under 10 U.S.C. 1145(a) would not otherwise be eligible for any benefit under 10 U.S.C. chapter 55,

(ii) A person who:

(A) Ceases to meet requirements for being considered an unmarried dependent child of a member or former member of the armed forces under 10 U.S.C. 1072(2)(D);

(B) On the day before ceasing to meet those requirements, was covered under a health benefits plan under 10 U.S.C. chapter 55, or transitional health care under 10 U.S.C. 1145(a) as a dependent of the member or former member; and,

(C) Would not otherwise be eligible for any benefits under 10 U.S.C. chapter 55,

(iii) A person who: (A) Is an unremarried former spouse of a member or former member of the armed forces;

(B) On the day before the date of the final decree of divorce, dissolution, or annulment was covered under a health benefits plan under 10 U.S.C. chapter 55, or transitional health care under 10 U.S.C. 1145(a) as a dependent of the member or former member; and,

(C) Is not a dependent of the member or former member under 10 U.S.C. 1072 (2) (F) or (G) or ends a one-year period of dependency under 10 U.S.C. 1072(2)(H).

(2) *Notification of eligibility.*

(i) The Department of Defense will notify persons eligible to receive health benefits under the Continued Health Care Benefit Program.

(ii) In the case of a member who becomes (or will become) eligible for continued coverage, the Department of Defense shall notify the member of their rights for coverage as part of preseparation counseling conducted under 10 U.S.C. 1142.

(iii) In the case of a child of a member or former member who becomes eligible for continued coverage:

(A) The member or former member may submit to the Department of Defense a notice of the child's change in status (including the child's name, address, and such other information needed; and

(B) The Department, within 14 days after receiving such information, will inform the child of the child's rights under 10 U.S.C. 1142.

(iv) In the case of a former spouse of a member or former member who becomes eligible for continued coverage, the Department of Defense will notify the individual of eligibility for CHCBP when he or she declares the change in marital status to a military personnel office.

(3) *Election of coverage.*

(i) In order to obtain continued coverage, written election by eligible beneficiary must be made, within a prescribed time period. In the case of a member discharged or released from active duty (or full time National Guard duty), whether voluntarily or involuntarily; an unremarried spouse of a member or former member; or a child emancipated from a member or former member, the written election shall be submitted to the Department of Defense before the end of the 60-day period beginning on the later of:

(A) The date of the discharge or release of the member from active duty or full-time National Guard duty;

(B) The date on which the period of transitional health care applicable to the member under 10 U.S.C. 1145(a) ends; or

(C) The date the member receives the notification of eligibility.

(ii) A member of the armed forces who is eligible for enrollment under paragraph (d)(1)(i) of this section may elect self-only or family coverage. Family members who may be included in such family coverage are the spouse and children of the member.

(4) *Enrollment.* Enrollment in the Continued Health Care Benefit will be accomplished by submission of an application to a Third Party Administrator (TPA). Upon submittal of an application to the Third Party Administrator, the enrollee must submit proof of eligibility.

(i) One of the following types of evidence will validate eligibility for care:

(A) A Defense Enrollment Eligibility Reporting System (DEERS) printout which indicates the appropriate sponsor status and the sponsor's and dependent's eligibility dates";

(B) A copy of a verified and approved DD Form 1172, "Application for Uniformed Services Identification and Privilege Card;" and

(C) A front and back copy of a DD Form 1173, "Uniformed Services Identification and Privilege Card" overstamped "TA" for Transition Assistance Management Program.

(5) *Period of coverage.* Continued Health Care Benefit Program coverage may not exceed beyond:

(i) For a member discharged or released from active duty (or full time National Guard duty), whether voluntarily or involuntarily, the date which is 18 months after the date the member ceases to be entitled to care under 10 U.S.C. 1074(a) and any transitional care under 10 U.S.C. 1145.

(ii) In the case of an unmarried dependent child of a member or former member, the date which is 36 months after the date on which the person first ceases to meet the requirements for being considered an unmarried dependent child under 10 U.S.C. 1072(2)(D).

(iii) In the case of an unremarried former spouse of a member or former member, the date which is 36 months after the later of:

(A) The date on which the final decree of divorce, dissolution, or annulment occurs; or

(B) If applicable, the date the one-year extension of dependency under 10 U.S.C. 1072(2)(H) expires.

(iv) For the beneficiary who become eligible for Continued Health Care Benefit Program by ceasing to meet the requirements for being considered an unremarried dependent child of a member or former member, health care coverage may not extend beyond the date which is 36 months after the date the member becomes ineligible for medical and dental care under 10 U.S.C. 1074(a) and any transitional health care under 10 U.S.C. 1145(a).

(v) Though beneficiaries have sixty-days (60) to elect coverage under the CHCBP, upon enrolling, the period of coverage must begin the day after entitlement to a military health care plan (including transitional health care under section 1145(a)) ends.

(e) *CHCBP Benefits.*

(1) *In general.* Except as provided in paragraph (e)(2) of this section, the provisions of section 199.4 shall apply to the Continued Health Care Benefit Program as they do to CHAMPUS.

(2) *Exceptions.* The following provisions of section 199.4 are not applicable to the Continued Health Care Benefit Program:

(i) Paragraph (a)(2) concerning eligibility:

(ii) All provisions regarding nonavailability statements or requirements to use facilities of the uniformed services.

(3) *Beneficiary liability.* For purposes of beneficiary liability, CHAMPUS deductible and cost sharing requirements, for separating active duty members and active duty dependents who lose CHAMPUS eligibility, paragraph 199.4(f)(2) applies. For all others, paragraph 199.4(f)(3) applies. For catastrophic caps, limits by beneficiary category are the same as those established for basic CHAMPUS.

(f) *Authorized providers.* The provisions of section 199.6 shall apply to the Continued Health Care Benefit Program as they do to CHAMPUS.

(g) *Claims submission, review, and payment.* The provisions of section 199.7 shall apply to the Continued Health Care Benefit program as they do CHAMPUS, except that no provisions regarding nonavailability statements shall apply.

(h) *Double coverage.* The provisions of section 199.8 shall apply to the Continued Health Care Benefit Program as they do to CHAMPUS.

(i) Administrative remedies for fraud, abuse and conflict of interest. The provisions of section 199.9 shall apply to the Continued Health Care Benefit Program as they do to CHAMPUS.

(j) Appeal and hearing procedures. The provisions of section 199.10 shall apply to the Continue Health Care Benefit Program as they do to CHAMPUS.

(k) *Overpayment recovery.* The provisions of section 199.11 shall apply to the Continued Health Care Benefit Program as they do to CHAMPUS.

(l) *Third Party recoveries.* The provisions of section 199.12 shall apply to the Continued Health Care Benefit Program as they do to CHAMPUS.

(m) *Provider reimbursement methods.* The provisions of section 199.14 shall apply to the continued Health Care Benefit Program as they do to CHAMPUS.

(n) *Peer Review Organization Program.* The provisions of section 199.15 shall apply to the Continued Health Care Benefit Program as they do to CHAMPUS.

(o) *Preferred provider organization programs available.* Any preferred provider organization program under this part that provides for reduced cost sharing for using designated providers, such as the "TRICARE Extra" option under section 199.17, shall be available to participants in the Continued Health Care Benefit Program as it is to CHAMPUS beneficiaries.

(p) *Special programs not applicable.*

(1) *In general.* Special programs established under this Part that are not part of the basic CHAMPUS program established pursuant to 10 U.S.C. 1079 and 1086 are not, unless specifically provided in this section, available to participants in the Continued Health Care Benefit Program.

(2) *Examples.* The special programs referred to in paragraph (p)(1) of this section include:

(i) The Program for the Handicapped under section 199.5;

(ii) The Active Duty Dependents Dental Plan under section 199.13;

(iii) The Supplemental Health Care Program for active duty members under section 199.16;

(iv) The TRICARE Enrollment Program under section 199.17, except for TRICARE Extra program under that section; and

(v) The special programs for civilian sector services in lieu of military hospital services under section 199.19.

(3) Exemptions to the restriction. In addition to the provision to make TRICARE Extra available to CHCBP beneficiaries, the following two demonstration projects are also available to CHCBP enrollees:

(i) Home Health Care Demonstration; and

(ii) Home Health Care-Case Management Demonstration.

(q) *Premiums.*

(1) *Rates.* Premium rates will be established by the Assistant Secretary of Defense (Health Affairs) for two rate groups—individual and family. Eligible beneficiaries will select the level of coverage they require and pay the appropriate premium payment. The rates shall be based on Federal Employee Health Benefit Program employee and agency contributions which would be required for a comparable health benefits plan, plus an administrative fee. The administrative fee, not to exceed ten percent of the basic premium amount, shall be determined based on actual expected administrative costs for administration of the program. Premiums may be revised annually and shall be published annually for each fiscal year. Premiums will be paid by enrollees quarterly.

(2) *Effects of failure to make premium payments.* Failure by enrollees to submit timely and proper premium payments will result in denial of continued enrollment and denial of payment of medical claims. Premium payments which are late 30 days or more past the start of the quarter for which payment is due will result in the ending of beneficiary enrollment. Beneficiaries denied continued enrollment due to lack of premium payments will not be allowed to reenroll. In such a case, benefit coverage will cease at the end of the ninety day (90) period for which a premium payment was received. Enrollees will be held liable for medical claims costs in this instance.

(r) *Transitional provisions.* The Department of Defense shall provide for a period of enrollment for members and former member of the uniformed services for whom the availability of transitional health care under 10 U.S.C. 1145(a) expires before the October 1, 1994, implementation of the Continued Health Care Benefit Program.

(1) Enrollment in the U.S. VIP program will continue up to October 1, 1994. Policies written prior to October 1, 1994, will remain in effect until the end of the policy life.

(2) After the October 1, 1994, implementation of the Continued Health Care Benefit Program, beneficiaries who enrolled in the U.S. VIP program prior to October 1, 1994, may elect to cancel their U.S. VIP policy and enroll in the CHCBP.

(s) *Procedures.* The Director, OCHAMPUS, may establish other rules and procedures for the administration of the Continued Health Care Benefits Program.

Dated: March 31, 1994.

L.M. Bynum,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–8113 Filed 4–5–94; 8:45 am]

BILLING CODE 5000–04–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–46–4–6192; FRL–4853–4]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Sacramento Metropolitan Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing the approval of revisions to the California State Implementation Plan (SIP) proposed in the **Federal Register** on October 4, 1993. The revisions concern a rule from the Sacramento Metropolitan Air Quality Management District (SMAQMD). This approval action will incorporate this rule into the federally approved SIP. The intended effect of approving this rule is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rule controls VOC emissions from aerospace assembly and coating operations. Thus, EPA is finalizing the approval of this revision into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

EFFECTIVE DATE: This final rule is effective on May 6, 1994.

ADDRESSES: Copies of the rule revisions and EPA's evaluation report for the rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket, 6102, 401 "M" Street, SW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 92123–1095.

Sacramento Metropolitan Air Quality Management District,8411 Jackson Road, Sacramento, California 95812.

FOR FURTHER INFORMATION CONTACT: Chris Stamos, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency,

Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1187.

SUPPLEMENTARY INFORMATION:

Background

On October 4, 1993 at 58 FR 51591, EPA proposed to approve SMAQMD Rule 456, Aerospace Assembly and Component Coating Operations, into the California SIP. Rule 456 was adopted by SMAQMD on February 23, 1993 and submitted by the California Air Resources Board (CARB) to EPA on April 6, 1993. This rule was submitted in response to EPA's 1988 SIP-Call and the CAA section 182(a)(2)(A) requirement that nonattainment areas fix their reasonably available control technology (RACT) rules for ozone in accordance with EPA guidance that interpreted the requirements of the pre-amendment Act. A detailed discussion of the background for the above rule and nonattainment area is provided in the proposed rule cited above.

EPA has evaluated the above rule for consistency with the requirements of the CAA and EPA regulations and EPA interpretation of these requirements as expressed in the various EPA policy guidance documents referenced in the proposed rule cited above. EPA has found that the rule meets the applicable EPA requirements. A detailed discussion of the rule provisions and evaluations has been provided at 58 FR 51591 and in a technical support document (TSD) available at EPA's Region IX office (TSD for SMAQMD Rule 456 dated August 8, 1993).

Response to Public Comments

A 30-day public comment period was provided at 58 FR 51591 and EPA received no comments on SMAQMD Rule 456.

EPA Action

EPA is finalizing action to approve the above rule for inclusion into the California SIP. EPA is approving the submittal under section 110(k)(3) as meeting the requirements of section 110(a) and part D of the CAA. [1] This approval action will incorporate this rule into the federally approved SIP. The intended effect of approving this rule is to regulate emissions of VOCs in accordance with the requirements of the CAA.

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

Regulatory Process

This action has been classified as a Table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future document will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 222) from the requirements of section 3 of Executive Order 12291 for 2 years. The EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 6, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not effect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: March 8, 1994.

John Wise,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c) (192) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(192) New and amended regulations for the following APCDs were submitted on April 6, 1993 by the Governor's designee.

(i) Incorporation by reference.

(A) Sacramento Air Quality Management District.

(*1*) Rule 456, adopted on February 23, 1993.

* * * * *

[FR Doc. 94–8179 Filed 4–5–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 52

[DE8–1–5678; A–1–FRL–4840–5]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Particulate Matter (PM–10): Group III Areas State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State implementation plan (SIP) revision submitted by the State of Delaware. This revision establishes and requires the implementation of primary and secondary particulate matter standards consistent with the national ambient air quality standards (NAAQS) for particulate matter (PM–10). The intended effect of this action is to approve four (4) regulations, amended by Delaware in order to conform with the requirements established for Group III areas for PM–10. This action is being taken under Section 110 of the Clean Air Act.

EFFECTIVE DATE: This action will become effective June 6, 1994 unless notice is received by May 6, 1994 that adverse or critical comments will be submitted. If

[1] EPA is scheduled to publish a draft Control Techniques Guideline (CTG) for aerospace coating operations in July of 1994. When the CTG is published, EPA will be evaluating rules applicable to aerospace assembly and coating operations against the CTG requirements. States will be required to submit revised RACT rules in accordance with those requirements and the schedule included in the CTG.

the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107; Jerry Kurtzweg ANR-443, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: David J. Campbell, Air and Radiation Programs Branch, Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107; 215 597-9781.

SUPPLEMENTARY INFORMATION: On April 26, 1988, the Delaware Department of Natural Resources and Environmental Control submitted a revision to the Delaware State implementation plan (SIP) to achieve and maintain the national ambient air quality standards (NAAQS) for particulate matter (PM-10). The revision consists of: (1) Regulation 1—"Definitions and Administrative Principles"; (2) Regulation 3—"Ambient Air Quality Standards"; (3) Regulation 15—"Air Pollution Alert and Emergency Plan"; and (4) Regulation 25—"Requirements for Preconstruction Review".

The April 26, 1988 submittal also contained revised cutpoints for the motor vehicle exhaust emissions testing program in Delaware and a newly-adopted volatile organic compound (VOC) control regulation for equipment leaks at synthetic organic chemical manufacturing industry (SOCMI) facilities. The former was addressed under a separate rulemaking at 55 FR 3402. The latter is also being addressed under a separate rulemaking. This notice will address only that portion of the State of Delaware's April 26, 1988 submittal pertaining to PM-10.

The April 26, 1988 submittal is consistent with the SIP revision requirements for PM-10 Group III areas as detailed in the July 1, 1987 **Federal Register** notice (52 FR 24672). The amended Delaware regulations are consistent with the NAAQS for PM-10, and specify:

- PM-10 as an indicator of particulate matter.
- exceedance levels.
- reference methods for measurement of PM-10.
- emergency episode plan revisions to include PM-10.
- Prevention of Significant Deterioration (PSD) regulation standards for both PM-10 and Total Suspended Particulate (TSP), with standards for emission rates and significant monitoring concentrations.

Summary of SIP Revision

On July 1, 1987, EPA promulgated national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM-10) (52 FR 24634). The PM-10 standards replace the total suspended particulate (TSP) standards promulgated by EPA in 1971. Also on July 1, 1987, EPA promulgated changes to the policies and regulations by which it will implement the NAAQS for PM-10 in 40 CFR parts 51 and 52 (52 FR 24672).

Using the classification criteria established at 52 FR 24672, EPA has preliminarily designated areas within each State as Group I, II, or III based upon an area's probability of attaining the PM-10 standard. The July 1, 1987 **Federal Register** notice requires State implementation plan (SIP) revisions for all classified Group I, II, and III areas and indicates the SIP revision requirements for each classification.

On August 7, 1987, the State of Delaware was classified at 52 FR 29383 as follows:

Group III—The entire State of Delaware.

The Clean Air Act as amended (1990 Amendments) did not affect the requirements established for Group III areas. The July 1, 1987 **Federal Register** requires States to seek approval of SIP revisions as required under the preconstruction review program and to codify other minor regulatory changes as needed. It is presumed that the existing Delaware SIP is adequate to demonstrate attainment and maintenance of the NAAQS for PM-10 in all Group III areas in the State. On April 26, 1988, the State of Delaware responded to the July, 1, 1987 **Federal Register** by submitting four (4) regulations amended to reflect the revised particulate matter standards as a SIP revision. This SIP revision addresses Group III areas only.

EPA Evaluation

EPA has evaluated Delaware's SIP revision request and concluded the following: (1) The amended regulations conform with the revised primary and secondary NAAQS for PM-10; (2) the amended regulations are clearly enforceable; and (3) the applicable requirements of 40 CFR part 51 have been met. A more detailed evaluation is provided in the Technical Support Document available upon request from the Regional EPA office listed in the **ADDRESSES** section of this notice.

EPA is approving this SIP revision without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. These revisions to Delaware's regulations have been effective in the State since March 29, 1988. This action will be effective June 6, 1994 unless, by May 6, 1994, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by simultaneously publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on June 6, 1994.

Final Action

EPA is approving the four (4) regulations submitted by the Delaware Department of Natural Resources and Environmental Control as a revision to the Delaware SIP. EPA's review of this material indicates that it conforms to the requirements of 40 CFR parts 51 and 52, and to the July 1, 1987 promulgation of NAAQS for PM-10 in the **Federal Register**.

The Agency has reviewed this request for revision of the Federally-approved State implementation plan for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

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

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed

final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act 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, the Administrator certifies 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 Clean Air Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Clean Air Act forbids EPA to base its actions concerning SIP's on such grounds. *Union Electric Co. v. U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

This SIP revision establishing revised particulate matter standards in Delaware has been classified as a Table 3 action for signature by the Acting Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request is still applicable under Executive Order 12866, which superseded Executive Order 12291 on September 30, 1993.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 6, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Clean Air Act.)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: February 9, 1994.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

Authority: 42 U.S.C. 7401–7671q.

Subpart I—Delaware

2. Section 52.420 is amended by adding paragraph (c)(47) to read as follows:

§ 52.420 Identification of plan.

* * * * *

(c) * * *

(47) Revisions to the Delaware regulations for particulate matter (PM–10) submitted on April 26, 1988 by the Delaware Department of Natural Resources and Environmental Control:

(i) Incorporation by reference. (A) Letter of April 26, 1988 from the Department of Natural Resources and Environmental Control transmitting a revision to the Delaware State implementation plan for particulate matter (PM–10) Group III areas.

(B) Revisions via Order No. 88–A–5, exhibit A, and Table 1. The Order amends the following Delaware Regulations Governing the Control of Air Pollution: Regulation 1—"Definitions and Administrative Principles"; Regulation 3—"Ambient Air Quality Standards"; Regulation 15—"Air Pollution Alert and Emergency Plan"; and Regulation 25—"Requirements for Preconstruction Review". The revisions were adopted on March 29, 1988 and became effective immediately.

(ii) Additional materials.

(A) Remainder of the State implementation plan revision submitted by the Delaware Department of Natural Resources and Environmental Control on April 26, 1988.

[FR Doc. 94–8248 Filed 4–5–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[PP3F4177/R2052; FRL–4772–1]

Pesticide Tolerances for Dimethenamid

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of the herbicide, dimethenamid, 2-chloro-*N*-[(1-methyl-2methoxy)ethyl]-*N*-(2,4-dimethyl-thien-3-yl)-acetamide in or on the raw agricultural commodity (RAC) soybeans at 0.01 parts per million (ppm). This regulation to establish the maximum permissible level of residues of the herbicide in or on this commodity was requested in a petition submitted by Sandoz Agro Inc.

DATES: This regulation becomes effective on April 6, 1994.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP3F4177/R2052], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objection and hearing request filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington DC 20460. In Person, bring a copy of objections and hearing requests to: Rm 1132, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Product Manager (PM) 22, Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 229, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–305–5540).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the Federal Register on October 21, 1993 (58 FR 54353) which announced that Sandoz Agro Inc., 1300 East Touhy Avenue, Des Plaines, IL 60018, had submitted a pesticide petition (PP 3F4177) to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal

Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), establish tolerances for the residues of the herbicide, dimethenamid, 2-chloro-*N*-[(1-methyl-2-methoxy)ethyl]-*N*-(2,4-dimethyl-thien-3-yl)-acetamide in or on the RAC soybean grain at 0.01 ppm. The Agency is editorially correcting the RAC to read soybeans. There were no comments or requests for referral to an advisory committee received in response to this notice of filing. The data submitted in the petitions and all other relevant material have been evaluated. The toxicology data considered in support of the tolerances include:

1. A rat acute oral study with an LD50 of 2.14 grams (g)/kilogram (kg), males, 1.30 g/kg females and 1.57 g/kg combined.

2. A 13–week rat feeding study with a no-observed effect level (NOEL) of 500 ppm (33.5 milligrams (mg)/kg/day for males and 40.1 mg/kg/day for females).

3. A 13–week dog feeding study with a NOEL of 100 ppm (2.5 mg/kg/day).

4. A 21 day rabbit dermal study with a NOEL of 50 mg/kg/day with mild irritant effect at all dose levels.

5. A carcinogenicity study in mice with no carcinogenic effects observed at any dose level under the conditions of the study and a systemic NOEL of 300 ppm (40.8 mg/kg/day for males and 40.1 mg/kg/day for females, based on food consumption) and a systemic lowest effect level (LEL) of 1,500 ppm (205 mg/kg/day for males and 200 mg/kg/day for females based on food consumption) based on significantly elevated liver weights.

6. A rat chronic feeding/carcinogenicity study with a systemic NOEL of 100 ppm (5 mg/kg/day) and a LEL of 700 ppm (35 mg/kg/day) due to decreased food efficiency and histopathology findings. Under the conditions of the study limited evidence of carcinogenicity was observed based on a statistically significant increasing trend for benign liver cell tumors in male rats and a statistically significant increasing trend for ovarian tubular adenomas in female rats. A re-evaluation of the ovarian neoplasia data indicated that there was no statistically significant, dose-related, trend in the incidence of ovarian tumors in female rats. This study is discussed further below.

7. A 1 year dog feeding study with a NOEL of 250 ppm (9.6 mg/kg/day) and with a LEL = 1,250 ppm (49 mg/kg/day) based on clinical chemistry and histological changes in liver.

8. A two generation reproduction study in rats with a parental and reproductive NOEL of 500 ppm (36 mg/kg/day for males and 40 mg/kg/day for females) and a parental and reproductive LEL of 2,000 ppm (150 mg/kg/day for males and 160 mg/kg/day for females) based on reduction of body weight and of food consumption, and increases in liver weights (parental toxicity), and significant reductions in pup weight during lactation (reproductive toxicity).

9. A rabbit developmental study with a maternal NOEL of 37.5 mg/kg/day and a LEL of 75 mg/kg/day based on decreased body weight and food consumption, and with a developmental NOEL of 75 mg/kg/day and a LEL of 150 mg/kg/day based on a low incidence of abortion/premature delivery and angulation of the hyoid alae.

10. A rat developmental study with a maternal NOEL of 50 mg/kg/day and a LEL of 215 mg/kg/day based on excess salivation, increased liver weight and reduced body weight gain and food consumption, and with a developmental NOEL of 215 mg/kg/day and a LEL of 425 mg/kg/day based on increased resorptions.

11. An Ames mutagenicity assay negative with and without activation, an *in vitro* chromosomal aberration using CHO cells positive with and without activation, an unscheduled DNA synthesis in rat hepatocytes unequivocally positive in one *in vitro* assay and negative in another *in vitro* assay. A Dominant Lethal Study to further evaluate the mutagenic mechanism is due March 5, 1995 (2 years after the date of the initial conditional registration of dimethenamid under the Federal Insecticide Fungicide and Rodenticide Act [FIFRA]).

The Agency has concluded that the available data provide limited evidence of carcinogenicity for dimethenamid in rats and has classified the pesticide as a Category C carcinogen (possible human carcinogen with limited evidence of carcinogenicity in animals) in accordance with Agency guidelines, published in the **Federal Register** in 1986 (51 FR 33992). Based on a review by the Health Effects Division Peer Review Committee for Carcinogenicity of the Office of Pesticide Programs, the Agency has determined that a quantitative risk assessment is not appropriate for the following reasons:

1. The tumor response was primarily due to a significantly increasing trend for benign and/or malignant liver tumors in males and due to a significantly increasing trend for ovarian tubular adenomas in female rats. A re-evaluation of the ovarian neoplasia data indicated that there was not a statistically significant, dose-related, trend in the incidence of ovarian tumors in female rats.

2. The chemical was not carcinogenic when administered in the diet to mice at dose levels ranging from 30 to 3,000 ppm.

Based on this evidence, EPA concludes that dimethenamid poses at most a negligible cancer risk to humans and that for purposes of risk characterization the Reference Dose (RfD) approach should be used for quantification of human risk. Residues of dimethenamid will not concentrate in processed soybean commodities and a food or feed additive regulation is not required for dimethenamid.

The standard risk assessment approach of using the RfD based on systemic toxicity was applied to dimethenamid. Using a hundredfold safety factor and the NOEL of 5 mg/kg bwt/day determined by the most sensitive species from the 2–year rat feeding study, the RfD is 0.05 mg/kg/day. The Anticipated Residue Contribution (ARC) from the established tolerances is 0.000003 mg/kg bwt/day and utilizes 0.007 percent of the RfD for the overall U. S. population. The proposed use on soybeans would contribute an additional 0.000068 mg/kg/day, raising the ARC to 0.000071 mg/kg bwt/day, or 0.14 percent of the RfD. The exposure of the most highly exposed subgroup in the population did not utilize a significantly greater amount of the RfD.

Tolerances have been previously established for dimethenamid in corn grain, corn fodder and corn forage. The metabolism of dimethenamid in plants is adequately understood. There is no reasonable expectation of secondary residues occurring in meat, milk and eggs from the tolerance associated with this petition.

An adequate analytical method, gas chromatography, is available for enforcement purposes. Because of the long lead time from establishing these tolerances to publication of the enforcement methodology in the Pesticide Analytical Manual, Vol. II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Information Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Room 1130A, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703–305–5937).

The pesticide is considered useful for the purposes for which the tolerances are sought. Based on the information

and data considered, the Agency concludes that the establishment of the tolerances will protect the public health. Therefore, the tolerances are established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fees provided by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, and the requestor's contentions on each such issue, and a summary of the evidence relied upon by the objection (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: there is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of section 2 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 28, 1994.

Douglas D. Campt,
Director, Office of Pesticide Programs.

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

PART 180 - [AMENDED]

1. The authority citation for Part 180 continues to read as follows:
Authority: 21 U.S.C. 346a and 371.

2. Section 180.464 is amended by revising the section heading to read as set forth below and by alphabetically inserting in the table the raw agricultural commodity, soybeans, to read as follows:

§180.464 Dimethenamid, 2-chloro-N-[(1-methyl-2methoxy)ethyl]-N-(2,4-dimethyl-thien-3-yl)-acetamide; tolerances for residues.

* * * * *

Commodities	Parts per million
* * * * *	
Soybeans	0.01

[FR Doc. 94–8104 Filed 4–5–94; 8:45 am]
BILLING CODE 6560–50–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 930939–4035; I.D. 062993B]

Taking and Importing of Marine Mammals; Fisheries Certificate of Origin

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS amends its regulations to allow importers or brokers to file "Fisheries Certificates of Origin," which are required for importation of certain fish and fish products, using the U.S Customs Service's Automated Broker Interface (ABI) system. The purpose of this amendment is to eliminate excess paperwork and minimize the reporting burden, while maintaining an efficient, accurate system to monitor the importation of the regulated fish and fish products.

EFFECTIVE DATE: This final rule is effective on May 6, 1994.

FOR FURTHER INFORMATION CONTACT: James Lecky, Chief, Protected Species Division, NMFS Southwest Region, 310–980–4000.

SUPPLEMENTARY INFORMATION:

Background

NMFS has implemented the use of the NOAA Form 370 "Fisheries Certificate of Origin" (FCO) to monitor the importation of those fish and fish products specified by regulation to implement the Marine Mammal Protection Act (Pub. L. 100–711)(MMPA), the Dolphin Protection Consumer Information Act (Pub. L. 101–627, Title IX) (DPCIA), and the International Dolphin Conservation Act (Pub. L. 102–523)(IDCA). These laws reflect the policy of the U.S. Government to ameliorate a worldwide environmental crisis in which marine mammals and other marine life are killed by commercial fishing technology, such as large-scale driftnets and purse seine nets deployed to encircle dolphins. The FCO provides the U.S. Customs Service (USCS) a tool to monitor and deny entry of those fish products that are prohibited entry into the United States.

NMFS published a proposed rule, with a request for comments, on November 18, 1993 (58 FR 60829), in the **Federal Register** to amend the regulations to allow importers or brokers to file the FCO using the USCS's Automated Broker Interface (ABI). Filing with the ABI would allow electronic filing of importation documentation without submission of the paper forms. There were no comments received on the proposed rule. The final rule is substantially identical to the proposed.

This final rule advances USCS's long-range plan to automate the importation process with the goal of eliminating unnecessary paperwork. NMFS has requested, and USCS has agreed, to incorporate the FCO into the ABI system. USCS has agreed to collect the information and to make the information available to NMFS by electronic transfer. The ABI system for the FCO will not be ready until the second quarter of 1994. Many details still need to be worked out before initiating electronic filing of the FCO. Recognizing this, NMFS is structuring its regulations to accommodate both the existing paper system and the future electronic filing of the FCO. To facilitate the conversion to electronic filing, the final rule will permit electronic filing at any and all points of entry where the ABI system is or may become available. After the ABI system is implemented for

the FCO, importers will have the option to file electronically or submit the paper FCO upon entry. If an importer is unable to participate in the electronic filing system, the paper FCO can still be used.

Importers or their brokers will be required to maintain documentation to verify electronic entries for a period of 5 years after the entry. Any FCOs from foreign exporters, invoices, "dolphin safe" certification, and all other required documents must be maintained by the broker or importer. NMFS enforcement officers are allowed access to these documents, upon request, for routine inspections and when investigating alleged violations of the MMPA or "dolphin safe" labeling violations.

Classification

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act, 44 U.S.C. chapter 35. The collections-of-information requirements found at § 216.24(e)(3) have been approved by the Office of Management and Budget under control number 0648–0040. The public reporting burden for filing the Certificate of Origin electronically is 24 minutes, and the recordkeeping requirement for maintaining the information is 5 minutes. Send comments regarding these burden estimates or any other aspect of the collection of information, including suggestions for reducing this burden to: Director, Southwest Region, NMFS (See ADDRESSES), and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington DC 20503 (Attn: Paperwork Reduction Act Project). This rule is not subject to review under Executive Order 12866.

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Imports, Indians, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Dated: March 29, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 216 is amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 et seq., unless otherwise stated.

2. Section 216.3 is amended by adding in alphabetical order a definition of "ABI", to read as follows:

§ 216.3 Definitions.

* * * * *

ABI means Automated Broker Interface, the electronic product-entry filing system under the control of the U.S. Customs Service, Department of the Treasury.

* * * * *

3. In § 216.24, paragraph (e)(3)(i)(A)(*1*) is revised to read as follows:

§ 216.24 Taking and related acts incidental to commercial fishing operations.

* * * * *

(e) * * *

(3) * * *

(i) * * *

(A) * * *

(*1*) Accompanied by a completed Fisheries Certificate of Origin described in paragraph (e)(3)(iii) of this section, or, for points of entry where the ABI system is available, the information required for the Certificate may be filed electronically by the ABI system in lieu of the paper form, provided that the electronic filing is made no later than at the time of entry and all documentation in support of the ABI entry is maintained by the importer or broker for not less than 5 years and is kept available for inspection by NMFS personnel upon request;

* * * * *

[FR Doc. 94–8173 Filed 4–5–94; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 59, No. 66
Wednesday, April 6, 1994

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

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 246

RIN 0584–AB53

Special Supplemental Food Program for Women, Infants, and Children (WIC): Homelessness/Migrancy as Nutritional Risk Conditions

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend regulations governing the Special Supplemental Food Program for Women, Infants and Children (WIC) to comply with the mandate of section 204 of the Child Nutrition Amendments of 1992, enacted on August 14, 1992. Consistent with that legislation, this rulemaking would add homelessness and migrancy to the predisposing nutritional risk conditions for the WIC Program.

This proposed rule would also alter the current WIC nutritional risk-priority system by placing individuals certified for WIC due solely to homelessness or migrancy in Priority VII, along with previously certified participants who might regress in nutritional status without continued provision of supplemental foods. The use of Priority VII for this latter group of individuals would remain a State agency option. However, State agencies would be required to use Priority VII for homeless or migrant individuals who are certified solely due to their homelessness or migrancy.

The intended effect of this proposed rule is to allow categorical and income-eligible homeless or migrant individuals, who lack any other documented nutritional or medical condition, to receive WIC Program assistance.

DATES: To be assured of consideration, written comments must be received on or before June 6, 1994. Since comments are being accepted simultaneously on several separate rulemakings, commenters on this proposed rule are asked to label their comments "Homelessness/Migrancy."

ADDRESSES: Comments may be mailed to Stanley C. Garnett, Director, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, room 540, Alexandria, Virginia 22302, (703) 305–2746. Submission of comments in duplicate would be appreciated. All written submissions will be available for public inspection at this address during regular business hours (8:30 a.m. to 5 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Contact Barbara Hallman, Supplemental Food Programs Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, room 542, Alexandria, Virginia 22302, (703) 305–2730.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12866

This proposed rule is issued in conformance with Executive Order 12866. It has been designated "not significant" and did not require clearance by the Office of Management and Budget.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). Pursuant to that review, William E. Ludwig, Administrator of the Food and Nutrition Service has certified that this rule will not have a significant impact on a substantial number of small entities. WIC local agency participant caseloads may potentially increase and thereby affect demand on local food vendor business.

The net effect on State and local agencies is expected to be minimal.

Paperwork Reduction Act

This proposed rule imposes no new reporting or recordkeeping provisions that are subject to OMB review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Executive Order 12372

The Special Supplemental Food Program for Women, Infants, and Children (WIC) is listed in the Catalog of Federal Domestic Assistance Programs under 10.557 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V, and 48 FR 29114 June 24, 1983).

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This proposed rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** paragraph of this preamble. Prior to any judicial challenge to the application of the provisions of this rule, all applicable administrative procedures must be exhausted. In the WIC Program, the administrative procedures are as follows: (1) Local agencies and vendors—State agency hearing procedures issued pursuant to 7 CFR 246.18; (2) applicants and participants—State agency hearing procedures issued pursuant to 7 CFR 246.9; and (3) sanctions against State agencies (but not claims for repayment assessed against a State agency) pursuant to 7 CFR 246.19—administrative appeal in accordance with 7 CFR 246.22; and (4) procurement by State and local agencies—administrative appeal to the extent required by 7 CFR 3016.36.

References

1. Chavin, Kristal, Seabron, and Guigli; The Reproductive Experience of Women Living in Hotels for the Homeless in New York City; New York State Journal of Medicine, 1987.

2. National Advisory Council on Maternal, Infant, and Fetal Nutrition, 1992 Biennial Report on the Special Supplemental Food Program for Women, Infants, and Children (WIC) and on the Commodity Supplemental Food Program (CSFP).

3. 1992 Recommendations of the National Advisory Council on Migrant Health; Farmworkers Health for the Year 2000.

4. Technical Paper No. 12 prepared for USDA/FNS by Awal Dad Khan; Homeless Mothers and Children: What is the Evidence for Nutritional Risk?, 1991.

Background

There have never been specific, direct regulatory barriers or prohibitions to the participation of the homeless or

migrants in the WIC Program. Both before and since the enactment of the Hunger Prevention Act of 1988 (Pub. L. 100–435), the Food and Nutrition Service (FNS) has actively promoted service to homeless and migrant populations. Further, particular attention has long been focused in the Child Nutrition Act of 1966, as amended (42 U.S.C. 1771 *et seq.*), on the needs of special populations, e.g. migrants and Native Americans. Section 17(f)(19) of the Child Nutrition Act of 1966, 42 U.S.C. 1786(F)(19), requires that not less than nine-tenths of 1 percent of the sums appropriated any fiscal year for special supplemental food programs be available for services to eligible members of migrant populations.

In an interim and a final rule on participation of homeless individuals in WIC, published in December 1989 and August 1992, respectively, the Department defined the term "homeless individual" based upon the definition provided legislatively in section 212(a) of the Hunger Prevention Act, Public Law 100–435 (42 U.S.C. 1786(b)(15)). This term identifies those otherwise eligible residents of specified overnight facilities who must be granted access to WIC when caseload is available, provided such facilities meet conditions insuring that residents, and not the facilities, benefit from the WIC Program.

The August 1992 final rule, 57 FR 34500 (August 5, 1992), amended the WIC regulations to require State agencies to include in their State Plans of Program Operation and Administration a description of how they will provide Program benefits to and meet the special nutrition education needs of homeless individuals (7 CFR 246.4(a) (6) and (9), respectively) and disseminate information about program availability and eligibility to organizations serving the homeless (7 CFR 246.4(a)(7)). The August 1992 final rule amended 7 CFR 246.10(f)(1) to allow States, upon approval by FNS, to make substitutions for foods normally required in the food package in order to accommodate the special circumstances of the homeless. Further, the August 1992 final rule amended 7 CFR 246.10(f) (2) and (3) to require that competent professional authorities take into account the special needs and problems of homeless individuals when prescribing supplemental foods.

FNS has also shared with State WIC agencies successful initiatives and targeting strategies employed by other States to facilitate participation of homeless and migrant persons in the WIC Program. A number of State agencies have established local agency clinics and WIC certification offices in hotels and facilities which house homeless and migrant families. Other States have held statewide training sessions for their local WIC agencies to educate them about the special problems most frequently encountered by homeless individuals, and how WIC can help to alleviate some of these problems.

According to a 1986 report to Congress by the U.S. House of Representatives' Committee on Government Operations, families, especially those composed of women and children, are the fastest growing segment of the homeless population nationwide (report cited by the National Advisory Council on Maternal, Infant, and Fetal Nutrition, *1992 Biennial Report to Congress on WIC and CSFP* (Commodity Supplemental Food Program)). Although the homeless have not been well studied relative to other population groups, several studies have indicated that the homeless and migrants are predisposed to inadequacies in their diets and in the medical care they receive. Homeless infants and children appear to be at higher risk of low birthweight and malnutrition. (Chavkin, Kristal, Seabron, and Guigli, 1987). Studies have also found that a correlation exists between homelessness in women and a general lack of prenatal care and poor pregnancy outcomes. Homelessness may also impede access to health care services and other public assistance programs. Moreover, evidence indicates that homeless children have high rates of delayed immunization, a higher risk of exposure to infectious diseases, and higher rates of emotional and developmental problems. (Khan, 1991).

Because of the difficulty in conducting research on the homeless, most studies have focused on the sheltered homeless. The risks to unsheltered homeless mothers and children are likely to be somewhat greater.

A recent study indicates that migrants suffer most if not all of the conditions identified above afflicting the homeless. (Farmworkers Health for the Year 2000, 1992 Recommendation of the National Advisory Council on Migrant Health). In addition, testimony before the National Advisory Council on Migrant Health of the Department of Health and Human Services (DHHS) suggests that a lack of permanent housing also predisposes migrants to higher rates of infant mortality than the general population.

Over the years, FNS has incorporated into the WIC Program regulations various provisions with the expressed purpose of addressing the unique circumstances of migrant farmworkers. State plans are required to include information on how the State intends to provide program benefits to eligible migrant farmworkers and their families; State agencies' nutrition education goals and action plans must include a description of the methods that will be used to meet the special nutrition education needs of migrant farmworkers and their families; and, States must provide expedited processing services to special nutritional risk groups such as migrant farmworkers and their families.

Because of the increased risks associated with homelessness and migrancy, the National Advisory Council on Maternal, Infant, and Fetal Nutrition recommended in its 1992 Report to the President and Congress that section 17(b)(8) of the Child Nutrition Act of 1966, 42 U.S.C. 1786(b)(8), be amended to include homelessness and migrancy as predisposing nutritional risk conditions for the WIC Program. Congress and the President accepted this recommendation and, as manifested in section 204 of the Child Nutrition Amendments of 1992, Public Law 102–342, specifically identified homelessness and migrancy as predisposing nutritional risk conditions for purposes of WIC Program eligibility.

Definition of Homelessness/Migrancy

As previously stated, the current definition of a "homeless individual" in the WIC regulations is based on the legislative definition provided in section 212(a) of the Hunger Prevention Act, Public Law 100–435 (42 U.S.C. 1786 (b)(15). Specifically, 7 CFR 246.2 defines a "homeless individual" as "a woman, infant or child who lacks a fixed and regular nighttime residence; or whose primary nighttime residence is: A supervised publicly or privately operated shelter (including a welfare hotel, a congregate shelter, or a shelter for victims of domestic violence) designated to provide temporary living accommodation; an institution that provides a temporary residence for individuals intended to be institutionalized; a temporary accommodation in the residence of another individual; or a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings."

The Department believes this definition, along with its current migrant farmworker definition, should accommodate all individuals Congress intended to include in their references to homelessness and migrancy in section 204 of the Child Nutrition Amendments of 1992, Public Law 102–342.

While Congress has specifically defined the term "homeless individual" for the WIC Program, section 17 of the Child Nutrition Act of 1966 does not contain a definition for the terms "migrant" or "migrancy." However, section 17 uses the terms "migrant" (e.g. section 17(f)(1)(c)(iv)) and "migrant farmworker" (e.g. section 17(d)(4)(B)). The Department has interpreted Congress' references to migrants in section 17 to mean only migrant farmworkers and the latter term is currently defined at CFR 246.2. However, before assuming that its migrant farmworker definition was sufficient to apply to all Congressional references to the term migrant, the Department examined the definition of migrant(s) as used by other public and private organizations and agencies concerned with migrants and migrant services. In each case, some reference was made to the agricultural or seasonal nature of migrancy and movement of individuals for agricultural employment purposes. Based on this comparative analysis, the Department considered its current definition of migrant farmworker adequate to accommodate all of Congress' references and uses of the term migrancy as set forth in section 204 of the Child Nutrition Amendments of 1992.

WIC Priority System

The current WIC nutritional risk priority system was designed to ensure that persons at greatest health and nutritional risk are served first with available program funds. The priority system therefore follows a logical order of progression to determine priority for service. Applicants with documented nutritionally related medical conditions are served first, followed by those at nutritional risk due to inadequate dietary patterns. Finally, and as a State agency option, previously certified participants whose nutritional status might regress without continued provision of supplemental foods are certified in Priority VII.

Under this proposal, State agencies would be required to include in Priority VII pregnant, breastfeeding or postpartum women, infants, and children who are certified at nutritional risk solely because of their homelessness or migrancy. State agencies may also continue to use Priority VII to identify certified participants who might regress in nutritional status without continued provision of supplemental foods. The placement in Priority VII of individuals certified solely due to homelessness or migrancy should not be viewed as diminished concern for these individuals. Rather, such a placement reflects the Department's obligation to serve persons with the greatest medical and/or nutritional needs first. Priority VII will only be used to classify those individuals who are homeless or migrants and have no other documented medical or nutritional risk. These are individuals who previously would not have otherwise qualified for WIC Program benefits due to lack of nutritional risk.

Given the facts revealed in the aforementioned studies, there is a high likelihood that homeless and migrant individuals are already being served by the WIC Program by virtue of their nutritional risk(s). Proposed Priority VII will serve as a safety net for homeless or migrant individuals who are not otherwise eligible due to a lack of documented nutritional or medical risk conditions. However, like any other eligible applicant, a homeless or migrant individual may be placed in a higher priority if her/his nutritional/health assessment by a competent professional warrants a higher placement in the priority system. For example, a homeless or migrant individual whose nutritional risk assessment reveals the presence of anemia would be placed in a higher priority category than a homeless or migrant person with no other documented nutritional risk condition who would be placed in Priority VII. This is in keeping with the aforementioned system of prioritizing WIC service based on documented nutritionally or medically related conditions. Priority VII is the logical placement for homeless and migrant individuals with no documented nutritional risks who qualify for the program due solely to homelessness or migrancy.

The Department does not intend for Priority VII to be used by States as an administrative shortcut in certifying homeless and migrant individuals. The Department expects that homeless and migrant applicants will receive all the normal and necessary health assessments that are routinely performed to determine the presence of a medical or nutritional risk which would determine their proper priority placement, and assist in identifying other health and social services to which such individuals may be referred.

The Department recognizes that this proposed regulation might require some States to modify their current reporting systems to accommodate the revised Priority VII. As such, the Department intends to provide an implementation period adequate to incorporate the necessary system modifications.

The Department notes that while Congress has found homelessness and migrancy to be conditions predisposing individuals to nutritional risks, and this determination has been recognized by the placement of these individuals in a WIC nutritional risk category, alcoholism and drug abuse, similarly recognized by Congress in section 17(b)(8), have not been accorded similar treatment by the Department. The Department believes the distinction is warranted. Over the past several years, the health and medical communities have come to accept alcoholism or drug addiction, in and of itself, as a nutritionally related medical condition sufficient to warrant placement in one of the first three priorities in 7 CFR 246.7(e)(4). The Department does not believe that the same can be said for homelessness and migrancy. Recognizing that most State agencies classify individuals suffering from alcoholism or drug addiction as a Priority I, based on recent medical research, the Department is considering seeking a technical correction to the WIC legislation to remove alcoholism and drug addiction from the examples of "predisposing" nutritional risk conditions. This change would thus recognize these conditions as independent nutritionally related medical conditions in the law, thereby adjusting legislative language to reflect current medical knowledge.

List of Subjects in 7 CFR Part 246

Food assistance programs, Food donations, Grant programs—Social programs, Indians, Infants and children, Maternal and child health, Nutrition, Nutrition education, Public assistance programs, WIC, Women.

For the reasons set forth in the preamble, 7 CFR part 246 is proposed to be amended as follows:

PART 246—SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS AND CHILDREN

1. The authority citation for part 246 continues to read as follows:

Authority: 42 U.S.C. 1786.

2. In § 246.4, paragraph (a)(11)(i) is revised to read as follows:

§ 246.4 State Plan.

(a) * * *

(11) * * *

(i) Certification procedures, including a list of specific nutritional risk criteria by priority level which cites conditions and indices to be used to determine a person's nutritional risk, the State agency's income guidelines for Program eligibility, and any adjustments to the

participant priority system made pursuant to § 246.7(e)(4) to accommodate high-risk postpartum women or the inclusion of previously certified persons who might regress in nutritional status without continued provision of supplemental foods in Priority VII.

* * * * *

3. In § 246.7, the introductory text of paragraph (e)(4) and paragraph (e)(4)(vii) are revised to read as follows:

§ 246.7 Certification of participants.

* * * * *

(e) * * *

(4) *Nutritional risk priority system.* The competent professional authority shall fill vacancies which occur after a local agency has reached its maximum participation level by applying the following participant priority system to persons on the local agency's waiting list. Priorities I through VII shall be utilized in all States. The State agency may, at its discretion, expand Priority VII to include previously certified participants who might regress in nutritional status without continued provision of supplemental foods. The State agency may set income or other sub-priority levels within any of these seven priority levels. The State agency may expand Priority III, IV, or V to include high-risk postpartum women.

* * * * *

(vii) *Priority VII.* Pregnant, breastfeeding and postpartum women, infants, and children who are at nutritional risk solely because of homelessness or migrancy and, at State agency option in accordance with the provisions of paragraph (e)(1)(iii) of this section, previously certified participants who might regress in nutritional status without continued provision of supplemental foods.

* * * * *

Dated: March 25, 1994.

William E. Ludwig,

Administrator, Food and Nutrition Service.

[FR Doc. 94–8117 Filed 4–5–94; 8:45 am]

BILLING CODE 3410–30–U

Commodity Credit Corporation

7 CFR Part 1413

RIN 0560–AD76

1995 Wheat Program, Acreage Reduction

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the regulations to set forth the acreage reduction percentage for the 1995 crop of wheat. This action is required by the Agricultural Act of 1949 (the 1949 Act), as amended.

DATES: Comments must be received on or before May 4, 1994, in order to be assured of consideration.

ADDRESSES: Comments may be FAXed to 202–690–1346 or mailed to Craig Jagger, Agricultural Economist, Grains Analysis Division, Agricultural Stabilization and Conservation Service (ASCS), U.S. Department of Agriculture (USDA), P.O. Box 2415, room 3740–S, Washington, DC 20013–2415; telephone 202–720–4418. Comments received may be inspected between 9 a.m. and 4:30 p.m., Monday through Friday, except holidays, in room 3740, South Agriculture Building, USDA, 14th Street and Independence Avenue SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Craig Jagger, Agricultural Economist, Grains Analysis Division, USDA, ASCS, room 3740–S, P.O. Box 2415, Washington, DC 20013–2415 or call 202 720–4418.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule is issued in conformance with Executive Order 12866. Based on information compiled by the USDA, it has been determined to be "economically significant" because it would have an annual effect on the economy of more than $100 million and would materially alter the budgetary impact of entitlement, or loan programs or rights and obligations of recipients thereof. Budget outlays for deficiency payments are expected to range from $1.3 billion to $1.8 billion annually. This proposed rule would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities, would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency, and would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Preliminary Regulatory Impact Analysis

A Preliminary Regulatory Impact Analysis describing the options considered in developing this proposed rule and the impacts of implementing each option is available from the above-named individual.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Federal Assistance Program

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

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is applicable to this proposed rule since the Commodity Credit Corporation (CCC) is required by section 107B(o) of the 1949 Act to request comments with respect to the subject matter of this rule. The Preliminary Regulatory Impact Analysis referred to above determined that the 1995 Wheat Acreage Reduction Program (ARP) will have no significant economic impact on small entities because the regulatory burden on the affected entities would remain the same regardless of the determinations made by this action. Thus, CCC certifies that this rule will have no significant economic impact on a substantial number of small entities.

Executive Order 12372

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

Executive Order 12778

This proposed rule has been reviewed in accordance with Executive Order 12778. This rule does not involve the preemption of State law, is not retroactive, and does not involve any exhaustion of administrative remedy issues.

Paperwork Reduction Act

The amendment to 7 CFR part 1413 set forth in this proposed rule does not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. 35.

Comments

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

Background

In accordance with section 107B of the 1949 Act, an ARP is required to be implemented for the 1995 wheat crop if it is determined that the total supply of wheat would otherwise be excessive.

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

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

Producers who knowingly produce wheat in excess of the permitted acreage for the farm plus any wheat acreage planted in accordance with the flexibility provisions provided by section 504 of the 1949 Act are ineligible for loans and purchases and all payments with respect to that crop on the farm.

If an ARP for the 1995 crop is in effect, the program must be announced no later than June 1, 1994. Adjustments in the announced program may be made if it is determined that there has been a significant change in the total supply of wheat since the program was first announced. These adjustments must be made no later than July 31, 1994.

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

In determining the 1995 Wheat ARP, the Secretary will choose a specific ARP percentage from within a range established by the estimated ending stocks-to-use (S/U) ratio for the 1994/95 wheat marketing year. If it is estimated that the 1994/95 S/U in percentage terms will be—

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

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

The S/U for the 1994/95 marketing year at 24.0 percent is estimated to be well below 40 percent. Based on this estimate, the 1995 ARP may be not more than 15 percent.

In addition, section 1104 of the Agricultural Reconciliation Act of 1990 provides that the acreage reduction factor for the 1995 crop of wheat may not be less than 5 percent. This provision does not apply if the beginning stocks of soybeans for the 1991/92 marketing year are less than 325 million bushels or if the estimated S/U for the 1994 wheat crop is less than 34 percent.

The current estimate of soybean stocks on September 1, 1991, is 329 million bushels. The estimated S/U for the 1994/95 wheat crop is 24.0 percent. Thus, under current supply and use estimates for soybeans and wheat, the minimum 5-percent-ARP provision is not applicable.

The 1995 ARP options considered are:

Option 1. 0-percent ARP
Option 2. 5-percent ARP
Option 3. 10-percent ARP

The estimated impacts of the ARP options are shown in this table.

ESTIMATED IMPACTS OF 1995 ARP OPTIONS

Item	Option 1	Option 2	Option 3
ARP (%)	0	5	10
Participation (%)	86	85	83
Planted Acres (Million acres)	72.6	70.8	68.6
Production (Million bushels)	2,437	2,378	2,303
Domestic Use (Million bushels)	1,238	1,223	1,203
Exports (Million bushels)	1,225	1,215	1,205
Ending stocks (Million bushels)	659	625	580
Season Average Producer Price ($ / bushel)	3.00	3.05	3.15
Deficiency Payments ($ million)	1,844	1,630	1,339

Accordingly, comments are requested as to whether there should be a 1995 acreage reduction percentage, and, if so, whether it should be 0 percent, 5 percent, 10 percent, or some other percentage within the range of 0 to 15 percent. The final determination of this percentage will be set forth at 7 CFR part 1413.

List of Subjects in 7 CFR Part 1413

Acreage allotments, Cotton, Disaster assistance, Feed grains, Price support programs, Reporting and recordkeeping requirements, Rice, Soil conservation, Wheat.

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

PART 1413—FEED GRAIN, RICE, UPLAND AND EXTRA LONG STAPLE COTTON, WHEAT AND RELATED PROGRAMS

1. The authority citation for 7 CFR part 1413 continues to read as follows:

Authority: 7 U.S.C. 1308; 1308a; 1309; 1441–2; 1444–2; 1444f; 1445b–3a; 1461–1469; 15 U.S.C. 714b and 714c.

2. Section 1413.54(a)(1) is revised to read as follows:

§ 1413.54 Acreage reduction program provisions.

(a) * * *

(1)(i) 1991 wheat, 15 percent;

(ii) 1992 wheat, 5 percent;

(iii) 1993 wheat, 0 percent;

(iv) 1994 wheat, 0 percent;

(v) 1995 wheat, if announced, shall be within the range of 0 to 15 percent, as determined and announced by CCC.

* * * * *

Signed at Washington, DC on April 1, 1994.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 94–8253 Filed 4–1–94; 3:41 pm]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–CE–37–AD]

Airworthiness Directives: Beech Aircraft Corporation 35 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; Reopening of the comment period.

SUMMARY: This document proposes to provide additional time for the public to comment on a proposal to supersede two airworthiness directives that currently require the following on certain Beech Aircraft Corporation (Beech) 35 series airplanes: Checking the ruddervator static balance and adjusting as appropriate; fabricating and installing airspeed limitation placards; incorporating certain airspeed limitations into the airplane flight manual (AFM); and installing stabilizer reinforcements. Several comments received on the original notice of proposed rulemaking (NPRM) requested additional time to respond to the proposed action. This proposed action would incorporate and update the procedures and applicability of both AD's into one document. The actions specified by the proposed AD are intended to prevent structural failure of the V-tail, which could result in loss of control of the airplane.

DATES: Comments must be received on or before June 17, 1994.

ADDRESSES: Submit comments in triplicate to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–37–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Engler, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4122; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 93–CE–37–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–37–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that would apply to certain Beech 35 series airplanes was published in the **Federal Register** on October 27, 1993 (58 FR 57760). The action proposed to supersede AD 57–18–01 and AD 87–20–02 R1 with a new AD that would require: (1) Checking the ruddervator static balance and adjusting as appropriate; (2) fabricating and installing airspeed limitation placards; (3) incorporating certain airspeed limitations into the airplane flight manual (AFM); and (4) installing stabilizer reinforcements. The proposed actions would be accomplished in accordance with the instructions to either Beech Kit No. 35–4016–3, 35–4016–5, 35–4016–7, or 35–4016–9, as applicable and as specified in Beech Service Bulletin No. 2188, and the applicable maintenance manuals.

Interested persons have been afforded an opportunity to participate in the making of this amendment.

Several commenters request an extension of the comment period in order to have additional time to respond to the actions presented in the proposal. After careful consideration, the FAA has determined that the comment period for the proposal should be reopened to allow the public additional time to comment on the proposed actions.

The FAA has altered the proposal to include additional information that was inadvertently left out or referenced incorrectly when preparing the original notice of proposed rulemaking (NPRM). Before final rule action is implemented, the FAA will evaluate all comments received in response to the original NPRM as well as this supplemental NPRM.

Since an unsafe condition has been identified that is likely to exist or develop in other Beech 35 series airplanes of the same type design, the proposed AD would supersede AD 57–18–01 and AD 87–20–02 R1 with a new AD that would require: (1) Checking the ruddervator static balance and adjusting as appropriate; (2) fabricating and installing airspeed limitation placards; (3) incorporating certain airspeed limitations into the airplane flight manual (AFM); and (4) installing stabilizer reinforcements. The proposed actions would be accomplished in accordance with the instructions to either Beech Kit No. 35–4016–3, 35–4016–5, 35–4016–7, or 35–4016–9, as applicable and as specified in Beech Service Bulletin No. 2188, and the applicable maintenance and shop manuals.

The FAA estimates that approximately 10,200 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 40 workhours per airplane to accomplish the proposed action, and that the average labor rate is approximately $55 an hour. Parts cost approximately $500 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $27,540,000. AD 57–18–01 and AD 87–20–02 R1, which both would be superseded by the proposed action, currently require the same actions as are proposed. This proposed action incorporates and updates the procedures of both the current AD's into one document. With this in mind, the proposed action would not provide any additional cost impact upon U.S.

operators than that which is already required.

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

For the reasons discussed above, I certify that this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

2. Section 39.13 is amended by removing both AD 57–18–01, Amendment 39–1759, and AD 87–20–02 R1, Amendment 39–5944, and by adding a new airworthiness directive to read as follows:

Beech Aircraft Corporation: Docket No. 93–CE–37–AD. Supersedes AD 57–18–01, Amendment 39–1759, and AD 87–20–02 R1, Amendment 39–5944.

Applicability: 1. Models 35, 35R, A35, B35, C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, and P35 airplanes (all serial numbers), certificated in any category;

2. Models S35, V35, V35A, and V35B airplanes (all serial numbers), certificated in any category, that do not have the straight tail conversion modification incorporated in accordance with Supplemental Type Certificate (STC) SA2149CE; and

3. Model Super V airplanes (all serial numbers), certificated in any category.

Compliance: Required initially within the next 100 hours time-in-service (TIS) after the effective date of this AD, unless already accomplished, and thereafter as indicated in the body of this AD.

To prevent structural failure of the V-tail, which could result in loss of control of the airplane, accomplish the following:

Note 1: Any of the actions specified by this AD may have already been accomplished in accordance with either AD 57–18–01 and AD 87–20–02 R1, which are superseded by this AD. The intent of this AD is to clarify, update, and incorporate the actions of those AD's into one AD while maintaining the repetitive inspections schedules already established by the superseded AD's.

Note 2: The paragraph structure of this AD is as follows:

Level 1: (a), (b), (c), etc.
Level 2: (1), (2), (3), etc.
Level 3: (i), (ii), (iii), etc.

Level 2 and Level 3 structures are designations of the Level 1 paragraph they immediately follow.

(a) For all airplane models, balance the elevator/rudder (ruddervator) control surfaces in accordance with Section 3 of Beech Shop Manual 35–590096B; and verify that the ruddervators are within the manufacturers specified limits as specified in the applicable shop or maintenance manual.

(1) If any ruddervator is found outside of the specified limits, prior to further flight, obtain manufacturer's modification instructions by contacting the Wichita Aircraft Certification Office (ACO) at the address specified in paragraph (k) of this AD, and modify the ruddervator in accordance with these instructions.

(2) Repeat these requirements any time the ruddervator is repaired or painted.

(b) For all airplane models, visually inspect the fuselage bulkheads at Fuselage Station (FS) 256.9 and FS 272 for damage (cracks, distortion, loose rivets, etc.). Visually inspect the fuselage skin around the bulkhead for damage (wrinkles or cracks). Prior to further flight, repair or replace any damaged parts. Repeat this inspection at each 100-hour TIS interval thereafter.

(c) For all Model Super V airplanes, check the static balance of the ruddervator in accordance with Beech Shop Manual 35–590096A, Section 3, pages 12A, 12B, and 13. Repeat this check anytime the ruddervator is removed or repainted. Prior to further flight, make applicable corrections if any of the following is not achieved:

(1) With the root weight removed and a tip weight attached, static balance of 19.80 (plus or minus 1.00) inch-pounds tail heavy; and

(2) With the root weight added to the condition specified in paragraph (c)(1) of this AD, static balance of 7.00 (plus or minus 1.00) inch-pounds tail heavy.

(d) For Models 35, 35R, A35, B35, C35, D35, E35, F35, and G35 airplanes, accomplish the following:

(1) Fabricate a placard (utilizing letters of at least .10-inch minimum height) with the words "Never exceed speed, Vne, 144 MPH (125 knots) IAS; Maximum structural cruising speed, Vno, 135 MPH (117 knots) IAS; Maneuvering speed, VA, 127 MPH (110 knots) IAS." Install this placard on the airplane instrument panel next to the airspeed indicator within the pilot's clear view.

(2) Mark the outside surface of the airspeed indicator with lines of approximately 1/16-inch by 3/16-inch as follows:

(i) Red line at 144 MPH (125 knots);

(ii) Yellow line at 135 MPH (117 knots); and

(iii) A white slippage mark between the airspeed indicator glass and case to visually verify glass has not rotated.

(3) Place a copy of this AD in the Pilot's Operating Handbook (POH) and FAA-approved Airplane Flight Manual (AFM).

(e) For Models H35, J35, K35, M35, N35, P35, S35, V35, V35A, and V35B, accomplish the following:

(1) Fabricate a placard (utilizing letters of at least .10-inch minimum height) with the words "Never exceed speed, Vne, 197 MPH (171 knots) IAS; Maximum structural cruising speed, Vno, 177 MPH (154 knots) IAS; Maneuvering speed, VA, 132 MPH (115 knots) IAS." Install this placard on the airplane instrument panel next to the airspeed indicator within the pilot's clear view.

(2) Mark the outside surface of the airspeed indicator with lines of approximately 1/16-inch by 3/16-inch as follows:

(i) Red line at 197 MPH (171 knots);

(ii) Yellow line at 177 MPH (154 knots); and

(iii) A white slippage mark between the airspeed indicator glass and case to visually verify glass has not rotated.

(3) Place a copy of this AD in the Pilot's Operating Handbook (POH) and FAA-approved Airplane Flight Manual (AFM).

(f) For all applicable model airplanes, fabricate a placard (utilizing letters of at least .10-inch minimum height) with the words "Normal Category Operation Only" and install this placard on the instrument panel within the pilot's clear view over the existing "Utility Category" placard.

(g) For Models C35, D35, E35, F35, G35, H35, J35, K35, M35, N35, S35, V35, V35A, and V35B airplanes, accomplish the following:

(1) Visually inspect the empennage, aft fuselage, and ruddervator control system for damage in accordance with the applicable Beech kits specified in Beech Service Bulletin (SB) No. 2188. Prior to further flight, accomplish the following in accordance with these instructions:

(i) Replace or repair any damaged parts; and

(ii) Set the elevator controls, rudder and tab system controls, cable tensions, and rigging.

(2) Remove all external stabilizer reinforcements installed during incorporation of either Supplemental Type Certificate (STC) SA845GL, STC SA846GL, STC SA1650CE, STC SA2286NM, or STC SA2287NM. Seal or fill any residual holes with appropriate size rivets.

(i) The internal stub spar incorporated through SA1649CE and SA1650CE may be retained.

(ii) The external angles incorporated through STC SA1649CE may also be retained by properly trimming the leading edge section to permit installing the stabilizer reinforcement referenced in paragraph (g)(3) of this AD.

(3) Install stabilizer reinforcements in accordance with the instructions to either Beech Kit No. 35–4016–3, 35–4016–5, 35–4016–7, or 39–4016–9, as applicable and specified in Beech SB No. 2188. Set the elevator nose down trim in accordance with the instructions to either Beech Kit No. 35–4016–3, 35–4016–5, 35–4016–7, or 35–4016–9, as applicable and specified in Beech SB No. 2188, and replace ruddervator tab control cables with larger diameter cables in accordance with the service information.

(h) Ensure correct accuracy of the airplane basic empty weight and balance information by accomplishing one of the three methods presented in Figures 1, 2a through 2c, and 3 of this AD. Prior to further flight, correct any discrepancies in accordance with the applicable maintenance manual.

Figure 1—Weight and Balance Information Accuracy Method No. 1

A. Review existing weight and balance documentation to assure completeness and accuracy of the documentation from the most recent FAA-approved weighing or from factory delivery to date of compliance with this AD.

B. Compare the actual configuration of the airplane to the configuration described in the weight and balance documentation; and

C. If equipment additions or deletions are not reflected in the documentation or if modifications affecting the location of the center of gravity (e.g., paint or structural repairs) are not documented, determine the accuracy of the airplane weight and balance data in accordance with Method No. 2.

Figure 2—Weight and Balance Information Accuracy Method No. 2

A. Assemble the following equipment:

1. One certified platform scale having a range of 750 to 1,000 pounds that is capable of supporting the nose wheel without contacting the rest of the airplane;

2. One scale ramp of sufficient incline to allow rolling the wheel onto the scale; and

3. One gear strut inflation system capable of inflating the gear struts to full extension.

B. Procedure

1. Prepare the airplane for weighing in accordance with the Weighing Instructions in the Weight and Balance Section of the Pilot's Operating Handbook/Airplane Flight Manual (POH/AFM).

2. Ensure that the scale and airplane are on a level hangar floor and the airplane is shielded from any wind.

3. Inflate the main landing gear struts to the maximum extension and completely deflate the nose strut. Inflate the tires to correct tire pressure as listed in the applicable maintenance or shop manual.

Note: Extreme caution should be used when deflating the nose strut because the airplane could drop suddenly.

4. Adjust the height of the scale platform to 12 inches above the hangar floor.

5. Position the nose wheel onto the scale and ensure that the remainder of the airplane does not contact the scale. Verify the proper wheel weight. Set the parking brake and chock the main wheels.

6. Record the net weight registered on the scale.

7. Remove the nose wheel from the scale.

8. Adjust the gear struts to the proper extension lengths in accordance with the applicable maintenance or shop manual.

9. Subtract the following unusable (less undrainable) fuel from the current airplane Basic Empty Weight, CG, and Moment:

Category	Weight (lbs) (in.)	Arm (in-lbs)	Moment
All Airplanes	34.5	79.1	2,730
Airplanes with 10-gallons wing auxiliary tanks	5	94	470
Airplanes with 20-gallon auxiliary fuselage tanks	3	133	399

10. Multiply the net weight obtained in paragraph 6. by 83.25 to obtain moment.

11. Divide the weight obtained in paragraph 9. into the moment obtained in paragraph 10. to determine a value for X.

12. Calculate a value of CG from: CG=92.5 − 1.01X.

13. Subtract the CG obtained in paragraph 12. from the CG obtained in paragraph 9.

D. Results

1. If the results of paragraph C. 13., indicate that the difference in CG is equal to or less than .5 inches, then continue to use the basic empty airplane weight and CG data listed in the existing airplane records as the basis for computing the weight and CG for the loaded airplane while using the criteria specified in the POH/AFM, Weight and Balance Section.

2. If the results of paragraph C. 13, indicate that the difference in CG is more than .5 inches, then determine the basic weight and CG of the airplane using Method No. 3.

Example of Above—The following presents a sample calculation of the information specified in Method 2:

Basic Empty Weight=2,064.5 lbs.
Arm=78.3 in.
Moment=161,650 in.-lbs.
Paragraph C. 6: Nose Wheel Weight—341 lbs
Paragraph C. 9:

Weight (lbs)	Arm (in)	Moment (in-lbs)
2064.5 −34.5	78.3 79.1	161,650 −2,730
2030.0	(*)	158,920

* Arm=(18920)=78.29 (2030.)
Paragraph C.10.: Moment=(341 lbs)×(83.25 in)=28,388 in-lbs.
Paragraph C.11.: x=(23,388 in-lbs)=13.98 in. (2030.0 lbs)
Paragraph C.12.: CG=92.50 in.−(1.01)×(13.98)=78.38 in.
Paragraph C.13.:
Difference=(78.29)−(78.38)=−.09 in.

Airplane is within plus/minus 0.5 tolerance, therefore paragraph D.1., applies.

Figure 3—Weight and Balance Information Accuracy Method No. 3

Determine the basic empty weight and CG of the empty airplane using the Weighing Instructions in the Weight and Balance Section of the POH/AFM. Record the results in the airplane records, and use these new values as the basis for computing the weight and CG information as specified in the POH/AFM, Weight and Balances Section.

(i) Upon completion of the requirements of paragraph (h) of this AD, remove the placards required by paragraphs (d), (e), and (f) of this AD (including all sub-paragraphs), as applicable, and observe the original limits.

(j) Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(k) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita ACO, FAA, 1801 Airport Road, Room 100, Wichita, Kansas 67209. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and send it to the Manager, Wichita ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(l) Service information that applies to this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information may also be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri.

(m) This amendment supersedes AD 57–18–01, Amendment 39–1759, and AD 87–20–02 R1, Amendment 39–5944.

Issued in Kansas City, Missouri, on March 31, 1994.

John R. Colomy,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–8172 Filed 4–5–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 71

[Airspace Docket No. 94–AGL–4]

Proposed Modification of Class E Airspace; Freeport, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify the Class E airspace near Freeport, IL, to accommodate a new

Nondirectional Beacon (NDB) Runway 06 Standard Instrument Approach Procedure (SIAP) and a new Localizer (LOC) Runway 24 SIAP to Albertus Airport, Freeport, IL. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended affect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on aeronautical charts to provide a reference for pilots operating in the area.

DATES: Comments must be received on or before May 12, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL-7, Rules Docket No. 94-AGL-4, East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Robert Frink, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294-7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94-AGL-4." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-220, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Class E airspace near Freeport, IL, to accommodate a new NDB Runway 06 SIAP and a new LOC Runway 24 SIAP to Albertus Airport, Freeport, IL. This modification would increase the Class E airspace area radius from 6.4 miles to 6.5 miles. Controlled airspace extending from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on aeronautical charts to provide a reference for pilots operating in the area.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—

(1) Is not a "significant regulatory action" under Executive Order 12866;

(2) Is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and

(3) Does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IL E5 Freeport, IL [Revised]

Freeport, Albertus Airport, IL
(lat. 42°14'48"N., long. 89°34'55"W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Albertus Airport.

* * * * *

Issued in Des Plaines, Illinois on February 22, 1994.

John P. Cuprisin,
Manager, Air Traffic Division.

[FR Doc. 94-8198 Filed 4-5-94; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 94–AGL–2]

Proposed Class E Airspace Establishment; Savanna, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace near Savanna, IL, to accommodate a new Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME–A) instrument approach procedure to Tri-Township Airport, Savanna, IL. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended affect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on aeronautical charts to provide a reference for pilots operating in the area.

DATES: Comments must be received on or before May 12, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 94–AGL–2, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Robert Frink, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 94–AGL–2." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace near Savanna, IL, to accommodate a new VOR/DME–A instrument approach procedure to Tri-Township Airport, Savanna, IL. Controlled airspace extending from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The intended affect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. The area would be depicted on aeronautical charts to provide a reference for pilots operating in the area.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IL E5 Savanna, IL [New]
Savanna, Tri-Township Airport, IL
(lat. 42°02′48″N., long. 90°06′34″W.)

That airspace extending upward from 700 feet above the surface within a 6.4 mile radius of the Tri-Township Airport.

* * * * *

Issued in Des Plaines, Illinois on February 22, 1994.

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 94–8197 Filed 4–5–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 764 and 942

Receipt of a Petition to Designate Lands Unsuitable for Mining and To Prepare a Petition Evaluation Document and Environmental Impact Statement

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

ACTION: Notice of intent to prepare a combined petition evaluation document/environmental impact statement, and notice of scoping meeting and scoping comment period for the petition.

SUMMARY: Notice is hereby given that the Office of Surface Mining Reclamation and Enforcement (OSM) intends to prepare a combined petition evaluation document/environmental impact statement (PED/EIS) for the decision on a petition to designate certain lands within the Little Yellow Creek (Fern Lake) watershed in Claiborne County, Tennessee, as unsuitable for surface coal mining and reclamation operations in accordance with section 522 of the Surface Mining Control and Reclamation Act (SMCRA) of 1977. OSM has identified four alternatives that the combined PED/EIS would evaluate as described in the supplementary information of this notice. OSM requests that other agencies and the public submit written comments or statements on the need for an EIS on the petition and the scope of the issues which should be analyzed in the combined document.

DATES: Written comments must be received by 5 p.m. (EDT), May 18, 1994. Oral comments may be presented at the scoping meeting to be held at the Middlesboro City Hall at 7 p.m. (EDT) on April 18, 1994.

ADDRESSES: Written comments must be mailed or hand delivered to the Office of Surface Mining, Branch of Technical Assistance, Attn: Willis Gainer, 530 Gay Street, SW., suite 500, Knoxville, Tennessee 37902. Copies of the petition are available upon request from the Office of Surface Mining at the given address. The public record on the petition is available for review during normal working hours (8:30 a.m. to 4:40 p.m.) at the OSM office listed. *Public hearing:* Middlesboro City Hall, Kentucky.

FOR FURTHER INFORMATION CONTACT: Willis L. Gainer, at the OSM office listed [see **ADDRESSES**] (telephone: 615–545–4065).

SUPPLEMENTARY INFORMATION: On February 14, 1994, the City of Middlesborough, Kentucky and the National Parks and Conservation Association petitioned the Office of Surface Mining Reclamation and Enforcement (OSM) of the United States Department of the Interior, to designate an area located in the Little Yellow Creek (Fern Lake) watershed in Claiborne County, Tennessee, as unsuitable for surface coal mining operations pursuant to the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95–87). The petition was amended on February 22, 1994, and deemed administratively complete and accepted for processing on March 15, 1994. A subsequent amendment with exhibits was received on March 16, 1994. The petition as accepted is a 26 page document with 100 pages of exhibits and an amendment. An additional 18 pages were received as part of a second amendment after the determination of completeness. The Federal Program for Tennessee, as administered by OSM, applies to all surface coal mining operations in Tennessee including the processing of lands unsuitable for mining petitions (49 FR 38874, October 1, 1984).

The petition area occupies approximately 3,780 acres of the Little Yellow Creek watershed in Claiborne County, from the headwaters to the Tennessee State line and includes portions of Fern Lake. The petition boundary runs essentially from the Tennessee State line at Kentucky Corner on Cumberland Mountain in a southwest direction along the crest of Cumberland Mountain to a point at the watershed divide between Tackett Creek and Little Yellow Creek. The petition boundary then crosses from Cumberland Mountain to the crest of Mingo Mountain across this watershed divide and proceeds in a northeasterly direction until it intercepts the Kentucky/Tennessee State line. The boundary follows the State line to the east back to Kentucky Corner.

The major allegations of the petition can be summarized as follows:

1. Surface coal mining operations will affect fragile lands in which the surface coal mining operations could result in significant damage to important scientific or aesthetic values or natural systems.
2. Surface coal mining operations will affect land in which the surface coal mining operations could result in a substantial loss or reduction in the long-range availability of water supplies.
3. Surface coal mining operations would be incompatible with local land use plans of the Cumberland Gap National Historical Park.
4. Surface coal mining operations will affect natural hazard lands in which the surface coal mining could increase flooding potential in an already flood-prone area.

OSM has identified four possible alternatives that the combined PED/EIS would evaluate:

Alternative 1—Designate the entire petition area as unsuitable for surface coal mining operations.

Alternative 2—Not designate any of the area as unsuitable for surface coal mining operations.

Alternative 3—Designate parts of the petition area as unsuitable for all surface coal mining operations:

A. Designate as unsuitable for all or certain types of surface coal mining operations, including the designation of selected reserves, those parts of the petition area in which such operations would affect fragile lands and result in significant damage to important aesthetic values and natural systems.

B. Designate as unsuitable for all or certain types of surface coal mining operations, including the designation of selected reserves, those parts of the petition area in which such operations would result in a substantial loss or a reduction of long-range productivity of water supply.

C. Designate as unsuitable for all or certain types of surface coal mining operations, including the designation of selected reserves, those parts of the petition area in which such operations would be incompatible with existing local land use plans and programs.

D. Designate as unsuitable for all or certain types of surface coal mining operations, including the designation of selected reserves, those parts of the petition area in which such operations would affect natural hazard lands.

Alternative 4—Designate the entire petition area as unsuitable for surface coal mining but allow underground mining with or without certain restrictions.

A scoping comment period is intended to raise the relevant issues to be addressed by the combined document. OSM seeks public comments in relation to the scope of issues to be addressed by the impact evaluation, including impacts and alternatives that should be addressed. Written comments should be specific and confined to issues pertinent to the petition. The public comments received during the scoping period will assist OSM in

making decisions on the petition evaluation and in preparing the PED/EIS. OSM believes that the proposed action is a major Federal action that may significantly affect the quality of the human environment and may require the preparation of an EIS. OSM additionally gives notice here that should information or analyses show that the proposed action does not require an EIS, it will terminate the environmental impact statement process through an appropriate notice in the **Federal Register**, prepare an environmental assessment, and continue processing of the petition under 30 CFR part 764 and 942.

Dated: March 30, 1994.

Brent Wahlquist,

Assistant Director, Reclamation and Regulatory Policy.

[FR Doc. 94–8158 Filed 4–5–94; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 91

RIN 0790–AF64

Revitalizing Base Closure Communities—Base Closure Community Assistance

AGENCY: Department of Defense, DoD.

ACTION: Proposed rule.

SUMMARY: The proposed rule publishes for comment the guidance required by section 2908 of the National Defense Authorization Act for Fiscal Year 1994. Section 2908 of the Act provides authority for the Secretary of Defense to transfer real property or facilities available as a result of a base closure, to persons paying the cost of environmental restoration activities on the property.

DATES: Comments must be received by July 5, 1994.

ADDRESSES: Comments must be forwarded to the Office of the Assistant Secretary of Defense for Economic Security, room 3D854, The Pentagon, Washington, DC 20301.

FOR FURTHER INFORMATION CONTACT: Steven Kleiman or Frank Savat, telephone (703) 614–5356.

SUPPLEMENTARY INFORMATION: In many cases the most difficult obstacle to getting property into productive reuse after a base closes is environmental restoration, because the Department of Defense cannot convey title to property until this is accomplished. The potential exists that persons who are interested in developing the property could clean it more quickly and efficiently than the government. This section provides a proposed rule which in its final form would allow the Department to transfer a property for the cost of cleanup to persons who agree to perform the environmental restoration. If the estimated value of the base exceeds the cost of cleanup, the buyer shall make up the difference. The Department of Defense and the Environmental Protection Agency will continue to consult regarding the implementation of Public Law 103–160, section 2908.

List of Subjects in 32 CFR Part 91

Community development, Environmental protection, Government employees, Homeless Military personnel, Surplus Government property.

Accordingly, 32 CFR part 91 is proposed to be amended to read as follows:

PART 91—[AMENDED]

1. The authority citation for part 91 continues to read as follows:

Authority: 10 U.S.C. 2687 note.

2. Section 91.7 is proposed to be amended by adding a new paragraph (j) to read as follows:

§ 91.7 Procedures.

* * * * *

(j) Transfer of real property or facilities to persons paying the cost of environmental restoration activities on the property.

(1) In many cases the most difficult obstacle to getting property into productive reuse is environmental restoration, because the Department of Defense cannot convey title to property until this is accomplished. The potential exists that persons who are interested in developing the property could clean it more quickly and efficiently than the government. This section proposes instructions to implement a new authority which allows the Department of Defense to transfer a property for the cost of cleanup to persons who agree to perform the environmental restoration. If the estimated value of the base exceeds the cost of cleanup, the buyer shall make up the difference.

(2) Section 2908 of Title XXIX of Public Law 103–160 authorizes the Secretary of Defense, at any time before December 1, 1998, to enter into agreements to transfer by deed, real property or facilities at closing installations to a person who agrees to perform all required environmental cleanup, waste management, and environmental compliance activities.

(3) The authority may be exercised in the following manner:

(i) An agreement to transfer may be executed with any person, provided that person can demonstrate to the satisfaction of the Secretary concerned the ability to adequately perform all required environmental clean-up, waste management and environmental compliance activities.

(ii) The property and facilities subject to the agreement must be located in an installation closed or to be closed under a base closure law, as defined in paragraph (c)(1) of this section and at the time the agreement is executed must be available exclusively for the use, or expression of an interest in use, of a local redevelopment authority under Public Law 103–160, section 2905. The reuse contemplated in the agreement must be consistent with the applicable local redevelopment plan.

(iii) The Agreement may be in any form and transfer any interest allowable under the law of the State in which the property or facility is located provided, however:

(A) The Agreement may not serve to transfer title by deed in violation of Section 120(h) of the Comprehensive Environmental Response Compensation and Liability Act (CERCLA) (42 U.S.C. 9620(h)).

(B) The Agreement must contain a stipulation that all environmental restoration, waste management and environmental compliance activities required under Federal and State laws, administrative decisions, agreements (including schedules and milestones), and regulatory agency concurrences, including those that become effective at any time during the existence of the Agreement, shall be met by the person with whom the Agreement is to be executed. The environmental restoration for the Agreement must include activities associated with cleanup of petroleum and its derivatives.

(C) The Agreement shall contain any item or condition that the Secretary of the Military Department concerned considers appropriate to protect the interests of the United States. Such terms or conditions may include, but are not limited to, providing continued access to the property and facilities by the U.S. and State and local regulatory agencies; limitations upon the use to which the property may be put; and, provisions requiring a bond or other form of financial assurance.

(D) The Agreement must contain a description of the information disclosed to the person to whom the property or facilities will be transferred on the environmental restoration, waste management and environmental

compliance requirements and activities relevant to the property or facilities. This description shall include any specific information required by the notice requirements of Section 120(h)(1) of CERCLA (42 U.S.C. 9620(h)).

(E) The Agreement should disclose to the person to whom the property or facilities will be transferred that the U.S. will not indemnify, hold harmless or defend that person pursuant to Public Law 102–484, section 330, as amended by Public Law 103–160, section 1002.

(F) The Agreement may provide for a transfer to occur at any point after all remedial action necessary to protect human health and the environment has been constructed and installed by the person and the remedy has been demonstrated to the Military Department concerned and EPA to be operating properly and successfully.

(iv) The consideration for the Agreement must equal the estimated fair market value of the property or facilities to be transferred, as determined by the Secretary of the Military Department concerned. The consideration may be in the form of the expected costs of all environmental restoration, waste management, and environmental compliance activities to be paid by the recipient of the property or facilities. If such expected costs are lower than the estimated fair market value of the property or facilities, the Secretary concerned shall obtain the difference in other consideration satisfactory to the Secretary concerned.

(v) Before executing any Agreement authorized by Public Law 103–160, section 2908 the Secretary concerned must:

(A) Disclose to the person to whom the property or facilities shall be transferred any information under the control of the Secretary regarding the environmental restoration, waste management and environmental compliance activities that relate to the property.

(B) Conduct an Environmental Baseline Survey to determine whether there are impediments to the ultimate transfer of the property.

(C) Make the certification to Congress required by Public Law 103–60, section 2908.

(D) Ensure the consultation with the affected governor and local communities required by a base closure law, as defined in paragraph (e)(1) of this section, has been conducted.

Dated: March 31, 1994.

P.H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–8115 Filed 4–5–94; 8:45 am]

BILLING CODE 5000–04–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[CO32–1–5982; FRL–4855–7]

Clean Air Act Approval and Promulgation of PM–10 Implementation Plan for Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: In this action, the EPA proposes approval of the State implementation plan (SIP) submitted by the State of Colorado for the purpose of bringing about the attainment of the national ambient air quality standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM–10). The SIP was submitted by the State on May 27, 1993 to satisfy certain federal Clean Air Act requirements for an approvable moderate nonattainment area PM–10 SIP for Lamar, Colorado.

DATES: Comments on this proposed action must be received in writing by May 6, 1994.

ADDRESSES: Written comments should be addressed to: Vicki Stamper, 8ART–AP, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466.

Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations:

Air Programs Branch, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2405.

Air Pollution Control Division, Colorado Department of Health, 4300 Cherry Creek Drive South, Denver, Colorado 80222–1530.

FOR FURTHER INFORMATION CONTACT: Vicki Stamper, 8ART–AP, Environmental Protection Agency, Region VIII, 999 18th Street, suite 500, Denver, Colorado 80202–2466, (303) 293–1765.

SUPPLEMENTARY INFORMATION:

I. Background

Lamar, Colorado was designated nonattainment for PM–10 and classified as moderate under sections 107(d)(4)(B) and 188(a) of the Clean Air Act (Act) upon enactment of the Clean Air Act Amendments of 1990.[1] (See 56 FR 56694, November 6, 1991 and 40 CFR 81.306.) The air quality planning requirements for moderate PM–10 nonattainment areas are set out in subparts 1 and 4 of part D of title I of the Act. The EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under title I of the Act, 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)). Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of title I advanced in this proposal and the supporting rationale. In this rulemaking action on the Colorado moderate PM–10 SIP for the Lamar PM–10 nonattainment area, EPA is proposing to apply its interpretations taking into consideration the specific factual issues presented. Thus, EPA will consider any timely submitted comments before taking final action on this proposal.

Those states containing initial moderate PM–10 nonattainment areas were required to submit, among other things, the following provisions by November 15, 1991:

1. Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology—RACT) shall be implemented no later than December 10, 1993;

2. Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

4. Provisions to assure that the control requirements applicable to major stationary sources of PM–10 also apply to major stationary sources of PM–10 precursors except where the

[1] The 1990 Amendments to the Clean Air Act made significant changes to the Act. See Pub. L. No. 101–549, 104 Stat. 2399. References herein are to the Clean Air Act, as amended ("the Act"). The Clean Air Act is codified, as amended, in the U.S. Code at 42 U.S.C. 7401, *et seq.*

Administrator determines that such sources do not contribute significantly to PM–10 levels which exceed the NAAQS in the area. See sections 172(c), 188, and 189 of the Act.

Some provisions are due at a later date. States with initial moderate PM–10 nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM–10 by June 30, 1992 (see section 189(a)). Such States also must submit contingency measures by November 15, 1993 which become effective without further action by the State or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the PM–10 NAAQS by the applicable statutory deadline. See section 172(c)(9) and 57 FR 13510–13512, 13543–13544.

II. This Action

Section 110(k) of the Act sets out provisions governing EPA's review of SIP submittals (see 57 FR 13565–13566). In this action, EPA is proposing to grant approval of the Lamar plan revision which was due to EPA on November 15, 1991 and submitted by the State on May 27, 1993. EPA believes the attainment plan for Lamar meets all of the applicable requirements of the Act.

Since the Lamar PM–10 SIP was not submitted by November 15, 1991 as required by section 189(a)(2)(A) of the Act, EPA made a finding pursuant to section 179 of the Act that the State failed to submit the SIP and notified the Governor in a letter dated December 16, 1991. See 57 FR 19906 (May 8, 1992). After the Lamar PM–10 SIP was submitted on May 27, 1993, EPA found the submittal to be complete pursuant to section 110(k)(1) of the Act and notified the Governor accordingly in a letter dated June 14, 1993. This completeness determination corrected the State's deficiency and, therefore, terminated the 18-month sanctions clock under section 179 of the Act.

A. Analysis of State Submission

1. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[2] Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

The EPA also 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 EPA 6 months after receipt of the submission.

After providing more than 30 days of prior public notice, the State of Colorado held a public hearing on April 15, 1993 to entertain public comment on the implementation plan for Lamar. The plan for Lamar was subsequently adopted by the State and submitted by the Governor by letter dated May 27, 1993 as a proposed revision to the SIP. EPA received the submittal on June 3, 1993.

The SIP revision was reviewed by EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR part 51, appendix V. The submittal was found to be complete, and a letter dated June 14, 1993 was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the review process. In this action, EPA proposes to approve the State of Colorado's PM–10 SIP submittal for Lamar relative to those moderate area PM–10 SIP requirements due on November 15, 1991 and invites public comment on the action.

2. Accurate Emissions Inventory

Section 172(c)(3) of the Act requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. The emissions inventory should also include a comprehensive, accurate, and current inventory of allowable emissions in the area. Because the submission of such inventories is a necessary adjunct to an area's attainment demonstration (or demonstration that the area cannot practicably attain), the emissions inventories must be received with the submission (see 57 FR 13539).

The State of Colorado submitted a winter/spring season emissions inventory for the base year of 1992. A winter/spring season emissions inventory was calculated because the highest PM– 10 concentrations generally occur in the winter/spring season in Lamar. The base year inventory identified area sources as the primary cause of high PM–10 concentrations, which contributed 99 percent of the total emissions, with wind erosion from agriculture lands contributing 49 percent, re-entrained road dust from paved and unpaved roads contributing 24 percent, cattle feedlots contributing 15 percent, residential wood burning contributing 8 percent, and point sources contributing 1 percent. The remaining 3 percent of PM–10 emissions was due to emissions from tailpipes, agricultural tilling, and storage piles. The emission inventory demonstrates that wind erosion from agricultural land is the principal contributor to PM–10 emissions in the Lamar nonattainment area. However, the State and EPA believe that during the conditions when the PM–10 exceedances have been known to occur (high wind days preceded by warm, dry weather), PM–10 from wind erosion may be coming into the area from land much farther away than the area modeled by the State in developing the Lamar PM–10 emissions inventory. Thus, on the high wind days, agricultural emissions not in the immediate area surrounding Lamar may represent a much greater contribution to total PM–10 emissions in the area. However, emissions from such sources not in the immediate area surrounding Lamar were difficult to estimate.

The EPA is proposing to approve the emissions inventory because it generally appears to be accurate and comprehensive, and provides a sufficient basis for determining the adequacy of the attainment demonstration for this area consistent with the requirements of sections 172(c)(3) and 110(a)(2)(K) of the Act.[3] For further details see the Technical Support Document (TSD).

3. RACM (Including RACT)

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 Act). The General Preamble contains a detailed discussion of EPA's interpretation of the RACM (including RACT) requirement (see 57 FR 13539–13545 and 13560–13561). In Lamar, wind erosion from agricultural farmland in the area was identified as the

[2] Also Section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 100(a)(2).

[3] The EPA issued guidance on PM–10 emissions inventories prior to the enactment of the Clean Air Act Amendments in the form of the 1987 PM–10 SIP Development Guideline. The guidance provided in this document appears to be consistent with the revised Act.

principal contributor to the PM–10 nonattainment problem, and these emissions will be controlled through reliance on the soil conservation measures of the Food Security Act (FSA). See e.g., 16 U.S.C. 3801, 3811–3813.

The FSA, which was enacted in 1985, applies to any farmer participating in a federal farm subsidies program. One of the main provisions of the FSA requires farmers who cultivate highly erodible land (which includes the majority of the farmland surrounding Lamar) to develop and implement soil conservation plans. The conservation plan is to document the decisions of an affected farmer with respect to location, land use, tillage systems, and conservation treatment measures and schedules. The plan is to be based on the local Soil Conservation Service technical guide, and it is to be approved by the local soil conservation district. See 16 U.S.C. 3812(a)(2). The law provides that if such a conservation plan is actively applied by January 1, 1990 or 2 years after the Soil Conservation Service has completed a soil survey for the farm, whichever is later, affected farmers shall have until January 1, 1995 to comply with the plan without being subject to ineligibility for certain program loans, payments, and benefits.

In the area surrounding Lamar, approximately 75–80 percent of the agricultural lands are subject to the soil conservation requirements. According to the Southeast Regional Soil Conservation Service (SCS) office, all of the farmers subject to the FSA in the Lamar area have developed conservation plans, and most of the farmers in the Lamar area have already begun at least partial implementation of these plans.[4] The local SCS office has estimated that the implementation of these plans will result in a 70 percent reduction in wind erosion emissions from the non-irrigated farmland surrounding Lamar (which represents 85 percent of the farmland subject to the FSA in the Lamar area).

While the State is relying on these provisions to reduce the PM–10 emissions from wind erosion in the Lamar area, the State did not adopt these measures into the SIP or take credit for these control measures. Since these measures are federally mandated and will be implemented by the U.S. Department of Agriculture, it is not necessary for the State to adopt these measures into the SIP. No credit was taken for these measures because of the difficulty in estimating the effectiveness of these measures and, moreover, because no credit was needed to demonstrate attainment or maintenance of the PM–10 NAAQS in Lamar (see section II.A.4. of this document). Nevertheless, EPA does believe that the provisions of the FSA will have a significant impact on the emissions from wind erosion from agricultural land in the Lamar area.

RACT does not require controls on stationary sources in the Lamar nonattainment area because the point source emissions in the Lamar area are de minimis, and control of such sources would not expedite attainment and maintenance of the PM–10 NAAQS. See 57 FR 13540, 13543.

There are also Statewide control measures that apply in the Lamar area. Colorado Regulation No. 4 requires new wood stoves to meet the emission requirements of EPA's Standards of Performance for New Residential Wood Heaters in 40 CFR 60.532(b). Colorado Regulation No. 3 regulates the construction and modification of new stationary sources of PM–10.[5] These measures will help to reduce emissions from new stationary source growth and residential wood combustion.

A more detailed discussion of the individual source contributions, the associated control measures, and an explanation as to why certain available control measures were not adopted, can be found in the TSD. EPA has reviewed the State's explanation and associated documentation and concluded that it adequately justifies the control measures to be implemented. The Lamar PM–10 SIP demonstrates that the area will attain the PM–10 NAAQS by December 31, 1994. By this notice, EPA is proposing to approve Colorado's SIP submittal for Lamar as meeting the RACM (including RACT) requirement. However, EPA is not proposing action on Regulations No. 3 and 4 because EPA has previously approved these regulations in separate actions (see the TSD for further information).

4. Demonstration

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) of the Act). Alternatively, the State must show that attainment by December 31, 1994 is impracticable.

EPA regulations provide that the adequacy of a control strategy to provide for timely attainment must be demonstrated by means of a proportional model or dispersion model or other procedure which is shown to be adequate and appropriate (see 40 CFR 51.112(a)). EPA policy specifies that the preferred approach for estimating the air quality impacts of emissions of PM–10 is to use receptor modeling in combination with dispersion modeling. However, on July 5, 1990, EPA issued guidance providing that, in certain situations, it may be more appropriate to rely on a receptor model demonstration alone as the basis for the attainment demonstration (see July 5, 1990 memo to Regional Air Branch Chiefs from Robert D. Bauman, Chief of SO_2/Particulate Matter Programs Branch and Joseph Tikvart, Chief of Source Receptor Analysis Branch). Lamar met the criteria discussed in the July 5, 1990 memo to justify using receptor modeling alone and had originally planned to use this approach in its attainment demonstration. However, after further review, the State determined that the chemical mass balance (CMB) analysis (i.e., analysis of source contributions from PM–10 monitoring filters) to be used in the receptor model was inadequate and decided to base the attainment and maintenance demonstration on simple emissions rollback modeling, which involves using the ratio of the design day ambient concentration of 101 $\mu g/m^3$ to the design day emissions and projecting future concentrations.

Because the Lamar attainment and maintenance demonstrations did not follow EPA general guidance, the State included a commitment in the Lamar PM–10 SIP to conduct revised CMB analyses on all filters greater than 100 $\mu g/m^3$ and to use this information to assess the adequacy of the SIP. On September 20, 1993, the State submitted the revised CMB analysis but did not utilize the results in calculating a revised attainment and maintenance demonstration. The State determined that the receptor modeling performed for Lamar did not provide the conclusive source contribution information that would be necessary in order to adequately revise the Lamar PM–10 attainment and maintenance demonstrations. EPA has reviewed the

[4] Per December 4, 1992 telephone coversation between Vicki Stamper, U.S. EPA Region VIII, and Lorenz Sutherland, Southeast Colorado Regional SCS office.

[5] The State is required by the amended Clean Air Act to adopt a revised new source review permit program for the construction and operation of new and modified stationary sources. See Section 189(a)(1)(A). This SIP revision, which was submitted by the State on January 15, 1993, was due independent of the November 15, 1991 moderate PM–10 nonattainment area SIP requirements addressed in this action and will be addressed in a separate notice. See section 189(a)(2)(A) of the Act.

State's analysis and concurs with the State's justification for using emissions rollback modeling in its attainment demonstration. In addition, because the emissions rollback modeling demonstration accounted for growth in source categories that were not even identified in the CMB analysis, EPA believes that the use of emissions rollback modeling provides for a more conservative prediction of future concentrations. Thus, EPA believes that the State's attainment demonstration adequately demonstrates that the Lamar PM-10 nonattainment area will remain in attainment and maintain the 24-hour PM-10 NAAQS. (See the TSD for further information.)

The 24-hour PM-10 NAAQS is 150 μg/m³, and the standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 μg/m³ is equal to or less than one (see 40 CFR 50.6). The annual PM-10 NAAQS is 50 μg/m³, and the standard is attained when the expected annual arithmetic mean concentration is less than or equal to 50 μg/m³ (id.). The demonstration predicted that the 24-hour design concentration in the attainment year of 1994 will be 115 μg/m³, thus demonstrating attainment of the 24-hour PM-10 NAAQS. The demonstration also showed that the PM-10 NAAQS will be maintained in future years by predicting a 24-hour design concentration in 1997 of 116 μg/m³.

Since no violations of the annual PM-10 NAAQS have been monitored in the Lamar area and since the attainment demonstration in the Lamar PM-10 SIP clearly shows attainment and maintenance of the 24-hour PM-10 NAAQS, it is reasonable and adequate to assume that protection of the 24-hour standard will be sufficient to protect the annual standard as well. For a more detailed description of the attainment demonstration, see the TSD accompanying this document.

5. PM-10 Precursors

The control requirements which are applicable to major stationary sources of PM-10 also apply to major stationary sources of PM-10 precursors, unless EPA determines such sources do not contribute significantly to PM-10 levels in excess of the NAAQS in that area (see section 189(e) of the Act).

The analysis of the air quality and emissions data for the Lamar nonattainment area indicates that the PM-10 exceedances in the Lamar area are generally attributable to particulate matter emissions from area sources, mainly windblown emissions from agricultural lands, re-entrained road dust, cattle feed lots, and residential wood combustion. In addition, the emissions inventory for this area did not reveal any major stationary sources of PM-10 precursors. Consequently, EPA is proposing to find that major stationary sources of precursors of PM-10 do not contribute significantly to PM-10 levels in excess of the NAAQS. If finalized, this finding would exclude major stationary sources of PM-10 precursors from the applicability of PM-10 nonattainment area control requirements. Further discussion of the analyses and supporting rationale for EPA's proposed finding are contained in the TSD accompanying this document. Note that while EPA is making a general finding for this area, this finding is based on the current character of the area including, for example, the existing mix of sources in the area. It is possible, therefore, that future growth could change the significance of precursors in the area. The EPA intends to issue future guidance addressing such potential changes in the significance of precursor emissions in an area.

6. Quantitative Milestones and Reasonable Further Progress

The PM-10 nonattainment area plan revisions demonstrating attainment must contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate RFP, as defined in section 171(1), toward attainment by December 31, 1994 (see section 189(c) of the Act). RFP is defined in section 171(1) 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.

In implementing the quantitative milestone and RFP provisions for this initial moderate area, EPA has reviewed the attainment demonstration for the area to determine the nature of any milestones necessary to ensure timely attainment and whether annual incremental reductions should be required in order to ensure attainment of the PM-10 NAAQS by December 31, 1994 (see section 171(1)). Because the Lamar area can demonstrate expeditious attainment of the PM-10 NAAQS without taking credit for the reliance on the soil conservation plans, no further reductions are necessary. Therefore, EPA believes the Lamar PM-10 SIP satisfies the quantitative milestone and RFP requirement. However, there will be emissions reductions that occur as a result of the federally mandated soil conservation plans, which will help to ensure that the area attains and maintains the PM-10 NAAQS.

7. Enforceability Issues

All measures and other elements in the SIP must be enforceable by the State and EPA (see sections 172(c)(6), 110(a)(2)(A) of the Act 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). Nonattainment area plan provisions must also contain a program that provides for enforcement of the control measures and other elements in the SIP (see section 110(a)(2)(C)).

The specific control measures contained in the SIP are addressed above under section 3 entitled "RACM (including RACT)." The State, while relying on the soil conservation measures of the FSA, has not adopted these measures into the SIP or taken any credit for these measures. Since these measures are federally mandated and will be implemented by the U.S. Department of Agriculture, they are considered to be federally enforceable. Thus, it is not necessary for the State to adopt these measures into the SIP.

As discussed in section 3 above, there are State-wide regulations that will also impact the emissions of PM-10 in the Lamar nonattainment area. These regulations include Colorado Regulation No. 4, which requires all wood stoves sold after July 1, 1991 to meet the emission requirements of EPA's Standards of Performance for New Residential Wood Heaters in 40 CFR 60.532(b), and Colorado Regulation No. 3, which requires construction permits for new or modified stationary sources. EPA previously reviewed Colorado Regulations No. 3 and 4 at the time these regulations were approved by EPA as part of the SIP, and it was determined that these regulations met the enforceability criteria of the September 23, 1987 Potter Memorandum (see the TSD for information on EPA approvals of these regulations).[6]

The State of Colorado has a program that will ensure that the measures contained in the SIP are adequately enforced. The Colorado Air Pollution Control Division (APCD) has the authority to implement and enforce all emission limitations and control

[6] Note that the current version of Colorado Regulation No. 3 approved by EPA does not meet all of the applicable requirements of the amended Act. As discussed in footnote number 4, the State submitted revisions to Regulation No. 3 in January of 1993 which are being evaluated by EPA. EPA will act on that submittal in a separate notice.

measures adopted by the State, including the requirements of any emission control regulations, the SIP, and any permit. The APCD has the authority to impose civil penalties of up to $15,000 per day per violation, as well as criminal penalties. Thus, EPA believes the State has adequate enforcement capabilities to ensure compliance with the Lamar PM–10 SIP and the State-wide regulations. The TSD contains further information on the State-wide regulations, enforceability requirements, and a discussion of the personnel and funding intended to support effective implementation of the control measures.

8. Contingency Measures.

As provided in section 172(c)(9) of the Act, all moderate nonattainment area SIPs that demonstrate attainment must include contingency measures. See generally 57 FR 13510–13512 and 13543–13544. These measures were to be submitted by November 15, 1993 for the initial moderate nonattainment areas. Thus, the measures were due separate from the requirements addressed in this notice. Contingency measures should consist of other available measures that are not part of the area's control strategy. These measures must take effect without further action by the State or EPA, upon a determination by EPA that the area has failed to make RFP or attain the PM–10 NAAQS by the applicable statutory deadline. The Lamar SIP submittal addressed in this notice did not include any contingency measures. The State submitted the contingency measures for Lamar as a revision to the SIP on December 9, 1993. EPA will act on the December 1993 submittal in a separate notice.

III. Implications of This Action

The EPA is proposing to approve the plan revision submitted by Colorado for the Lamar nonattainment area on May 27, 1993 to satisfy those moderate area PM–10 SIP requirements due on November 15, 1991. Among other things, the State of Colorado has adequately demonstrated that the Lamar moderate PM–10 nonattainment area will attain the PM–10 NAAQS by December 31, 1994.

As noted, additional submittals for the initial moderate PM–10 nonattainment areas are due at later dates. The EPA will determine the adequacy of any such submittal as appropriate.

IV. Request for Public Comments

The EPA is requesting comments on all aspects of this proposal. As indicated at the outset of this document, EPA will consider any comments received by May 6, 1994.

V. Executive Order (EO) 12866

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistant Administrator for Air and Radiation. A future notice will inform the general public of these tables. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. The U.S. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

VI. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic 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 Act 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 small entities affected. Moreover, due to the nature of the federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Act forbids 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. section 7410(a)(2).

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

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 18, 1994.

William P. Yellowtail,

Regional Administrator.

[FR Doc. 94–8228 Filed 4–5–94; 8:45 am]

BILLING CODE 6560–50–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

45 CFR Part 1160

RIN 3154 - AAoo

Indemnities Under the Arts and Artifacts Indemnity Act

AGENCY: Federal Council on the Arts and the Humanities, National Foundation on the Arts and the Humanities.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: This Advance Notice of Proposed Rulemaking advises the public that the Federal Council on the Arts and the Humanities is considering an amendment to the regulations implementing the Arts and Artifacts Indemnity Act, as amended (the "Act"). The proposed amendment would permit the indemnification of eligible items from the United States while on exhibition in this country in connection with an exhibition of eligible items from outside of the United States. The proposed amendment is not intended to bring about a major shift in emphasis of the current policy or practice of the indemnity program. Specifically, exhibitions consisting solely of domestic items would continue to be ineligible for indemnification.

This notice invites comments that will assist the Federal Council in more fully understanding the issues involved in such a change. The Federal Council particularly invites comments from groups, individuals, and other governmental agencies involved in the

international exhibition process, including museums, private insurers, and professional and scholarly organizations. The revised rules will be published in the **Federal Register** and will be included in guideline packages for prospective applicants and in Certificates of Indemnity. The Catalogue of Federal Domestic Assistance number for the Arts and Artifacts Indemnity Program is 45–201.

DATES: Comments should be received by May 16, 1994.

ADDRESSES: Interested persons should submit ten copies of their written comments to the Federal Council on the Arts and the Humanities, c/o Alice M. Whelihan, Indemnity Administrator, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Alice M. Whelihan, (202) 682–5442.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Background

In 1975, the United States Congress enacted the Arts and Artifacts Indemnity Act which established an indemnity program administered by the Federal Council on the Arts and the Humanities (the "Federal Council"). 20 U.S.C. section 273(c). The Federal Council is composed of the heads of nineteen federal agencies and was established by Congress, among other things, to coordinate the policies and operations of the National Endowment for the Arts, the National Endowment for the Humanities, and the Institute of Museum Services, including the joint support of activities. 20 U.S.C. 972(a).

Under the indemnification program, the United States Government guarantees to pay loss or damage claims, subject to certain limitations, arising out of exhibitions containing items determined by the Federal Council to be of educational, cultural, historical or scientific value the exhibition of which must be certified by the Director of the United States Information Agency as being in the national interest. In order to be eligible for indemnification, the objects must be on exhibition in the United States, or if outside this country preferably as part of an exchange of exhibitions.

B. Regulatory Background

The Federal Council is the agency charged by Congress with the responsibility to administer the Arts and Artifacts Indemnity Act. In practice, the Indemnity Program is administered for the Federal Council by the Museum Program of the National Endowment for the Arts under the "Indemnities Under the Arts and Artifacts Indemnity Act" regulations (the "Regulations"), which are set forth at 45 CFR part 1160.

These Regulations have been promulgated, and amended from time to time, by the Federal Council pursuant to the express and implied rulemaking authorities granted by Congress to make and amend rules needed for the effective administration of the indemnity program. Among other things, Congress expressly granted the Federal Council the authorities to establish the terms and conditions of indemnity agreements; to set application procedures; and to establish claim adjustment procedures. 20 U.S.C. sections 971(a)(2), 973(a), 975(a).

For a number of years, the Federal Council has considered the desirability of amending the Regulations to permit the indemnification of U.S.-owned loans on exhibition in the United States in connection with certified international exhibitions. As currently drafted, the Regulations do not cover domestic objects on loan to an international exhibition in the United States. The Regulations provide, in pertinent part:

An indemnity agreement made under these regulations shall cover:

(1) Eligible items from outside the United States while on exhibition in the United States or

(2) Eligible items from the United States while on exhibition outside this country, preferably when they are part of an exchange of exhibitions. 45 CFR section 1160.1

On February 25, 1993, during a lengthy discussion of the application of the National Gallery of Art for the indemnification of the exhibition "Great French Paintings from the Barnes Foundation: Impressionist, Post-Impressionist and Early Modern," the Federal Council extensively considered the question of whether the eligibility criteria set forth in the Regulations were more narrowly drawn than required under the Act. On a preliminary basis, the Federal Council concluded that they were. While the Council approved the indemnification of the Barnes exhibition, a Certificate of Indemnity ultimately did not issue because of legal uncertainities related to the Council's action under its current Regulations. To clarify eligibility issues for future actions, the Federal Council also voted to "move with dispatch to amend its regulations."

On June 16, 1993, the Federal Council reaffirmed its vote of February 25, 1993 to amend the Regulations to permit the coverage of domestic items in connection with international exhibitions in the United States. Specifically, the Federal Council approved a motion to promulgate regulations revising 45 CFR part 1160.1 ("Purpose and Scope") by adding the following language immediately following section 1160.1(a)(2):

(3) eligible items from the United States while on exhibition in the United States if the exhibition includes other eligible items from outside the United States.

II. Statement of Views of the Federal Council

Since 1975, the Federal Council has approved indemnification for more than 500 exhibitions which have been viewed by millions of Americans in towns, cities and college campuses across the nation. Indemnification has facilitated both major international exhibitions and shows of more limited scale. More than 175 American museums have participated in the program, saving the organizers of the exhibitions nearly $70 million in commercial premiums. To date, the costs to the Federal government have been limited to the administrative costs of the program and the payment of two loss or damage claims totalling $104,700.

The Federal Council believes that the proposed amendment to the Regulations will significantly enhance its ability to provide the American public with the benefits of a high quality program of international exhibitions while not significantly increasing the exposure of the Federal government to pay loss or damage claims nor significantly adding to the administrative burdens or costs of the program.

The Federal Council believes that widening the eligibility criteria under the Indemnity Program to include coverage of U.S.-owned objects in exhibitions that also include foreign-owned loans would provide an important benefit to U.S. cultural institutions and to the American public. Under the current guidelines, U.S.-owned loans may be indemnified only when exhibited abroad. The Federal Council believes that if an exhibition of eligible items from abroad meets the criteria of having educational, cultural, historical or scientific value, and is certified by the Director of the United States Information Agency as being in the national interest, the U.S.-owned loans to the exhibition also should be eligible for indemnification.

The Federal Council wishes to stress that the proposed amendment is not intended to bring about a major shift in the emphasis of the current policy or practice of the indemnity program. Under the proposed amended regulations, indemnity coverage would

continue to be available primarily for the exhibition of items coming from outside the United States. It is anticipated that any U.S. loans to such international exhibitions would be a small but important component of the exhibition. Exhibitions consisting solely of domestic items would continue to be ineligible for indemnification. The Director of the United States Information Agency would continue to certify that the exhibition of items otherwise determined by the Council to be eligible for indemnification is in the national interest.

The Federal Council believes that the proposed modification would not significantly increase the exposure of the Federal government to claims for loss or damage while providing important additional relief for U.S. borrowing institutions. This is because coverage during international transit, the time of greatest risk, would not be required for loans from U.S. lending institutions. Nor does the Federal Council anticipate a significant increase in either the number of applications to the program or the administrative burdens associated with applying or reviewing indemnification applications. Under current practice, applicants already are required to include information on domestic loans in their applications, and indemnity panels consider the educational, cultural, historical or scientific value of both the domestic and foreign items in determining whether to indemnify an exhibition.

List of Subjects in 45 CFR Part 1160

Indemnity payments.

For the Federal Council on the Arts and the Humanities.

Michael S. Shapiro,

Counsel to the Federal Council on the Arts and the Humanities.

Accordingly, for the reasons set out in the preamble, the Federal Council proposes to amend 45 CFR part 1160 as follows:

1. The authority citation for part 1160 continues to read as follows:

Authority: 20 U.S.C. 971–977.

PART 1160—INDEMNITIES UNDER THE ARTS AND ARTIFACTS INDEMNITY ACT

§ 1160.1 [Amended]

2. Section 1160.1, is amended by revising paragraph (a) to read as follows:

§ 1160.1 Purpose and scope.

(a) This part sets forth the exhibition indemnity procedures of the Federal Council on the Arts and Humanities under the Arts and Artifacts Indemnity Act (Pub. L. 94–158) as required by section 2(a)(2) of the Act. An indemnity agreement made under the regulations in this part shall cover:

(1) Eligible items from outside the United States while on exhibition in the United States;

(2) Eligible items from the United States while on exhibition outside this country, preferably when they are part of an exchange of exhibitions; or

(3) Eligible items from the United States while on exhibition in the United States if the exhibition includes other eligible items from outside the United States.

* * * * *

[FR Doc. 94–8238 Filed 4–5–94; 8:45 am]

BILLING CODE 7536–01–P

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1312 and 1314

[Ex Parte No. 444]

Electronic Filing of Tariffs

AGENCY: Interstate Commerce Commission (ICC).

ACTION: Notice of proposal to establish a negotiated rulemaking committee.

SUMMARY: The ICC is proposing to establish a committee under the Negotiated Rulemaking Act to develop rules for electronic tariff filing (ETF). The agency is inviting applications and nominations for the committee. The ICC has requested approval from the Office of Management and Budget (OMB) to establish the committee. Although no difficulty in obtaining approval is anticipated, no committee will be established until approval is obtained.

DATES: Comments are due on May 6, 1994.

ADDRESSES: Send comments (an original and 10 copies) referring to Ex Parte No. 444 to: Interstate Commerce Commission, Office of the Secretary, Case Control Branch, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: James W. Greene (202) 927–5597 or Charles E. Langyher, III (202) 927–5160. TDD for hearing impaired: (202) 927–5721.

SUPPLEMENTARY INFORMATION: After considering the comments filed in response to our last notice in this proceeding, we have decided to proceed with the planning of a comprehensive ETF system (*i.e.*, one that will support EDI and automated analyses). We believe that determining the scope and type of ETF system we should adopt can best be achieved by initially specifying a comprehensive system in the context of an ongoing effort to identify the needs that an ETF system should serve and the technologies (including EDI, tariff imaging, and others) needed to meet them. There is currently no common understanding of what constitutes ETF. As ETF design progresses, the choices among various benefit and cost packages will become clearer. This will help carriers and shippers to determine what type of ETF system to support.

We agree with virtually all of the commenters supporting ETF that extensive industry participation is needed to resolve the technical and policy issues involved in ETF. We believe the project can best move forward under procedures authorized by the Negotiated Rulemaking Act of 1990.[1] The "Reg-Neg" Act establishes a framework by which Reg-Neg committees may resolve particular questions that would otherwise be resolved under traditional, formal rulemaking proceedings. If the committee reaches a consensus[2] on a proposed rule, it prepares a report to the agency containing the proposal.[3] The agency typically then publishes the proposal in a notice of proposed rulemaking.

The Reg-Neg approach seems well-suited to the development of ETF. Many ETF issues will be highly technical and complex. A Negotiated Rulemaking Committee will allow a core of experts representing the affected interests to work together on the issues on a continuing basis until consensus is reached. Moreover, a Reg-Neg Committee will be flexible; it could, for example, choose to host one or more industry conferences to allow different groups to present proposals. An agency may establish a negotiated rulemaking committee if the head of the agency determines that the use of the procedure is in the public interest. Reg-Neg Act, section 583(a). In making this determination, the agency must consider whether:

(1) There is a need for the rule;

(2) There is a limited number of identifiable interests;

[1] Public Law 101–461.

[2] The Reg-Neg Act, section 582(2), defines "consensus" as "unanimous concurrence among the interests represented on a negotiated rulemaking committee . . . unless such committee (A) agrees to define such term to mean a general but not unanimous concurrence; or (B) agrees upon another specified definition."

[3] A committee not reaching consensus may still prepare a report outlining the areas in which consensus was reached. Reports may also contain any other material which the committee deems appropriate.

(3) These interests can be adequately represented by persons willing to negotiate in good faith to reach a consensus;

(4) There is a reasonable likelihood that the committee will reach consensus within a fixed period of time;

(5) The negotiated rulemaking procedure will not unreasonably delay the notice of proposed rulemaking;

(6) The agency has adequate resources and is willing to commit such resources to the process; and

(7) The agency is committed to use the result of the negotiation in formulating a proposed rule if at all possible. *Id.* For the reasons stated in the decision, we believe these criteria can be met for an ETF undertaking.

ETF Issues

As guidance to the Reg-Neg Committee, we will describe our current views on certain ETF issues and the characteristics of a comprehensive system. We will also instruct the committee, however, not to limit its consideration to this type of system. Rather, the Committee to identify the needs that an ETF system should serve, should review whatever alternative technologies it believes may be preferable, and recommend appropriate rules to the Commission.

We will specifically direct the Committee's attention to the electronic tariff imaging system currently being developed by the Commission. The tariff imaging system provides for the retention of tariff page images on optical disks, rather than retaining the printed tariff pages themselves. This system will provide much-improved security for tariff documents, will greatly reduce the space required to store them, and will offer easier access to tariff information. The imaging system can be enhanced to provide for the electronic transmission of tariff pages to the Commission, which will allow carriers to file their tariffs "electronically" and avoid the time and expense of processing printed documents. Therefore, unless EDI and automated analysis capabilities are required for tariff data, the tariff imaging system (or some enhancement thereof) might offer a satisfactory and less expensive solution.

Our views on specific issues are as follows:

Bifurcation Into Separate Rail and Motor Carrier Sub-Dockets

We intend to begin with a unified proceeding, but to authorize the Committee to establish separate sub-groups (for example, for rail and non-rail) at a later date if necessary.[4] Some standardization across modes (using American National Standards Institute (ANSI) standards, for example) may be necessary to ensure that one EDI standard can accommodate all tariffs and that one ICC data base structure can handle all tariffs. Ultimately, however, some data coding standards (commodity codes, etc.) may differ for rail and motor carriers.

Carrier Sharing of the Commission's Custodial Responsibility for Official Tariff Data

No commenter has described a shared system which assures protection of official tariff data. Under these circumstances, we believe we must maintain custody of the data. The Commission will consider future shared custody arrangements that do adequately ensure data integrity.

Railroads' proposal to have carriers act as custodian of official tariff data is the most complete of those described, but it does not contain enough information to permit an evaluation of the adequacy of data security. We have learned from the undercharge crisis that strict security measures will be required to ensure that carriers cannot make unauthorized changes to rates. Additionally, it's difficult to tell whether the data in Railroads' system is organized in ways that would facilitate its use by shippers. It appears that Railroads, in response to an inquiry, can supply their determination of "the applicable rate"; however, prior tariff disputes have shown us that the carrier's determination is not always accurate. Shippers need access to the array of published rates so they can make their own determination of the correct rate. It is not clear whether or how Railroads' system would respond to such requests.

Whether ETF Should Be Voluntary or Mandatory

We reach no conclusion on this issue at this time.

We will request that the Reg-Neg Committee consider it and make a recommendation.

Other ETF System Design Issues

We anticipate that the recommendations from the Reg-Neg Committee will encompass ETF system design issues. Particularly in light of the lack of detail in the comments, we agree with commenters that further consultations are required before such decisions can be made.

Whether General Standards or Detailed Publishing Regulations Are More Appropriate for Printed Tariffs

We will retain the status quo (general standards for rail tariffs and detailed regulations for other tariffs) while ETF issues are being considered. The primary focus of this proceeding is on ETF; very few commenters address the printed tariff issue; and we see no need to deal extensively with printed tariff issues at this time.

Characteristics of a Comprehensive ETF System

While we expect the Reg-Neg Committee to thoroughly consider design issues and recommend appropriate regulations to the Commission, we offer the following comments on what might be appropriate for a comprehensive ETF system (*i.e.*, one that will support EDI and automated analyses):

1. Rates would be filed in a data base-oriented format with defined, computer readable codes designating origins, destinations, commodities, and other conditions of rate application (such as minimum weight, special packaging requirements, etc.).

2. Although data coding standards should be required in a comprehensive system, additional analysis is necessary to determine whether a common standard data coding structure should be required for all filers or whether different standard structures should be adopted for rail, motor and/or water carriers.

3. Although the publication of rules and accessorial charges in computer ratable formats is desirable, we do not believe we should require that they be published in this manner.

4. Only raw ETF data should be made available from the Commission. Whether the Commission would develop software to automatically analyze rates would depend on whether the Commission needs such software for agency operations.

5. The system should utilize ANSI EDI standards. We note FMC's contention that ANSI standards do not include all of the fields required for tariff filing purposes, and hope that the ANSI standards can be expanded to meet such requirements and enable us to avoid proprietary formats.

6. We do not believe we should include a requirement that our ETF system be capable of determining the rates applicable to particular movements. This determination does not, however, eliminate the need for

[4] Railroads indicate that they are prepared to move ahead immediately; however, they have had the ability to proceed on their own since the Commission lifted the stay on rail carrier ETF in November of 1989.

data standards and standardized EDI formats, since they will be required to enable shippers and carriers to automatically process ETF data.

Establishing the Reg-Neg Committee

We request the public to address in particular the interests that should be represented on the Committee (First notice). As described more fully below, we are also soliciting volunteers[5] to serve on the Committee. When OMB approves the Committee, we will publish another notice (Second notice) listing the interests that are likely to be significantly affected by a rule; the persons proposed to represent such interests and the persons or person proposed to represent the agency; and a proposed agenda and schedule for completing the work of the committee, including a target date for publication by the agency of a proposed rule for notice and comment. See Reg-Neg Act, section 584(a).[6] The public will be asked to comment, particularly on the composition of the Committee and whether all interests are represented, and will have another opportunity to volunteer to participate. We anticipate that the first meeting of the Committee will occur some time during the summer.

As indicated above and in the Reg-Neg Act, a negotiated rulemaking committee must contain members representing all interests that will be affected by the rule. Membership is generally limited to 25, unless the agency determines that a greater number is necessary for the functioning of the committee or to achieve balanced membership. Reg-Neg Act, section 585(b). A committee must include at least one person representing the agency. *Id.*

Persons may apply for, or nominate another person for, membership on the Committee by submitting an application or nomination containing the information required by the Reg-Neg Act, section 584(b). The required information is as follows:

(1) The name of the applicant or nominee and a description of the interests such person shall represent;

(2) Evidence that the applicant or nominee is authorized to represent parties related to the interests the person proposes to represent; and

(3) A written commitment that the applicant or nominee shall actively participate in good faith in the development of the rule under consideration.[7]

We expect that the Committee's work will require knowledge of technical tariff and electronic data processing matters, and expect that those skills (as well as others) will be possessed by the persons who apply, or are nominated, for the Committee.

Additional information concerning the ICC's views on meeting the Reg-Neg Act section 583(a) criteria is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 927-7428. [Assistance for the hearing-impaired is available through TDD services (202) 927-5721.]

Environmental Statement

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: March 21, 1994.

By the Commission Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons and Philbin. Vice Chairman Phillips and Commissioner Simmons commented with separate expressions.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94-8221 Filed 4-5-94; 8:45 am]

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[5] Members of a committee are generally required to pay their own expenses of participating. Section 588 of the Reg-Neg Act provides that the agency may pay for a member's reasonable travel and per diem expense, expenses to obtain technical assistance, and a reasonable rate of compensation if the member certifies a lack of adequate resources to participate in the committee and if the agency determines that such member's participation on the committee is necessary to assure an adequate representation of the member's interest. The Commission does not anticipate paying any expenses under this provision. The Commission will, however, provide administrative support and appoint an employee to represent the agency on the Committee, and is investigating the hiring of a contractor to provide technical support.

[6] The Reg-Neg Act, section 584(a), requires the notice to contain, in addition to the information listed above, an announcement that the agency intends to establish a negotiated rulemaking committee; a description of the subject and scope of the rule to be considered, and the issues to be considered; a description of the administrative support for the committee to be provided by the agency, including technical assistance; a solicitation for comments on the proposal to establish the committee; and an explanation of how a person may apply or nominate another person for membership on the committee.

[7] Persons submitting applications or nominations after publication of the next notice will also have to state the reasons that the persons specified in that notice do not adequately represent the interests of the person submitting the application or nomination. See section 584(b)(4).

Notices

Federal Register
Vol. 59, No. 66
Wednesday, April 6, 1994

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 Crop Insurance Corporation

Program Changes Improving the Actuarial USDA. Soundness of the Federal Crop Insurance Program

AGENCY: Federal Crop Insurance Corporation.

ACTION: Notice.

SUMMARY: The Omnibus Budget Reconciliation Act of 1993 (OBRA) directed the Federal Crop Insurance Corporation (FCIC) to make program changes as necessary to improve actuarial soundness of the Federal crop insurance program and to achieve, by the fiscal year beginning October 1, 1995, a projected overall loss ratio not to exceed 1.10 (110 percent) (section 1501(a)). Section 1501(c)(2) further directed the Department to issue for public comment a comprehensive plan or "blueprint" that identifies, among other things:

- Steps FCIC intends to take to achieve a projected overall loss ratio of no greater than 1.10 on and after October 1, 1995.
- Additional steps if further action is required, based upon actual program experience or unforeseen external circumstances.
- Modifications to be considered if initial actions to improve actuarial soundness work better than anticipated.
- Projections, assumptions, and analyses which underlie the FCIC conclusions that the above actions will achieve the required loss ratio within the stated deadline while maintaining fairness and effective coverage to agricultural producers, and which thereby demonstrate FCIC's compliance with the performance standard identified in section 1501(a).

The following notice outlines such a plan. Readers are requested to identify additional issues other than those outlined herein that they believe are relevant and important in assisting FCIC in its actions to manage the program to achieve the target loss ratio. This notice encourages comment and participation from the affected public. Comments and inquiries should be sent to the address listed below.

FOR FURTHER INFORMATION CONTACT: Mari Dunleavy, Regulatory and Procedural Development Staff, Federal Crop Insurance Corporation, Washington, DC 20250, telephone (202) 254–8314.

NOTICE: The Federal Crop Insurance Corporation's "Blueprint for Financial Soundness" reads as follows:

Blueprint for Financial Soundness

Scope and Purpose

Actions identified herein result from internal analysis by FCIC and information previously provided to FCIC by numerous interested parties. These include the Commission for the Improvement of Crop Insurance (a Congressionally established work group in 1989 and 1990), various crop insurance industry organizations, members of Congress, agricultural producers, crop insurance agents and insurance companies, the General Accounting Office, and others. Information was not solicited specifically for this draft but was compiled from previous recommendations. Not all of the specific recommendations made by any or all of these groups are included herein. This document establishes initiatives to achieve the above actions.

Estimates of the financial impact of an action, based on available data and professional judgment, are provided whenever possible. Readers should recognize that these estimates are fluid due to the nature of the data and the ever-changing program. In particular, since FCIC does not have a single aggregate mathematical or statistical model that describes its programs, estimates of financial impact are based on partial analysis which considers the effect of one particular action in the absence of any other action or initiative. Also, the exact steps to be taken under this Blueprint depend in part upon the public comment and recommendations received before investing resources in detailed studies of potential impacts. Readers are encouraged to provide information, rationale, and where possible, estimates of costs or potential savings.

In some cases the financial impact of an action may not be quantified. This does not mean the action is not important or that it cannot contribute to achievement of the goal. For example, enhanced management reporting systems do not produce a measurable financial impact. However, such systems can enhance FCIC's ability to estimate the potential impacts of program changes and assure that ongoing management decisions recognize the impact of the decision on future actions.

This document is divided into four main sections, which describe:

(1) Crop insurance program to provide context and background;

(2) Actions FCIC proposes as part of this plan to achieve the target loss ratio;

(3) Additional actions that FCIC may take if those described in section II are not effective or that cannot be implemented due to unforeseen circumstances; and

(4) Changes FCIC will consider once the projected loss ratio achieves the targeted level of 1.10.

I. Background of the Crop Insurance Program

A. Overview of Program Operations

Crop insurance is delivered primarily by commercial insurance companies that have entered into a cooperative financial arrangement [the Standard Reinsurance Agreement (SRA)] with FCIC. Under this arrangement, the company agrees to deliver an FCIC designed and priced product to eligible buyers. The company is responsible for all aspects of customer service, and guarantees payment of the insured person's share of the premium to FCIC. In return, FCIC reimburses the company for administrative expenses and requires the company (on a state basis) to share in insurance experience whether favorable or unfavorable. FCIC also provides stop loss reinsurance that limits the maximum loss the company can sustain.

A small and decreasing portion of the total sales is managed directly by FCIC through sales and service contractors. These contractors agree to sell an FCIC designed and priced product and to perform certain servicing functions related to the sale (such as determining

the average yields). FCIC reimburses the contractor for administrative expenses associated with selling and servicing the product; however, FCIC is directly responsible for premium collection, loss adjustment, and payment of losses. These latter functions are the responsibility of the reinsured company under that delivery system. FCIC intends to eliminate direct sales after the 1994 crop year because this system now delivers less than 10 percent of the total business, and maintaining a nationwide capability for delivery at an acceptable cost is difficult.

The crop insurance plan for most crops indemnifies insured persons for losses in yield exceeding a predetermined threshold amount. To establish this threshold an average yield is determined based on the individual's production history. The first portion of the loss (deductible of the insurance), equal to 25, 35, 50, or 65 percent of the average yield, must be sustained by the insured person. These are the choices of deductibles now offered by FCIC, and typically are described by the maximum loss in yield covered by the insurance; e.g., 75 percent coverage, 65 percent, etc. The 50 and 75 percent coverage levels are required by the Act to be available to all persons. The level of coverage is chosen by the insured individual.

The insured person also must choose a price at which the yield is valued for the purposes of computing the amount of premium and any applicable amount of loss; this variable is called the price election. FCIC must offer a price election that is not less than the anticipated market price at time of harvest. This determination is made well before the possibility of loss is known during the crop year. Otherwise, insured persons would choose low price elections if no loss is sustained (minimizes premium payments) the highest possible price election if a loss occurs (maximizes indemnities).

FCIC establishes premium rates for the various coverage levels, yields, crop types and farming practices (e.g., irrigated) for each county. All planted acres of the crop are covered by the insurance policy unless for some reason the acreage is uninsurable. The premium owed by the insured person is determined by multiplying the average yield per acre by the coverage level, multiplied by the number of acres planted, the price election, and the premium rate. For example, if the average yield is 100 bushels per acre, the coverage level is 65 percent, planted acres are 50, the price election is $2.25, and the premium rate is 5.2 percent, the premium is equal to 100 × 0.65 × 50 × $2.25 × 0.052, or $380.25. The potential indemnity in the event of a total loss is $7,312.50 (determined by multiplying the average yield, coverage level, planted acres, and price election).

A portion of the total premium is subsidized to encourage participation in the program. The subsidy is 30 percent of the total premium for coverage levels up to and including the 65 percent level. The subsidy for 75 percent level of coverage is equal to the dollar amount that would be paid at the 65 percent level of coverage. The premium subsidy for the above example would be $114.08; thus, the insured person would pay $266.17. The same $114.08 subsidy would be paid if the insured person chose the 75 percent coverage level.

In the event of a loss, the amount of production that was harvested, or that was determined should have been harvested, is measured by the insurer. An indemnity payment is made if the determined production is less than the total guarantee for the acreage (yield multiplied by coverage level and acres planted). For example, if the insured person harvests 1,000 bushels from 25 acres and does not harvest a potential yield of 10 bushels per acre from the remaining 25 acres, the total of the production to count is 1,250 bushels (1,000 bushels harvested plus 25 acres multiplied by 10 bushels). This is subtracted from the total bushel guarantee for the acreage (100 × 0.65 × 50, or 3,250 bushels), resulting in a loss of 2,000 bushels. The indemnity is equal to the number of lost bushels multiplied by the price election. For this example, the indemnity would be 2,000 bushels × $2.25, or $4,500.

Crop insurance does not guarantee revenue. As the above example illustrates, it provides an insurance indemnity only if production is less than the established guarantee. No protection is provided if the market price is less than the price election.

B. Legislative Background and Issues

Federal crop insurance was established as a pilot program in the 1930's. Prior to 1980, crop insurance was available only on major crops in major producing areas. The coverage level often was limited to 60 percent or less of a long-term average yield for an area. Congress amended the Act in 1980 to expand the scope and coverage of the program with the intent that it be the sole means of providing public disaster assistance to U.S. farmers. Participation in the program increased after the 1980 amendments, but remains below levels deemed necessary to be regarded as the principal vehicle for disaster assistance. Insured acreage peaked at about 40–45 percent of the total acreage planted to insurable crops in 1988–89, but more commonly has been in the 30–35 percent range. Losses also increased with the expansion of the program. The loss ratio has exceeded the break-even amount of 1.00 in every year since 1980. Cumulative losses for the years 1980–1992 were approximately $2.9 billion, with a cumulative loss ratio of about 1.45 for the 13 years.

Program participation is an issue influencing the Federal crop insurance program. Full participation (i.e., 100 percent of eligible acres insured) is the measure of program success that is accepted (at least implicitly) by some persons. This measure may not be the most appropriate. A rational decision to buy insurance of any kind must be based on the magnitude of the financial difficulties that accompany a loss. For example, buying collision coverage on a 15-year old automobile makes little financial sense. Similarly, buying insurance on a crop that contributes only a small portion of the expected income of the insured person may not make financial sense. Full participation in the crop insurance program may not represent an efficient use of the taxpayer's resources. However, participation must be high enough to minimize or eliminate perceived needs to legislate disaster assistance funded under dire emergency provisions of the Budget Enforcement Act. The level of participation in the crop insurance program that maximizes returns to the public is not known, and is an area needing further definition.

Many losses paid in the 1980's and early 1990's were due to widespread disasters, the adverse financial effects of which Congress intended to mitigate under the Act. However, continuing loss ratios exceeding 100 percent, enactment of disaster assistance in nearly every year since 1988, and lower than desirable participation indicate that the public policy goals of the program have not been fully realized. The Secretary of Agriculture has proposed a reform of the crop insurance program to:

- Achieve actuarial soundness.
- Increase participation to levels that render ad hoc disaster legislation.
- Eliminate incentives to enact ad hoc disaster assistance legislation.

The proposals contained in this Blueprint focus on these three areas that directly relate to the goal of achieving the targeted loss ratio. They are:

(1) Actuarial matters such as premium rates and yield guarantees,

(2) Underwriting matters such as terms and conditions of insurance policies, and

(3) Management issues such as compliance and risk-sharing arrangements with commercial insurers.

II. Management Actions To Achieve a Loss Ratio of 1.10

A. Develop More Accurate Insurance Yields

The insurance yield may be the single most important factor in determining the success or failure of the crop insurance program. A yield that is too high compared to the productive potential of the person or land will increase the number of years that a loss is paid. An excessively high yield also increases the amount paid when a loss occurs. A yield that is too low will not effectively protect farmers from loss and, because it is regarded as insufficient, will not induce desired levels of participation.

From the 1985 through 1993 crop years, insured yields were based on a program called the Actual Production History (APH) Plan. The goal of this program was to obtain 10 previous yields to establish the insured yield for the next crop year. Proxy yields largely based on ASCS farm program payment yields or county averages were allowed whenever farmers would not or could not provide 10 years of history. Analysis by FCIC and others determined the proxy yields were benefiting farmers whose yields tended to be lower than average and discouraging farmers whose yields tended to be above average. Consequently, a modified-APH program that reduced the influence of the proxy yields was introduced beginning with the 1994 crop year; thus, a "ladder" was introduced into the proxy yields. Only 65 percent credit is given to the proxy yield if no actual yields are reported, 80 percent credit is given if one actual yield is reported, 90 percent if two actual yields are reported, and 100 percent if three actual yields are reported. The proxy yields are not used after four actual yields are available. The insured yield is a simple average of the 4 years of actual and modified proxy yields for the first 4 years, and then (after 4 years) is the simple average of the actual yields reported. Acquiring 10 years of production history remains the goal of the program. These revised procedures are the core of the initiatives to comply with the mandate of OBRA 93 to institute rules to demonstrate actual production histories.

The revised rules are expected to substantially reduce losses of the Federal crop insurance program. Analysis performed by FCIC indicates the new rules would reduce losses by 15 percent for corn, 22 percent for soybeans, and 18 percent for wheat. These analyses were based on simulations of loss histories using the rules for the two computational methods—the previous APH and the proposed modified-APH plans. The analyses encompassed nine states each for corn and soybeans and three states for wheat. These states and crops represented nearly 60 percent of the total premiums earned in 1990. The results indicated that the modified-APH rules would reduce losses by a weighted average of 19 percent and are believed to be representative for most crops.

The actual loss ratio for the 1990 crop year was 1.23. If the modified-APH rules did reduce losses by an average of 19 percent, the loss ratio would have been 0.996. This would achieve significant compliance with the loss ratio target of 1.10.

Based on these results, FCIC implemented modified-APH for the 1994 crop year by:

- Promulgating regulations for the program during calendar year 1994.
- Measuring the impact of the modifications upon net program losses by calculating insured yields, premiums, and indemnities of policyholders under 1993 and 1994 rules.
- Where possible, determining whether the modified-APH rules had the intended effect of providing a more accurate offer for farmers who previously elected not to purchase crop insurance.
- Determining whether the average number of yields reported for prior years has changed under the modified-APH rules compared with APH rules for 1990 through 1993.
- Implementing a tracking system to assure that insurance experience remains associated with a person in future years (see item D below).
- Developing reporting processes to assure that the accuracy of yield determinations is continuously monitored and improved.
- Actions requiring analysis of the effects of the modified-APH rules upon the accuracy of insured yields cannot be completed until losses from the 1994 crop year are processed. For wheat and other fall planted crops, such availability will occur by about the fourth calendar quarter of 1994. For spring planted crops, this does not occur until about the middle of the first calendar quarter of 1995.

FCIC believes that these actions to implement modified-APH will reduce the average loss ratio over time by 10–15 percentage points (e.g., from an average of 1.40 for several years to 1.25 to 1.30). This estimate is based on a conservative expectation of the actual results of the simulations described above.

B. Catastrophic Yield Adjustment

FCIC recognizes that the average of a series of observations as short as 4 years is subject to significant variations due to abnormally large or small yields during that time. For example, if a major disaster year such as 1993 is included in the 4 years, the procedure implicitly states that a similar year will occur once every 4 years. This is not likely. Thus, FCIC will examine certain adjustments to the modified-APH rules with a goal to assign more appropriate probabilities to the individual observations. These adjustments commonly are called catastrophic yield adjustments. However, just as the yields for 1 year may be abnormally low, they also may be abnormally high. Capping the abnormally high years may also be appropriate so that average yields are not excessively high due solely to a few observations.

FCIC will evaluate alternative methods to recognize catastrophic and unusually good crop years, and consider implementing appropriate adjustments to the modified-APH plan effective for the 1995 crop year.

C. Implement Group Risk Plan

FCIC is implementing a program of insurance that is based on the average yield of an area, not upon individual yield coverage as is offered under the traditional APH program. The area coverage is called the Group Risk Plan (GRP) by FCIC. GRP was introduced as a pilot program for the 1993 crop year for soybeans in 96 counties. It was expanded for the 1994 crop year to include seven additional crops encompassing, 1,872 county crop programs (one crop in one county) in 27 states. Crops now included under GRP are barley (three states), corn (17 states), cotton (seven states), forage (two states), grain sorghum (four states), peanuts (four states), soybeans (24 states), and wheat (eight states).

The GRP is intended to protect the insured person against the financial consequences of a disaster that strikes all or nearly all farmers in an area. It sets an expected county yield for each year based on historical yields, adjusted for any trends. Whenever the actual county average yield for the year is less than the expected county yield by a predetermined amount, an indemnity is paid. The principal differences of the GRP compared to traditional individual coverage area:

- Coverage is based on a trend projected yield, which probably will

exceed the average yield of all farmers insured under individual yield coverage is there is a positive trend in yields for the area.

• Higher coverage levels (deductibles are as low as 10 percent) at affordable premium rates can be sold.

Thus, in the proper circumstances, GRP will offer risk protection that may be better than the individual coverage, and may do so at a lower cost.

GRP has characteristics that make it unsuitable for managing the adverse financial consequences of crop loss in certain circumstances. A farmer's yield each year must change in the same direction and by about the same amount as the county yield if it is to be fully effective coverage for the individual. For example, if the county's yield decreases by 25 percent from the expected yield for that year, the farmer's yield also should decline by about 25 percent from the yield he or she would have expected. In financial market terms, the "beta" or the farmer's yields and the county yields should be near 1.00.

Adequate data are a limitation to further significant expansion of GRP. The concept as presently developed uses many years (30 or more) of county yields. These data are routinely available only for counties in which the crop has been grown in commercially significant quantities. Weather data and crop growth models may permit expansion into counties in which the historical yield data are not available, but research is needed to develop and test these approaches. Further, acceptance of GRP by bankers as collateral for loans is yet to be determined.

Significant expansion of GRP is not anticipated until its contributions to agricultural risk management can be measured. No estimates of savings can be attributed to GRP because customer acceptance is not known. Customer acceptance of the soybean GRP for the 1993 crop year was limited. Fewer than 500 policies (of nearly 700,000 total for the crop insurance program) were sold. Even if the plan improves the actuarial soundness of crop insurance, the present volume of business is not sufficient to make any noticeable difference in program results.

D. Implement Data Base of Taxpayer Identification Numbers

Amendments to the Federal Crop Insurance Act enacted in 1990 authorize FCIC to collect and use social security numbers and employer identification numbers to administer its programs. These regulations were appropriately approved and were published in the **Federal Register** in late 1992. OBRA 93 further directed FCIC to implement a database of these numbers for certain uses not later than the 1995 crop year.

FCIC implemented the database described above in January 1994, effective for the 1994 crop year. This database is used to locate production history that is not reported by a person to assure that classifications assigned under the nonstandard classification system (NCS—see paragraph E below) are used for both the individual who accumulated the adverse history and any person having a significant beneficial interest in a crop produced by that person, and for other related purposes. In particular, further efforts will be made to accumulate information about persons involved in sales and servicing of crop insurance—agents, loss adjusters, and other insurance providers—so that their contributions to achieving the target loss ratio can be measured.

Implementing this database will make both modified-APH and the NCS more effective by permitting FCIC and reinsured companies to assure that all appropriate experience and premium rating factors are used. Incremental improvement in the loss ratio due to modified-APH and NCS is difficult to quantify. The database will enhance those programs as well as permit FCIC to systematically measure the performance of insurance providers for the first time.

FCIC will also use the social security numbers and employer identification numbers for the implementation of an Ineligible File Tracking System. This system will be used to restrict (through an automated environment) producers who have been declared ineligible to obtain benefits provided by the Federal crop insurance program. The FCIC expects to implement the Ineligible File Tracking System beginning with the 1995 fiscal year.

E. Expand the Nonstandard Classification System (NCS)

FCIC instituted the NCS for the 1990 crop year because evidence indicated that a small percentage of insured persons had losses in nearly every year. The losses paid to these persons far exceeded paid premiums. For various reasons, the insured yields for these individuals exceeded their apparent capabilities, and the premium rates were not representative of the risks posed by these persons. NCS was intended to reduce the insurance guarantee and increase the premium rate for such individuals. Modified-APH eliminates the need to reduce insured yields because the insured yield will be based solely on actual yields when a person is selected for NCS. However, NCS will continue to increase the premium rates as appropriate for those individuals who persistently have losses.

The Agriculture, Rural Development, Food and Drug, and Related Agencies Appropriation Act for the 1994 fiscal year prohibited FCIC from using any funds appropriated to insure crops in certain counties unless an NCS program had been implemented in those counties. Counties were affected if the loss ratio, after applying the 1993 premium rates, was greater than 1.10 more than 70 percent of the years that the crop had been insured in that county. Approximately 2,100 county crop programs were affected by this provision.

For the 1994 crop year, NCS has been extended to 11 crops encompassing over 90 percent of the total value of insurance in force. Additionally, all of the county crop programs affected by the Appropriations language have been included under the NCS. Over 25,000 individuals (about 3.6 percent of all active policies for the 1993 crop year) were included under this program. Not all of these persons had been insured during the base period. NCS also extends to persons who participated in growing the crop in some way but who may not have been insured. These persons also are classified under NCS so that the acreage cannot simply be insured under a different name to avoid the NCS classification.

In 1993, FCIC commissioned a study of the NCS to determine its effectiveness. A draft report of that study indicates that the NCS reduced the loss ratio by 5 to 10 points. This report is undergoing final preparation as this Blueprint for Financial Soundness is finalized.

FCIC will expand the NCS program for the 1995 crop year. All eligible crops will be included, although greater flexibility in selections may be authorized whenever program factors that led to poor experience have been identified. NCS is not suited to certain insured crops (e.g., Texas citrus trees) that are subject to infrequent losses of great severity. The additional savings from NCS are likely to be small in terms of the total business because the crops that constitute the majority of premiums and losses already are included.

F. Institute Premium Rate Adjustments

Premium rates are essential to the success of the crop insurance program. Rates that are too low will not produce adequate income and will lead to persistent losses. High rates will, paradoxically, likely lead to the same

outcome. Excessive premium rates discourage participation by a broadly based cross-section of the farming community. Instead, persons who are most likely to collect indemnities will buy, and it is not likely that rates can be increased as rapidly as the relative risk of the pool of insured persons increases.

FCIC has increased premium rates for all crops in a systematic fashion beginning with the 1991 crop year. Rates have increased as much as 70 percent for some crops in some counties from the 1991 to the 1994 crop years. Decreases of up to 20 percent have been made for some crops in counties with histories of low losses. By an amendment to the Act in 1990, Congress limited general premium rate increases to 20 percent annually.

The above statistics indicate the amounts that FCIC has increased the base premium rates. The average premium rate actually earned (actual premium paid divided by actual liability) may not have increased by the same magnitude for various reasons. Most importantly, insured persons may choose a lower coverage level when the rate increases. By doing so, they accept a lesser degree of protection but also pay a lower premium rate.

FCIC proposes to continue premium rate increases as needed to help achieve the required loss ratio. The rate increases made during 1991–1994 have done much to enhance the actuarial soundness of the program. However, the premium rates for some crops and areas of the country remain below the levels needed to achieve the overall 1.10 loss ratio target.

The impact of premium rate adjustments has been evaluated by using data for the 20 years from 1973–1992. The effectiveness of the adjustments was measured by applying the current 1993 premium rate levels to the historical period from 1973 and all subsequent years. The loss ratios were recalculated by using the revised premium amounts.

This method does not include any change in sales that may occur due to a higher or lower cost of insurance. It assumes the 20-year base period is adequate to measure actuarial performance, an assumption that may not be the most appropriate definition of actuarial soundness. Events such as a 1993 Midwestern flood may or may not be appropriate to include in the 20-year base period for a particular area of the country.

In 1993, seven crops (barley, corn, cotton, grain sorghum, oats, soybeans, and wheat) constituted 75 percent of total premiums. The loss ratio for 1980–1992 for these seven crops was 1.45, identical to the loss ratio for all insured crops for this same period. Thus, changes in premium rates for these crops should be representative of the changes that have been made for all crops in recent years. The premium rate changes for the seven crops through the 1994 crop year are estimated to have been adequate to reduce the 1980–1992 loss ratio from 1.45 to 1.08. This aggregate result meets the 1.10 standard required by OBRA 93, but only two of the seven crops individually meet this standard. Within each of these crops, many parts of the country will meet the standard but others will not. Hence, additional rate changes in 1995 and later years are appropriate.

FCIC recognizes that premium rate increases are an important component of a viable crop insurance program. It is also recognized that increasing premium rates to the levels suggested by the most recent 20 year experience may not be good public policy. Extremely high premium rates will preclude realization of the social benefits and public policy goals of the program because participation will be discouraged. If this happens, experience indicates that ad hoc disaster assistance will be enacted. Such assistance is less likely to satisfy social objectives with regard to maintaining rural communities and adequate supplies of food and fiber because it is uncertain for any particular year or region of the country. Thus, a catastrophic adjustment process may be needed to temper the influence of a year such as 1993. If the weather of 1993 truly is a 1 in 100 year event (or, as some have suggested, a 1 in 500 year event), its influence should be tempered in terms of the premium rates charged to insured persons.

In addition to changing premium rates as needed, FCIC proposes to take a number of additional actions to enhance the accuracy and adequacy of its actuarial activities. These include:

- Develop computer software and other tools to enhance the quality of the data used to establish premium rates and perform actuarial analyses ("STATPLAN" database, due for completion in October 1994).
- Plans to contract with a major actuarial consulting firm to review all aspects of FCIC's actuarial methods.
- Enhance staff skills by additional training in analytical methods for existing personnel and more emphasis on recruitment of actuarial trainees (ongoing) for appropriate functional units.
- Continue to contract with external specialists such as the Economic Research Service, land grant universities, the Cooperative Extension Service, and others (ongoing).
- Develop models to measure sources of change in premium volumes and track the effects of premium rate changes as isolated from changes induced by factors such as price elections, coverage level choices, insured crops, and other factors that are not controllable by the rate-making function (development to begin immediately).

G. Improve Underwriting of Crop Insurance Contracts.

Underwriting begins by establishing the basic terms and conditions of the coverage. These include defining conditions that result in a covered loss, measuring the amount of that loss, and defining the responsibilities of the insured and the insurer. Underwriting continues with proper classification of an insured risk. For example, planting crop B the year after crop A was grown on the same acreage may be riskier that if other crops were grown the previous year. Some land, such as flood plains, is more prone to losses. Quality of management also is important. A farmer who is organized, plans, performs preventive maintenance on equipment, and performs field operations in a timely manner may minimize losses.

A comprehensive underwriting system requires effective risk management strategies and goals, standards, and documentation. Initiatives to improve underwriting that began in the early 1990's will be continued as part of the strategy detailed in this Blueprint. The following specific actions will be pursued:

- Fully automate the actuarial documents to facilitate more comprehensive underwriting at the point of sale and to verify the classification of risk in an automated environment (completed by the 1996 crop year).
- Develop standards and classification systems to assess and classify individual risk, including completion of research intended to develop a "scoring model" for risk that is based on measurable attributes of a person or situation similar to a credit rating model (for implementation by crop year 1996 if this model is feasible).
- Continue to rewrite crop insurance policies to better describe the insurance coverage and limitations and to reduce vulnerabilities to actuarial soundness that exist due to imprecise, unclear, or omitted terms and conditions (ongoing, with major crops scheduled for the 1995 crop year).
- Encourage development of supplemental or alternative insurance

coverages authorized by section 508(b) of the Act so that coverage may be improved with most of the risk remaining in the commercial sector.

Improved underwriting will improve program performance. However, meaningful measures to quantify possible benefits are not readily available. For this reason, FCIC cannot attribute a specific dollar amount to the benefits of improved actuarial systems and crop insurance policies.

H. Emphasize Program Compliance

The FCIC Compliance function is designed to confirm that the Federal crop insurance program is operated and delivered as intended. Through internal reviews based on generally accepted auditing principles, it assures that program controls are in place against excess losses due to waste, fraud and abuse. Compliance emphasis will focus on:

1. Program Delivery

Beginning in 1987, the Compliance staff conducted reviews of program delivery to assess compliance with regulations, policy, and procedure. That year, according to GAO and OIG audits, errors in claims payment represented an estimated 15 percent of all losses paid equaling $55 million of taxpayer dollars. Since that time, Compliance efforts have reduced these errors to approximately 5 percent of indemnities but still need continued improvement. Losses due to claim payment errors are not included in underwriting calculations of risk, so this reduction in excess losses has a direct and immediate impact of lowering the program loss ratio without increasing program cost or premium rates.

To further reduce claims overpayment the Compliance Staff will review the entire operations of each delivery company in coordinated nationwide reviews. The review methodology was recently revised to reflect generally accepted auditing principles and statistically projectable sampling techniques.

Beginning with the 1995 crop year, Compliance requirements will be expanded to define specific quality control and performance measurement processes for each delivery company. Policy service error rates will be monitored. The performance of each company will then be compared to an established national standard.

2. Program Performance

Compliance reviews for several years have shown that a proportion of the excess losses are attributable to features in program construction that produce unintended results. The Compliance Staff will conduct program performance reviews that assess regulations, policies and procedures designed to prevent waste, fraud, and abuse and that the program, policies, and procedures perform as intended.

As an example, in 1989 GAO claims that construction of policy language in the California Safflower program alone resulted in approximately $20 million in excess losses. It is not possible to determine how much of FCIC losses may be attributable to unintended features of program construction. However, recent program performance pilot reviews of the peanut program and regional irrigated practices resulted in an estimated 4 to 10 percent reduction in losses for those areas that may otherwise have gone undetected.

For the past several years Compliance has conducted ad hoc program reviews on topical issues. These reviews will be expanded to identify and target reviews for crop insurance programs with the greatest potential vulnerability.

3. Fraud Prevention

The risk of fraud is particularly acute in the insurance industry. Estimates for property-casualty insurance indicate insurance fraud may represent as much as 15 percent of all losses paid. Recent efforts at crop insurance fraud detection and subsequent prosecution have been increasingly successful. However, after-the-fact controls on program abuse are not fully effective. Compliance will work with the delivery companies to focus on practical, cost efficient fraud prevention. Compliance operations, program performance, and complaint reviews will emphasize identifying systemic vulnerabilities and assessing program safeguards. Discrepancies noted in review findings will be evaluated to determine the underlying causes.

Emphasis also will be placed on measures to control program abuse that include strict contract enforcement and pro-active policy analyses that identifies potential abuse and targets additional claims review. These measures will be coupled with the aggressive implementation of civil sanctions, agent/loss adjuster debarment, and designating producer ineligibility in finding related to program abuse.

I. Assure that Adequate Risk is Borne by the Commercial Insurance Industry

Amendments to the Act in 1990 directed FCIC to assure that adequate risk is borne by the commercial insurance companies reinsured by FCIC, consistent with their ability to bear risk and the availability of commercial reinsurance. For the 1992 reinsurance year (a 12 month period that began on July 1, 1991 and ended on June 30, 1992), FCIC substantially modified its Standard Reinsurance Agreement (SRA) with the commercial insurers which participate in the program. Both the amount and the probability of losses on the part of the commercial insurers were increased in this agreement. Additional incremental changes in the amount of potential gains and losses were made for both the 1993 and 1994 SRA's.

The GAO suggests in a report entitled Crop Insurance Program Has Not Fostered Significant Risk Sharing by Insurance Companies (GAO/RCED 92-25, January 13, 1992) that the changes in the 1992 SRA are not significant enough in the area of risk bearing by the commercial insurance companies. Still, the 1992 SRA fundamentally changed the manner in which gains and losses are calculated, a subtle but effective measure to increase risk. The amount of potential loss increased, but the change in the formula increased the chances that the company would lose in years of poor experience. As a comparison, the commercial industry lost approximately $8 million in 1988 when the crop insurance program sustained a loss ratio of 2.45 primarily due to drought in the Midwest. If that experience is restated to the larger 1993 premium amounts, the loss still would have amounted to only about $10–$15 million. Results from the 1993 crop year are not yet complete, but current estimates indicate that commercial insurers will sustain losses of $80–$85 million although the loss ratio will be less than in 1988. The difference is caused by the SRA changes.

Some will argue that industry-wide losses of $80–$85 million are not significant compared to overall program losses that may be near $900 million in 1993. Two factors bear on this issue:

(1) The ability of the insurance companies to earn reserves under the SRA, and

(2) The effect of losses upon an insurance company's operations in future years.

The commercial industry can bear a greater share of the losses only if there is corresponding opportunity to achieve comparable earnings in favorable years. Over the long term, the industry must achieve a satisfactory rate of return on invested capital, or it would make economic sense for participants to invest in other endeavors. The SRA must allow adequate opportunity to earn this satisfactory rate of return. It also must permit accumulation of reserves to pay losses in years that disasters strike. Under the present SRA

and the conditions of actuarial soundness of the program, there is no opportunity to accumulate the reserves needed to bear a large portion of a $900 million loss.

Losses directly impact the capital structure of the companies. An insurance company leverages its capital (the term "surplus" is used by the industry) to support the volume of business that it writes. As a general rule, an insurance company is permitted by regulators to bear the risk associated with $2 to $3 of premium per $1 of surplus. The ratio of premiums to surplus may be lower for risky lines of insurance such as multiple peril crop insurance. Thus, whenever an insurance company loses a portion of its capital, its ability to accept premiums in future years is reduced by a greater amount, which in turn reduces its ability to earn profits and reserves. These factors must be considered when the ability of the industry to bear risk is evaluated, as is mandated by the Act.

As appropriate, given the factors discussed above, FCIC will evaluate (1) the need to increase risk sharing with the commercial insurance industry as the program achieves greater actuarial soundness, (2) reducing cessions to the assigned risk fund by requiring the industry to share in losses for loss ratios that exceed 5.00, (3) changing the stop loss provisions of the SRA, and (4) recruiting additional commercial insurers to participate in the crop insurance business. These changes will be made incrementally beginning with the 1995 SRA that takes effect on July 1, 1994.

J. Improve Loss Adjustment

Any actuarial and underwriting system can be affected by errors in adjustment of losses. These errors include both overpayment and underpayment of claims. Underpayment would not seem to be a factor influencing actuarial soundness, but failure to pay a loss when due will cause insured persons to question the value of the insurance and potentially reduce participation. The insurance experience also will not accurately depict the nature of the risk insured, leading to inaccuracies in future premium rates.

Some problems in loss adjustment are directly related to deficiencies in underwriting. For example, if the crop insurance policy is not clear on a particular point, the loss adjuster may find it necessary to make a determination in favor of the insured person.

FCIC will undertake the following initiatives to assure high quality of loss adjustment determinations so that results are fair to insured persons and taxpayers:

- Develop uniform loss adjustment standards that clearly specify the requirements for accurate determinations.
- Continue research to improve loss adjustment methods, such as yield appraisal methods and techniques for unharvested crops, and measurement techniques for stored production.
- Strengthen the quality adjustment provisions of crop insurance contracts and develop standards to prevent abuse of production determinations when quality losses are claimed.

The contributions of these factors to achieve the 1.10 target loss ratio will be measured by a reduction in improper amounts paid on claims and a reduced error rate. The potential impact of these actions is difficult to quantify since the initiatives to improve underwriting also affect this area. These actions are ongoing. Loss adjustment standards for major crops and changes to the quality adjustment provisions are targeted for the 1995 crop year.

K. Marketing Crop Insurance

FCIC marketing efforts for 1994 will be directed by a strategic marketing plan based on information and data received from market research compiled across the country. The plan's main objectives will be to inform members of the farming community about changes in the program and to educate farmers about risk management, emphasizing the value of crop insurance to farming operations.

FCIC will conduct a year-long media campaign targeted at publications and broadcast markets with an agricultural audience.

Also, emphasis on outreach to minority farmers, traditionally under-represented in the program, will be coordinated through a Minority Outreach Marketing Plan that specifically identifies minority farmers in each of the 10 FCIC Regional Service Offices.

L. Expand Participation by Introducing New Products

Numerous ideas for products that will enhance the quality and acceptance of the crop insurance program have been suggested. These include cost of production coverage (several different concepts), dollar denominated coverage, revenue insurance, replacement cost insurance, and others. FCIC currently has contracts with the Economic Research Service to evaluate several alternatives in the context of public policy contributions, availability of data to support the concepts, assessments of producer acceptance, and other factors. FCIC proposes to continue such research and seeks comments about additional concepts that may be appropriate. Implementation of a pilot test of the best alternatives will be pursued.

M. Improve Accuracy of Other Program Variables

This section includes items that impact the program but are not easily categorized under a previous heading. These are:

- Unit division. A unit is a tract of land used to establish the amount of insurance and any indemnity. For example, the crop insurance policy defines a unit as all land in a county that is owned by the farmer or rented for cash and planted to the insured crop. This unit may be subdivided under certain conditions, including payment of additional premium. Generally, insured persons favor a program that gives them great flexibility and freedom for establishing a unit. Some research indicates that size of a unit may affect losses, i.e., a unit consisting of 10 acres may have a great loss (in relative terms) than a unit consisting of 100 acres. This research, if verified, suggests that a surcharge may be needed for small acreage units regardless of how these are formed (by dividing larger units or because this is all the land planted to the crop). FCIC will examine the research and determine if this surcharge is appropriate, both actuarially and as a public policy initiative. FCIC also will explore the potential to provide greater flexibility of unit determinations as a tool to enhance program acceptance by customers. The pricing needed to support greater flexibility must be determined before it can be implemented. Implementation of changes will be targeted for the 1996 crop year.
- Program dates. Program dates include sales closing, acreage reporting, cancellation, and others. Several of these dates may directly affect the actuarial soundness of the program. For example, neither the farmer nor the insurer should be able to predict the potential for loss on the sales closing date. However, a study by one university indicates that farmers may achieve better than a 50–50 probability of predicting a loss with the current sales closing date of April 15 in the Midwest. Arguments in favor of having a sales closing date as late as possible generally focus on the need to maximize sales opportunities; i.e., that interest in purchasing crop insurance is greatest as planting time approaches. In a draft

report, the GAO has encouraged FCIC to close sales earlier. FCIC proposes to close sales for the 1995 crop year by 15–30 days earlier than the present dates. FCIC requests comments regarding other actions with regard to program dates that will facilitate achievement of the targeted 1.10 loss ratio.

• Staged guarantees. Staged guarantees reduce the amount of insurance when a crop is lost before harvest. For example, a farmer who abandons a crop within 30 days of planting might be paid only 40 percent of the amount of insurance. The concept underlying staged guarantees is investment costs; the farmer's investment is less than the total needed to produce and harvest the crop. Some believe this approach will reduce outlays for indemnities and help achieve actuarial soundness. However, in the long run its efforts could be to reduce premium rates from levels otherwise needed. The impact of staged guarantees upon customer acceptance of crop insurance may be the valid measure of this concept. FCIC specifically requests comments on this feature and assessments of its potential contribution to achieving the targeted 1.10 loss ratio.

• De minimis yields. This term denotes a yield below which any production is disregarded for the purpose of determining the amount of indemnity. The concept is advanced by interested parties as an equity issue—that it costs the farmer more to harvest the crop than it is worth in the market. If allowed by the program, indemnities will increase compared to the present provisions of the crop policies, which, in turn, requires higher premium rates to achieve the goal. Readers are encouraged to comment on the desirability of increasing premium rates by an amount needed to permit this feature to be included in crop insurance policies.

• Suspension and debarment. Inappropriate determinations and poor administration of the crop insurance program is alleged about agents, loss adjusters, and others who are involved with delivery of crop insurance. The SSN/EIN database is intended to help FCIC monitor the conduct of these persons. However, monitoring in and of itself is insufficient if there are no penalties for violations of program rules. FCIC proposes to develop clear and concise suspension and debarment procedures for agents, loss adjusters, reinsured companies and others who fail to observe the highest standards of performance in program delivery and administration.

• Price Elections. The GAO recommended in a 1991 report that for the major crops, FCIC set its price elections equal to the forecasts issued by the World Agricultural Outlook Board in its semi-annual estimates. These estimates correspond to the cycle used to prepare the annual budget of the United States Government. These estimates are available only twice each year. Based on a sampling of a few years, GAO stated that overall losses would be reduced if this recommendation were adopted. FCIC is committed to offering a price election that complies fully with the requirements of the law. In addition, the offer must be meaningful to farmers. FCIC requests comments regarding this recommendation and assessments by readers of its likelihood of contributing to reduced loss ratios and improved participation.

Readers are requested to identify additional issues that they believe are relevant and important to assist FCIC in its actions to manage the program to achieve the target loss ratio while maintaining or increasing participation levels.

III. Management Actions If Section II Are Not Successful

The actions identified in Section II of this document represent a continuation of current management initiatives that have been and continue to be important for the effective administration of a public program. FCIC believes that successful completion of these actions will meet the objective of achieving actuarial soundness as required by OBRA 93. Several years must elapse before it will be possible to observe FCIC's achievement of the objective. In the interim, attainment must be measured by realistic models of risk that adequately represent the crop insurance program. Flexibility in managing the program to attain the objective while simultaneously achieving other important policy objectives must be stressed.

Few options that do not adversely affect participation in a material manner are available in the event the actions described in this blueprint are determined to be inadequate. One option is to focus better on defining the risk that is included in the premium rates charged to current insureds. Extreme crop disasters (such as the 1993 flooding and cold, wet growing season) tend to be widespread and occur infrequently. Crop insurance is not actuarially sound in a commercial sense because the private sector cannot manage the magnitude of these risks or arrange the financing over the long periods of time needed to accumulate reserves for a major disaster. This characteristic of crop disasters argues that actuarial soundness perhaps should be measured on a basis that separates normally expected conditions from the extreme disasters. This would serve to more precisely define the risk included in the premium rates for current insureds, and the risk that should be amortized over longer time periods.

If the above is not acceptable, another action would be to limit the liability of crop insurance to specific areas and crops. This limitation could take the form of complete withdrawal of insurance in some cases, or limitations on the volume of business that would be accepted in a year for a crop or area. Commercial insurers use this process to manage their exposure to avoid concentrations geographically or by product line. Crop insurance may need the same management of its exposures rather than accepting any and all risk whenever farmers decide to enter and exit the program. This extreme action would indicate that the program was unable to completely fulfill its social and public policy responsibilities, and must be regarded as an initiative of last resort.

IV. Management Actions If Actions in Section II Are More Successful Than Needed

The greatest impediment to increased program participation will be high premium rates that might result from the actions defined in this plan. Moderation of premium rate increases will be a priority if more stringent program administration reduces the loss ratio below the target. If this occurs, experience should be examined to identify losses paid that no longer should be expected. Once the impact of those losses is eliminated from the experience, some improvement in premium rates would be anticipated. FCIC believes that the remaining management actions that have improved administration of the program or that have better defined the coverage provided to U.S. agriculture should not be relaxed because these generally represent good administration of public policy.

Done in Washington, DC on April 1, 1994.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 94–8244 Filed 4–5–94; 8:45 am]

BILLING CODE 3410–08–M

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Americans With Disabilities Act Accessibility Guidelines for Buildings and Facilities

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of intent to establish advisory committee.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) announces its intent to establish an advisory committee to review the Americans with Disabilities Act Accessibility Guidelines (ADAAG) for buildings and facilities and requests applications from interested organizations for members to serve on the committee. The committee will make recommendations to the Access Board for updating ADAAG to ensure that the guidelines remain consistent with technological developments and changes in national standards and model codes, and meet the needs of individuals with disabilities.

DATES: Applications should be received by June 6, 1994.

ADDRESSES: Applications should be sent to the Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Fax number (202) 272–5447.

FOR FURTHER INFORMATION CONTACT: Marsha Mazz, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–5434 extension 21 (Voice); (202) 272–5449 (TTY). This document is available in alternate formats (cassette tape, braille, large print, or computer disc) upon request.

SUPPLEMENTARY INFORMATION: The Architectural and Transportation Barriers Compliance Board (Access Board) is responsible for developing guidelines under the Americans with Disabilities Act of 1990 to ensure that newly constructed and altered buildings and facilities covered by the law are readily accessible to and usable by individuals with disabilities.[1] The Access Board published its accessibility guidelines for the Americans with Disabilities Act in July 1991. 36 CFR part 1191, Appendix A. These guidelines, known as the Americans with Disabilities Act Accessibility Guidelines (ADAAG), have been adopted by the Department of Justice and the Department of Transportation as the accessibility standards for newly constructed and altered places of public accommodation, commercial facilities, and transportation facilities covered by the Americans with Disabilities Act.[2] 28 CFR part 36, Appendix A; 49 CFR part 37, Appendix A.

When it initially published ADAAG, the Access Board announced that it would periodically review and update the guidelines to ensure that they remain consistent with technological developments and changes in national standards and model codes, and meet the needs of individuals with disabilities. 56 FR 35410 (July 26, 1991). The Access Board also stated that it would work cooperatively with national standards and model code organizations to achieve a single standard over time that meets the requirements of the Americans with Disabilities Act and that can be adopted as an accessibility code by State and local governments throughout the country. Id.

The Access Board will begin the process of reviewing and updating ADAAG this fiscal year by establishing an ADAAG Review Advisory Committee (Committee). The establishment of the Committee would be in the public interest and would support the agency in performing its duties and responsibilities under the Americans with Disabilities Act. The Committee will review ADAAG in its entirety and make recommendations to the Access Board on:

- Improving the format and usability of ADAAG;
- Reconciling editorial and substantive differences between ADAAG and national standards and model codes, including the CABO/ANSI A117.1–1992 American National Standard for Accessible and Usable Buildings and Facilities;
- Updating ADAAG to reflect technological developments and to meet the needs of individuals with disabilities; and
- Coordinating future revisions to ADAAG with national standards and model codes organizations.

The Committee will be expected to present a report with its recommendations to the Access Board within one year of the Committee's first meeting.

The Access Board requests applications from organizations representing the following interests for membership on the Committee:

- Architects and design professionals;
- Building owners and operators;
- Individuals with disabilities;
- Model code groups;
- State and local building and accessibility code officials; and
- Other persons affected by accessibility standards.

The number of Committee members will be limited to effectively accomplish the Committee's work and will be balanced in terms of interests represented.

Applications should be sent to the Access Board at the address listed at the beginning of this notice. The application should include a statement of the organization's interests and the name, title, address and telephone number of the person who would represent the organization on the Committee. The application should also describe of the person's qualifications, including any experience the person has had with developing or applying national standards, model codes, or State and local codes. Committee members will not be compensated for their service. The Access Board may pay travel expenses for a limited number of persons who would otherwise be unable to participate on the Committee. Committee members will serve as representatives of their organizations, not as individuals. They will not be considered special government employees and will not be required to file confidential financial disclosure reports.

After the applications have been reviewed, the Access Board will publish a notice in the **Federal Register**

[1] The Access Board is an independent Federal agency established by section 502 of the Rehabilitation Act of 1973, as amended, whose primary mission is to promote accessibility for individuals with disabilities. The Access Board consists of 25 members. Thirteen are appointed by the President from among the public, a majority of who are required to be individuals with disabilities. The other twelve are heads of the following Federal agencies or their designees whose positions are Executive Level IV or above: The Departments of Health and Human Services, Education, Transportation, Housing and Urban Development, Labor, Interior, Defense, Justice, Veterans Affairs, and Commerce; General Services Administration; and United States Postal Services.

[2] The Access Board has initiated rulemaking to add new sections to ADAAG for certain State and local government facilities covered by the Americans with Disabilities Act. 57 FR 60612 (December 21, 1992). Under Department of Justice regulations, State and local governments presently have the option of using ADAAG or an earlier accessibility standard, the Uniform Federal Accessibility Standards (UFAS), when constructing or altering buildings and facilities. 28 CFR 35.151(c). The Department of Justice is expected to amend the regulations in the near future to eliminate this option. The Access Board is also working with other Federal agencies to use ADAAG as the basis for the accessibility standard for federally financed facilities covered by the Architectural Barriers Act. Eventually, it is anticipated that there will be a single accessibility standard for all public and private buildings and facilities covered by the Americans with Disabilities Act and the Architectural Barriers Act.

announcing the appointment of Committee members and the first meeting of the Committee. The Committee will operate in accordance with the Federal Advisory Committee Act, 5 U.S.C. app 2. The Office of Management and Budget has approved the Committee in accordance with Executive Order 12838. Committee meetings will be held in Washington, DC. Each meeting will be open to the public. A notice of each meeting will be published in the **Federal Register** at least fifteen days in advance of the meeting. Records will be kept of each meeting and made available for public inspection.

Although the Committee will be limited in size, there will be an opportunity for the public to present written information to the Committee and to comment at Committee meetings. Persons and organizations who are interested in particular sections of ADAAG, are encouraged to inform the Access Board of their interests. The Access Board will notify persons and organizations who indicate interest in particular sections of ADAAG when Committee meetings are scheduled to discuss those sections.

Authorized by vote of the Access Board on November 10, 1993.

Judith E. Heumann,

Chairman, U.S. Architectural and Transportation Barriers Compliance Board.

[FR Doc. 94–8230 Filed 4–5–94; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration.

Title: National Security Assessment of the Cartridge and Propellant Actuated Device Industry.

Agency Form Number: None.

OMB Approval Number: None.

Type of Request: New Collection.

Burden: 400 hours.

Number of Respondents: 50.

Avg Hours Per Response: 8 hours.

Needs and Uses: Information will be collected from 50 firms to assess the health and competitiveness of the Cartridge and Propellant Activated Device Industry. Recommendations will be made to maintain the viability of this critical industry.

Affected Public: Businesses or other for-profit institutions, small businesses or organizations.

Frequency: One time.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Gary Waxman, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Gary Waxman, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: March 31, 1994.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–8251 Filed 4–5–94; 8:45 am]

BILLING CODE 3510–CW–F

International Trade Administration

[A–357–804]

Silicon Metal From Argentina; Amendment to Final Results of Antidumping Administrative Review

SUMMARY: On December 14, 1993, the Department of Commerce (the Department) published in the **Federal Register** the final results of administrative review of the antidumping duty order on silicon metal from Argentina. The results covered the period March 29, 1991 through August 31, 1992. For one firm, Silarsa, we are amending these final results due to a clerical error.

EFFECTIVE DATE: April 6, 1994.

FOR FURTHER INFORMATION CONTACT: Maureen McPhillips or John Kugelman at (202) 482–5253, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On December 14, 1993, the Department of Commerce (the Department) published in the **Federal Register** (58 FR 65336) the final results of administrative review of the antidumping duty order on silicon metal from Argentina (57 FR 48779, September 26, 1991). The review covered the period March 29, 1991 through August 31, 1992.

Since Silarsa did not respond to the Department's request for cost of production and constructed value information, for the final results we relied on best information available (BIA) for Silarsa. As BIA, we used the dumping margin petitioners had constructed by using the information on the record of the review.

Subsequent to the publication of the final results, we received timely allegations of ministerial errors from Silarsa. Silarsa requested that we correct certain claimed errors in the calculation of Silarsa's cost of manufacturing (COM) and constructed value (CV), which affected the final margin we assigned to Silarsa. Silarsa pointed out that, contrary to basic accounting principles, the Department had erroneously double-counted the cost of materials by adding "1992 WIP (work in process)" and "1992 Finished Goods" to Silarsa's "1992 Purchases".

In response, petitioners stated that Silarsa's request was without foundation. Petitioners noted that the Department assigned Silarsa a BIA rate of 54.97% because Silarsa terminated its participation in the review only after the Department initiated a sales-below-cost investigation based on petitioners' allegations. Petitioners further asserted that the arguments raised by Silarsa in its clerical error allegation did not constitute the type of ministerial error discussed in 19 CFR 353.28(d), which covers ministerial errors of a clerical or arithmetic nature.

Petitioners contended that Silarsa argued its case in its rebuttal brief and in its December 23, 1993, clerical error allegation. In petitioners' view, this attempt by Silarsa to bring its post-decision reargument of its case under the guise of allowing for identification of ministerial errors is an abuse of that rule and should be rejected.

On March 2, 1994, the Court of International Trade (CIT), in *Silarsa S.A.* v. *United States* (Court No. 94–01–00030), issued an order remanding the final results of the 1991–1992 administrative review of the antidumping duty order on silicon metal from Argentina for the correction of ministerial errors. We agreed with Silarsa and the CIT that certain inventory items were double-counted in petitioners' calculation of Silarsa's cost of materials. On March 17, 1994, the Department submitted its redetermination on remand to the CIT. On March 24, 1994, the CIT affirmed the Department's redetermination on remand.

Amendment to the Final Results of Review

As a result of our correction of this ministerial error, we have determined that the weighted-average margin for Silarsa for the period March 29, 1991 through August 31, 1992 is 24.62 percent.

Accordingly, the Department will determine, and the Customs Service will assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, a cash deposit of 24.62 percent will be effective for all shipments of the subject merchandise produced by Silarsa and entered or withdrawn from warehouse for consumption on or after the publication date of this notice. The cash deposit requirement for manufacturers/exporters other than Silarsa specified in the final results of this administrative review remain unaffected by this amendment.

This notice is published pursuant to section 751(f) of the Tariff Act of 1930, as amended, and § 353.28 of the Department's regulations.

Dated: March 31, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–8271 Filed 4–15–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–351–824, A–307–811]

Postponement of Preliminary Antidumping Duty Determinations: Silicomanganese From Brazil and Venezuela

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: April 6, 1994.

FOR FURTHER INFORMATION CONTACT: Michael Ready (Brazil) or Edward Easton (Venezuela), Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–2613 or 482–1777, respectively.

Postponement

On December 2, 1993, the Department of Commerce (Department) initiated antidumping duty investigations of silicomanganese from Brazil and Venezuela. On March 25, 1994, Elkem Metals Company and the Oil, Chemical & Atomic Workers Local 3–639 (petitioners), requested that the Department postpone its preliminary determinations until June 10, 1994, in order to allow the Department to consider and act upon the sales-below-cost allegations submitted by petitioners, and to further evaluate the deficiencies in respondents' questionnaire responses.

In accordance with section 733(c)(1)(A) of the Tariff Act of 1930 (the Act), as amended and 19 CFR 353.15(c), we find no compelling reasons to deny petitioners' request and are, accordingly, postponing the dates of these preliminary determinations until no later than June 10, 1994.

This notice is published pursuant to section 733(c)(2) of the Act and 19 CFR 353.15(d).

Dated: March 30, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–8260 Filed 4–5–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–588–832]

Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Antidumping Duty Investigation of Color Negative Photographic Paper and Chemical Components Thereof From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: April 6, 1994.

FOR FURTHER INFORMATION CONTACT: Bill Crow, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0116.

Preliminary Determination

We preliminarily determine that color negative photographic paper and chemical components thereof (CNPP) from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on September 20, 1993 (58 FR 50331, September 27, 1993), the following events have occurred.

On October 15, 1993, the International Trade Commission (ITC) issued an affirmative preliminary injury determination.

On November 15, 1993, the Department presented an antidumping duty questionnaire for CNPP to Fuji Photo Film, Company, Ltd., hereinafter referred to as "Fuji" or "respondent" (see February 28, 1994, memorandum to the file). Respondent submitted sales questionnaire responses in December 1993 and January 1994. The Department issued supplemental sales questionnaires in February 1994. Respondent submitted the responses to these supplemental questionnaires in February and March 1994.

On December 14, 1993, respondent submitted a statement in support of the Department postponing the preliminary determination in this investigation. On December 23, 1993, petitioner requested that the Department postpone the preliminary determination until March 29, 1994, pursuant to 19 CFR 353.15(c) (1993). The Department granted this request on January 6, 1994 (59 FR 1927, January 13, 1994).

On March 2, 1994, petitioner submitted an allegation that critical circumstances exist with respect to imports of CNPP from Japan. On March 4, 1994, the Department sent respondent a critical circumstances questionnaire. Respondent submitted responses to the Department's critical circumstances questionnaire on March 18, 1994.

On March 8, 1994, in accordance with 19 CFR 353.20(b), respondent requested that, in the event of an affirmative preliminary determination, the Department postpone the final determination.

Scope of Investigation

For purposes of this investigation, color negative photographic paper is all sensitized, unexposed silver-halide color negative photographic paper, whether in master rolls, smaller rolls or sheets. Chemical components include sensitized (whether chemically or spectrally) and unsensitized emulsions, couplers, and coupler dispersions used in making color negative photographic paper.

Unsensitized silver-halide emulsions consist of silver-halide microcrystals dispersed in a gelatin and water matrix after preparation and washing to remove soluble salts. Unsensitized emulsions are naturally sensitive to blue and ultraviolet light, but cannot efficiently convert light to form a color image without further processing. Sensitized emulsions have been treated to increase their sensitivity across the entire spectrum and/or treated by the addition of spectral sensitizing dyes to make the emulsions selectively sensitive to

specific wavelengths of light. A coupler is a colorless, water-insoluble chemical capable of reacting with a silver-halide development product to form a dye. A coupler dispersion consists of a coupler dispersed in a water-gel solution, and may contain organic solvents, chemicals to stabilize the coupler and other substances.

Specifically excluded from this investigation are all paper and chemical products not used in the silver halide process which are used in other imaging technologies. Products outside the scope include toner and developer chemicals used in electrostatic or indirect imaging processes (e.g., xerography), products used in laser printing, and instant photography products.

Also excluded from the scope of the investigation is paper that is designed exclusively for use in graphic arts proofing equipment and does not exceed 160 microns in thickness, and emulsions classified under subheading 3707.10.0000 of the Harmonized Tariff Schedule of the United States (HTSUS) that are used in the manufacture of monochrome graphic arts film or paper that are not used in the production of color negative photographic paper.

The color negative photographic paper subject to this investigation is currently classifiable under HTSUS subheadings 3703.10.3030 and 3703.20.3030. Emulsions are currently classifiable under HTSUS subheadings 3707.10.0000 and 3707.90.3000. Couplers and coupler dispersions are currently classifiable under HTSUS subheadings 3707.90.3000, 3707.90.6000, 2933.19.3000, 2933.90.2500 and 2934.90.2000. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

To avoid suspension of liquidation of non-subject chemicals, those items entered under the HTSUS subheadings listed above, which are not for use in the color negative photographic paper production process, must be accompanied by an importer's declaration to the Customs Service to that effect.

In order to be excluded from the suspension of liquidation ordered in this notice, all sensitized (whether chemically or spectrally) and unsensitized emulsions, couplers, and coupler dispersions entered into the United States must be accompanied by an importer's declaration to the Customs Service to the effect that they are not for use in the color negative photographic paper production process and will not be used in the color negative photographic paper production process.

On February 18, 1994, petitioner and respondent submitted comments on whether the chemical components are in the same class or kind of merchandise as color negative photographic paper. Petitioner argues that the subject merchandise constitutes one class or kind of merchandise, whereas respondent argues that the merchandise included in the scope of investigation constitutes two classes or kinds of merchandise. We determined that color negative photographic paper and the chemical components constitute one class or kind of merchandise (see March 24, 1994, decision memorandum from Richard W. Moreland to Barbara R. Stafford). We based our determination on the criteria set forth in *Diversified Products* v. *United States*, 572 F. Supp. 883 (1983) and *Kyowa Gas Chemical Industry Co., Ltd.* v. *United States*, 582 F. Supp. 887 (1984).

Period of Investigation

The period of investigation (POI) is March 1, 1993, through August 31, 1993.

Such or Similar Comparisons

In this investigation, we have only examined sales of color negative photographic paper; we have not examined sales of chemical components because respondent did not make such sales during the POI (see October 22, 1993, memorandum from James Maeder to David Binder). We have determined for purposes of the preliminary determination that the color negative photographic paper covered by this investigation comprise a single category of "such or similar" merchandise. Respondent reported products that are identical according to the Department's matching criteria, but have minor cost differences based on the emulsions contained in each product. For purposes of the preliminary determination, we are treating these products as identical and are making no adjustments for differences in merchandise between the products as claimed by respondent in accordance with 19 CFR 353.57. This is because respondent failed to provide a narrative description for its adjustments for differences in merchandise that explains the exact nature, source, and size of each difference. We have instructed the respondent to submit a thorough description of its adjustments for differences in merchandise so that these adjustments can be considered for use in the final determination (see February 23, 1994, decision memorandum from Richard W. Moreland to Barbara R. Stafford).

Fair Value Comparisons

To determine whether sales of CNPP from Japan to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We based USP on exporter's sales price (ESP), in accordance with section 772(c) of the Act, because the subject merchandise was sold to the first unrelated purchaser after importation into the United States.

On March 22, 1994, respondent submitted clarifications regarding its response to section C of the Department's questionnaire regarding U.S. sales. Respondent requested that the Department consider backup calculations for reported ocean freight charges, and U.S. short-term interest rates. In this submission, Fuji also provided clarification concerning certain Fuji-Hunt (a U.S. entity related to Fuji) delivery expenses and certain Fuji-Hunt indirect selling expenses. This submission was received too late to be used for purposes of the preliminary determination; however, we will consider this submission in our final determination.

Based on information submitted by respondent, we reclassified a certain movement expense as revenue, and added it to the U.S. gross unit price. We added, where appropriate, freight revenue to the U.S. gross price, before adjusting for freight costs.

We made deductions, where appropriate, for discounts and rebates, and the following movement charges: foreign brokerage, foreign inland freight, ocean freight, marine insurance, U.S. brokerage and handling, U.S. broker's commission, U.S. duty, and several U.S. inland freight charges including inland freight insurance. For certain inland freight charges applicable to sales made through Fuji-Hunt, as minor charge-specific best information available (BIA), the Department increased the reported charges to account for missing values. Additionally, we deducted commissions and direct selling expenses which include advertising, credit expenses, and a combination of promotional expenses which constitute other direct selling expenses. We recalculated U.S. imputed credit using the reported dates of shipment and payment because the amounts reported by the respondent did not consistently reflect the method described in the questionnaire response. We then

adjusted the U.S. price for additional product preparation performed by certain parties after exportation. The preparation performed by certain parties was treated as a component of total packing costs which were deducted from USP.

We also deducted indirect selling expenses which include those indirect selling expenses that Fuji-USA (Fuji's principal related U.S. entity) incurred in its general sales activities, those indirect selling expenses that Fuji-Hunt incurred in its sales and marketing activities, foreign and U.S. pre-sale warehousing expenses, inventory carrying costs, premiums for product liability insurance, and indirect selling expenses incurred in Japan.

For purposes of the preliminary determination, we are accepting respondent's treatment of Fuji-USA's commissions paid to an unrelated party and Fuji-Hunt's commissions as direct selling expenses and commissions paid to Fuji-USA's employees as indirect selling expenses pending the receipt of additional information to be used for the final determination. We treated all advertising costs as direct selling expenses because respondent reported that all advertising is directed at their customers' customers.

We made an adjustment to U.S. price for the consumption tax paid on the comparison sales in Japan. In *Federal-Mogul Corporation and The Torrington Company* v. *United States*, Slip Op. 93–194 (CIT, October 7, 1993), the Court of International Trade (CIT) prohibited us from applying a purely tax-neutral margin calculation methodology. Accordingly, we made our tax methodology conform to the instructions of the CIT, and adjusted U.S. price for taxes by multiplying the home market tax rate by the price of the U.S. merchandise at the point in the chain of commerce of the U.S. merchandise that is analogous to the point in the home market chain of commerce at which the foreign government applies the home market consumption tax.

In this investigation, the tax levied on the subject merchandise in the home market is three percent. We calculated the appropriate tax adjustment to be three percent of the price of the U.S. merchandise net of discounts reflected on the invoice at the time of sale (which, in this case, is the point in the chain of commerce of the U.S. merchandise that is analogous to the point in the home market chain of commerce at which the foreign government applies the home market consumption tax). We then added this amount to the U.S. price. We also calculated the amount of the tax adjustment that was due solely to the inclusion of expenses in the original tax base that are later deducted from the price to calculate USP (i.e., three percent of the sum of any adjustments, expenses and charges that were deducted from the price of the U.S. merchandise). We deducted this amount after all other additions and deductions had been made. By making this additional tax adjustment, we avoid a distortion that would cause the creation of a dumping margin even when pre-tax dumping is zero.

The Department instructed respondent to report by April, 1, 1994, a revised sales listing for sales of further manufactured merchandise. Since respondent will submit this sales information too late to be included in our preliminary analysis, and because respondent's first submission was too deficient to use for purposes of this preliminary determination, we have not included further manufacturing sales in our analysis (see March 24, 1994, decision memorandum from Richard W. Moreland to Barbara R. Stafford).

Foreign Market Value

We compared the volume of home market sales of subject merchandise to the volume of third country sales to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating FMV. We found that the home market was viable for sales of CNPP.

The Department excluded from its analysis certain sales of control paper, hobby paper, crystal paper, and softech paper, because these sales were made outside of the ordinary course of trade due to the nature of the products and were made in insignificant quantities. We omitted error entries and inventory adjustment entries because these entries are not sales of CNPP, and because respondent did not directly tie these entries to the relevant sales in the CNPP database. Additionally, we dropped cancellation transactions from the sales database, as respondent has stated that it cannot identify the original transaction to which a specific cancellation entry applies. We also excluded certain low-priced sales of CNPP because, despite a specific request to do so, respondent did not adequately explain the nature of, or circumstances surrounding, these low-priced sales.

We used the Department's current related party test, which considers differences in the level of trade, to determine whether sales to related customers were made on an arm's-length basis. For purposes of the preliminary determination, we considered a party as related to respondent whenever respondent had substantial ownership in, or contractual agreements constituting business control over, the party. See Appendix II to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina (58 FR 37077, July 9, 1993) for more information on the Department's related party test. We did not include in our analysis any sales to related customers that we determined were not at arm's length.

We calculated FMV based on delivered prices, inclusive of packing. We made deductions for inland freight, rebates and discounts, and direct selling expenses, including promotional and advertising expenses, credit expenses, warranty and guaranty expenses, and interest for guarantee deposits, where applicable. For those rebate programs where respondent did not identify in the database which customer actually received the rebate, we made no adjustment. We disallowed any rebate not established before the filing of the petition. For one expense claimed as a rebate, we determined that the expense, although viewed as a direct selling expense for CNPP, was overstated through a misallocation of the costs; consequently we did not make any adjustment for this expense, but will consider doing so subsequent to verification and further explanation. With regard to one promotional program reported as a direct selling expense, we did not make an adjustment to FMV because respondent failed to report the expense properly.

We treated all advertising costs as direct selling expenses because respondent reported that all advertising is directed at the customers' customers. We deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(1) of the Act. Where respondent's reported total packing costs in Japan for certain transactions for certain packing forms omitted a particular packing processing charge, we added, as minor charge-specific BIA, the reported average charge.

We made the following deductions from FMV in accordance with 19 CFR 353.56. We calculated home market credit expenses using the reported dates of shipment and payment. Where no payment had been received we used the average credit period for home market sales.

We deducted from FMV the weighted-average home market indirect selling expenses, including inventory carrying costs, warehousing expenses, product

liability premiums, technical service expenses, and two promotional minilab programs, up to the amount of indirect selling expenses incurred on U.S. sales. We reclassified these two promotional programs as indirect selling expenses. While respondent had reported these as direct selling expenses, we have preliminarily determined that respondent has not directly tied them to specific sales of CNPP. We also reclassified technical expenses as indirect selling expenses because respondent's documentation illustrates that these expenses relate to general long-term assistance, rather than customer- or sales-specific expenses. We offset commissions paid to unrelated parties in the United States by the amount of indirect selling expenses incurred in the home market by respondent, capped by the sum of U.S. commissions and indirect selling expenses incurred, both in Japan and the United States, for U.S. sales.

For purposes of the preliminary determination, we have treated all movement expenses as direct selling expenses. Therefore, in accordance with the decision in *Ad Hoc Committee of AZ-NM-TX-FL Producers of Gray Portland Cement* v. *United States*, Slip Op. 93–1239 (Fed. Cir., January 5, 1994), we made a circumstance-of-sale adjustment for home market movement expenses. We recalculated indirect selling expenses incurred in the home market by reallocating certain rebates and promotional programs as indirect selling expenses rather than as charges or direct selling expenses, respectively, because we found that respondent misclassified these expenses. We classified product liability expenses as indirect selling expenses because respondent's explanations demonstrate that its liability policy is general in nature and not tied to specific sales.

We included in FMV the amount of the consumption tax collected in the Japanese home market. We also calculated the amount of the tax that was due solely to the inclusion of expenses in the original tax base that are later deducted from home market price to calculate FMV (i.e., three percent of the sum of any adjustments, expenses, charges, and offsets that were deducted from the home market price). We deducted this amount from the FMV after all other additions and deductions were made. By making this additional tax adjustment, we avoid a distortion that would cause the creation of a dumping margin even when pre-tax dumping is zero. In addition, we calculated a re-adjustment of the amount of tax to take into account the amount of packing expenses added to FMV (i.e., three percent of the packing expenses).

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we will verify the information used in making our final determination.

Critical Circumstances

On March 2, 1994, petitioner alleged that "critical circumstances" exist with respect to imports of CNPP and chemical components thereof from Japan. We preliminarily find that critical circumstances do not exist with respect to imports of CNPP from Japan, in accordance with section 733(e)(1) of the Act. To determine whether or not there have been massive imports of CNPP (one of the criteria in a critical circumstances analysis) we compared the export volume for the six months subsequent to the filing of the petition to that for the six months prior to the filing of the petition. We found that exports of this merchandise from respondent during the period subsequent to receipt of the petition had decreased. Unless we find that imports of the subject merchandise were massive, we do not need to determine whether there is a history of dumping in the United States or elsewhere or whether there is knowledge that the exporter was selling the merchandise at less than its fair value.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of CNPP from Japan, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin, as shown below. The suspension of liquidation will remain in effect until further notice.

Producer/manufacturer/exporter	Margin percentage
Fuji Photo Film Co. Ltd.	360.95
All Others	360.95

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination.

If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Postponement of Final Determination

On March 8, 1994, in accordance with 19 CFR 353.20(b), the sole respondent requested that, in the event of an affirmative determination, the Department postpone the final determination. We find no compelling reason to deny the request. Accordingly, we are postponing the date of the final determination until not later than 135 days after the date of publication of this notice.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies may be submitted by any interested party to the Assistant Secretary for Import Administration no later than June 30, 1994, and rebuttal briefs no later than July 8, 1994. We request that parties in this case provide an executive summary of no more than 2 pages in conjunction with case briefs on the major issues to be addressed. Further, briefs should contain a table of authorities. Citations to Commerce determinations and court decisions should include the page number where cited information appears. In preparing the briefs, please begin each issue on a separate page. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to give interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on July 15, 1994, at 10 a.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B–099, within ten days of the publication of this notice in the **Federal Register**. Requests should contain:

(1) The party's name, address, telephone number;

(2) The number of participants; and

(3) A list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to the issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)) and 19 CFR 353.15(a)(4).

Dated: March 29, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–8262 Filed 4–5–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–421–806]

Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Antidumping Duty Investigation of Color Negative Photographic Paper and Chemical Components Thereof From the Netherlands

AGENCY: Import Administration, International Trade Administration, Commerce.

EFFECTIVE DATE: April 6, 1994.

FOR FURTHER INFORMATION CONTACT: John Beck, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3464.

Preliminary Determination

We preliminarily determine that color negative photographic paper and chemical components thereof (CNPP) from the Netherlands are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margin is shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on September 20, 1993, (58 FR 50331, September 27, 1993), the following events have occurred.

On October 15, 1993, the U.S. International Trade Commission (ITC) issued an affirmative preliminary determination.

On November 19, 1993, the Department presented an antidumping duty questionnaire to Fuji Photo Film B.V. (respondent).

Respondent submitted its responses to the Department's sales and cost questionnaires in December 1993 and January 1994. The Department issued deficiency sales and cost questionnaires in February 1994. Respondent submitted its responses to these deficiency questionnaires in February and March 1994.

On December 14, 1993, respondent submitted a statement in support of the Department postponing the preliminary determination in this investigation. On December 23, 1993, Eastman Kodak Company (petitioner) requested that the Department postpone the preliminary determination until March 29, 1994, pursuant to 19 CFR 353.15(c) (1993). The Department granted this request on January 6, 1994 (59 FR 1927, January 13, 1994).

On March 2, 1994, petitioner submitted an allegation that critical circumstances exist with respect to imports of CNPP from the Netherlands. On March 4, 1994, the Department sent respondent a critical circumstances questionnaire. On March 18, 1994, respondent submitted its response to the questionnaire.

On March 8, 1994, respondent requested that, in accordance with 19 CFR 353.20(b), in the event of an affirmative preliminary determination, the Department postpone the final determination.

Scope of Investigation

For purposes of this investigation, color negative photographic paper is all sensitized, unexposed silver-halide color negative photographic paper, whether in master rolls, smaller rolls or sheets. Chemical components include sensitized (whether chemically or spectrally) and unsensitized emulsions, couplers, and coupler dispersions used in making color negative photographic paper.

Unsensitized silver-halide emulsions consist of silver-halide microcrystals dispersed in a gelatin and water matrix after preparation and washing to remove soluble salts. Unsensitized emulsions are naturally sensitive to blue and ultraviolet light, but cannot efficiently convert light to form a color image without further processing. Sensitized emulsions have been treated to increase their sensitivity across the entire spectrum and/or treated by the addition of spectral sensitizing dyes to make the emulsions selectively sensitive to specific wavelengths of light. A coupler is a colorless, water-insoluble chemical capable of reacting with a silver-halide development product to form a dye. A coupler dispersion consists of a coupler dispersed in a water-gel solution, and may contain organic solvents, chemicals to stabilize the coupler and other substances.

Specifically excluded from this investigation are all paper and chemical products not used in the silver halide process which are used in other imaging technologies. Products outside the scope include toner and developer chemicals used in electrostatic or indirect imaging processes (e.g., xerography), products used in laser printing, and instant photography products.

Also excluded from the scope of the investigation are paper that is designed exclusively for use in graphic arts proofing equipment and does not exceed 160 microns in thickness, and emulsions classified under subheading 3707.10.0000 of the Harmonized Tariff Schedule of the United States (HTSUS) that are used in the manufacture of monochrome graphic arts film or paper that are not used in the production of color negative photographic paper.

The color negative photographic paper subject to this investigation is currently classifiable under HTSUS subheadings 3703.10.3030 and 3703.20.3030. Emulsions are currently classifiable under HTSUS subheadings 3707.10.0000 and 3707.90.3000. Couplers and coupler dispersions are currently classifiable under HTSUS subheadings 3707.90.3000, 3707.90.6000, 2933.19.3000, 2933.90.2500 and 2934.90.2000. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

To avoid suspension of liquidation of non-subject chemicals, those items entered under the HTSUS subheadings listed above, which are not for use in the color negative photographic paper production process, must be accompanied by an importer's declaration to the Customs Service to that effect.

In order to be excluded from the suspension of liquidation ordered in this notice, all sensitized (whether chemically or spectrally) and unsensitized emulsions, couplers, and coupler dispersions entered into the United States must be accompanied by an importer's declaration to the Customs Service to the effect that they are not for use in the color negative photographic paper production process and will not be used in the color negative photographic paper production process.

On February 18, 1994, petitioner and respondent submitted comments on whether the chemical components are in the same class or kind of merchandise as color negative photographic paper. Petitioner argues that the subject merchandise constitutes one class or kind of merchandise, whereas respondent argues that the merchandise included in the scope of investigation constitutes two classes or kinds of merchandise. We determined

that color negative photographic paper and the chemical components constitute one class or kind of merchandise (see March 24, 1994, decision memorandum from Richard W. Moreland to Barbara R. Stafford). We based our determination on the criteria set forth in *Diversified Products* v. *United States*, 572 F. Supp. 883 (1983) and *Kyowa Gas Chemical Industry Co., Ltd.* v. *United States*, 582 F. Supp. 887 (1984).

Period of Investigation (POI)

We initiated this investigation using a six-month POI from March 1, 1993, through August 31, 1993. On October 13, 1993, petitioner requested that the Department expand the POI. We expanded the POI in order to capture U.S. shipments made pursuant to an October 1, 1991, contract with the single-largest unrelated purchaser (see December 30, 1993, decision memorandum from Richard W. Moreland to Barbara R. Stafford). We instructed respondent to submit foreign sales information of the subject merchandise for the month of November 1991 to be the basis for the foreign market value (FMV) comparison to the U.S. shipments made pursuant to the long-term contract (see January 17, 1994, decision memorandum from Richard W. Moreland to Barbara R. Stafford).

Such or Similar Comparisons

In this investigation, we have examined sales of color negative photographic paper; we have not examined sales of chemical components because respondent did not make such sales during the POI (see October 22, 1993, memorandum from James Maeder to David Binder). We have determined for purposes of the preliminary determination that the color negative photographic paper covered by this investigation comprise a single category of "such or similar" merchandise. Respondent reported products that are identical according to the Department's matching criteria but have minor cost differences based on the emulsions contained in each product. For purposes of the preliminary determination, we are treating these products as identical and are making no adjustments for differences in merchandise between the products as claimed by respondent in accordance with 19 CFR 353.57. This is because respondent failed to provide a narrative description for its adjustments for differences in merchandise that explains the exact nature, source, and size of each difference. We have instructed the respondent to submit a thorough description of its adjustments for differences in merchandise so that these adjustments can be considered for use in the final determination (see February 23, 1994, decision memorandum from Richard W. Moreland to Barbara R. Stafford).

Fair Value Comparisons/Multinational Corporation Provision

In its petition, Kodak alleged that all of the criteria for invoking the multinational corporation (MNC) provision have been met. To determine whether sales of CNPP from the Netherlands to the United States were made at less than fair value, we compared the United States price (USP) to the appropriate FMV as required by the MNC provision.

The MNC provision, contained in section 773(d) of the Act, requires the Department to determine if the following three criteria are met:

(1) Merchandise exported to the United States is being produced in facilities which are owned or controlled, directly or indirectly, by a person, firm or corporation which also owns or controls, directly or indirectly, other facilities for the production of such or similar merchandise which are located in another country or countries;

(2) The sales of such or similar merchandise by the company concerned in the home market of the exporting country are nonexistent or inadequate as a basis for comparison with the sales of the merchandise to the United States; and,

(3) The FMV of such or similar merchandise produced in one or more of the facilities outside the country of exportation is higher than the FMV of such or similar merchandise produced in the facilities located in the country of exportation. (In this comparison, we must adjust the FMVs for any differences between the costs of production in the two countries (including taxes, labor, materials and overhead), pursuant to section 773(d) of the Act).

If the above criteria are met, then the MNC provision instructs the Department to compare USP to the FMV of such or similar merchandise produced in one or more facilities outside the country of exportation.

Regarding the first criterion, Fuji Photo Film B.V. is wholly owned by Fuji Photo Film Co., Ltd. in Japan. Further, Fuji Photo Film Co., Ltd. produces the subject merchandise in Japan. Thus, Fuji Photo Film B.V. meets the first criterion.

Regarding the second criterion, we compared the volume of home market sales of color negative photographic paper to the volume of third country sales of color negative photographic paper, in accordance with section 773(d)(2) of the Act and 19 CFR 353.48(a), in order to determine whether there were sufficient sales of color negative photographic paper in the home market to compare to sales of color negative photographic paper to the United States. We found that the Netherlands home market was not viable for comparison to sales to the United States (see January 11, 1994, memorandum from Richard W. Moreland to Barbara R. Stafford).

We determined, pursuant to 19 CFR 353.49, that Germany is the most appropriate third country market for purposes of the comparison of FMVs under the MNC provision because:

(1) Germany is the largest single third country market;

(2) The type of merchandise sold in Germany is more similar to Dutch exports of color negative photographic paper to the U.S. than the type of merchandise sold elsewhere; and

(3) The channels of distribution in Germany are most similar to those for color negative photographic paper from the Netherlands sold in the United States (see December 30, 1993, memorandum from Richard W. Moreland to Barbara R. Stafford).

Regarding the third criterion, we compared German and Japanese FMVs. To calculate the FMVs, we first compared the German and Japanese prices to U.S. price (see the "Foreign Market Value" section of this notice for a complete description of how we calculated the German and Japanese FMVs).

Once we had calculated the two FMVs, we calculated a comparison adjustment for each product-specific FMV to determine whether any of the observed differences in value between the FMV of products produced in Japan and the FMV of products produced in the Netherlands and sold in Germany were attributable to differences in costs of production. The comparison adjustment included the costs of materials, labor, fixed and variable overhead, general and administrative expense and interest incurred in producing the product.

For the German adjustment, the Department relied on the submitted cost information except in the following instances where the costs were not appropriately quantified or valued:

(1) We excluded income from investment grants as this generally relates to income tax credits which are not considered a production cost;

(2) We did not include foreign exchange gains or losses resulting from sales transactions as they are not related to production costs; and,

(3) We reallocated CNPP specific research and development costs to reflect the benefits experienced by facilities in Japan and the Netherlands.

For the Japanese adjustment, the Department relied on the submitted cost information except in the following instances where the costs were not appropriately quantified or valued:

(1) We excluded losses from the disposal of fixed assets as these costs did not appear to relate to the subject merchandise;

(2) We did not include foreign exchange gains or losses resulting from sales transactions as they are not related to production costs;

(3) We reallocated CNPP specific research and development costs to reflect the benefits experienced by facilities in Japan and the Netherlands; and,

(4) We excluded the enterprise tax in our calculation of general and administrative expenses because this tax is based on income and is not considered a production cost.

In calculating the FMVs, Japanese prices included a consumption tax and German prices did not. Thus, we adjusted the Japanese FMV by deducting the consumption tax.

Next, we deducted the German comparison adjustment from the German FMV and the Japanese comparison adjustment from the Japanese FMV. We multiplied the resulting amount for each product by the quantity of U.S. merchandise to which the product was compared in order to provide for an equitable comparison. Finally, we aggregated the values. From these aggregated values, we determined that the Japanese value was higher than the German value. Thus, the third criterion for invoking the MNC provision has been met.

Because all of the above criteria for the MNC provision have been met, we are required to base the FMV for the Netherlands on sales prices by Fuji Photo Film Co., Ltd. in Japan (see the March 10, 1994, memorandum from the team to Barbara R. Stafford for a further discussion of the Department's MNC methodology).

United States Price

We based USP on exporter's sales price (ESP), in accordance with section 772(c) of the Act, because the subject merchandise was sold to the first unrelated purchaser after importation into the United States. Respondent did not provide a revised sales listing for the foreign extended POI sales because of ambiguous language in our deficiency questionnaire regarding the due dates. Therefore, we have not considered the extended U.S. POI sale for purposes of the preliminary determination, but will do so for purposes of the final determination. Additionally, we determined that it is not necessary to examine U.S. further-manufactured sales from the Netherlands for purposes of this investigation (see January 17, 1994, memorandum from Richard W. Moreland to Barbara R. Stafford).

On March 21, 1994, respondent submitted clarifications regarding its response to section C of the Department's questionnaire regarding U.S. sales. Respondent requested that the Department recalculate a certain inland insurance expense and a certain indirect selling expense. This submission was received too late to be used for purposes of the preliminary determination; however, we will consider this submission in our final determination.

Based on information submitted by respondent, we reclassified a certain movement expense as revenue, and added it to the U.S. gross unit price.

We made deductions, where appropriate, for discounts and rebates and for the following movement charges: foreign brokerage, foreign inland freight, marine insurance, ocean freight, U.S. brokerage and handling charges, U.S. duty, U.S. inland freight, and U.S. inland insurance. We added an amount for duty drawback.

We deducted commissions and direct selling expenses which include advertising, credit expenses, and a combination of promotional expenses which constitute other direct selling expenses. We recalculated U.S. imputed credit using the reported dates of shipment and payment because the amounts reported by the respondent did not consistently reflect the method described in the questionnaire response. We have adjusted USP for additional product preparation performed by certain parties after exportation.

We also deducted indirect selling expenses which include those indirect selling expenses that Fuji-USA (respondent's principal related U.S. entity) incurred in its general sales activities, those indirect selling expenses that Fuji-Hunt (a U.S. entity related to respondent) incurred in its sales and marketing activities, foreign and U.S. pre-sale warehousing expenses, inventory carrying costs, premiums for product liability insurance, and indirect selling expenses incurred in Japan.

For purposes of the preliminary determination, we are accepting respondent's treatment of Fuji-USA's commissions paid to an unrelated party and Fuji-Hunt's commissions as direct selling expenses, and commissions paid to Fuji-USA's employees as indirect selling expenses. We treated all advertising costs as direct selling expenses because respondent reported that all advertising is directed at their customers' customers.

We made an adjustment to USP for the consumption tax paid on the comparison sales in Japan. However, in *Federal-Mogul Corporation and The Torrington Company* v. *United States*, Slip Op. 93–194 CIT (October 7, 1993), the Court of International Trade prohibited us from applying a purely tax neutral margin calculation methodology. Accordingly, we made our tax methodology conform to the instructions of the CIT, and adjusted U.S. price for tax by multiplying the Japanese tax rate by the price of the U.S. merchandise at the point in the chain of commerce of the U.S. merchandise that is analogous to the point in the Japanese chain of commerce at which the Japanese government applies the consumption tax.

In this investigation, the tax levied on the subject merchandise in Japan is three percent. We calculated the appropriate tax adjustment to be three percent of the price of the U.S. merchandise net of discounts reflected on the invoice at the time of sale (which, in this case, is the point in the chain of commerce of the U.S. merchandise, that is analogous to the point in the Japanese market chain of commerce at which the Japanese government applies the consumption tax). We then added this amount to the U.S. price. We also calculated the amount of the tax adjustment that was due solely to the inclusion of expenses in the original tax base that are later deducted from the price to calculate USP (i.e., three percent of the sum of any adjustments, expenses and charges that were deducted from the price of the U.S. merchandise). We reduced this tax adjustment to take into account the adjustment to U.S. price for duty drawback (i.e., three percent of the duty drawback amount that was excluded from the tax base). We deducted this amount after all other additions and deductions had been made. By making this additional tax adjustment, we avoid a distortion that would cause the creation of a dumping margin even when pre-tax dumping is zero.

Foreign Market Value

As described in the "Fair Value Comparisons/Multinational Corporation Provision" section of this notice, we had to calculate FMVs in both Germany and Japan in order to make our MNC comparison. We calculated FMVs based

on German and Japanese home market sales prices, pursuant to section 773(d) of the Act. Respondent did not provide a revised sales listing for the foreign extended POI sales because of ambiguous language in our deficiency questionnaire regarding the due dates. Therefore, we have not considered the extended U.S. POI sale for purposes of the preliminary determination, but will do so for purposes of the final determination.

For German sales, we classified respondent's discounts and rebates to reflect the Department's standard definitions of discounts and rebates (i.e., a discount is a price concession before invoicing, whereas a rebate is a price concession after invoicing). We determined that certain discounts were, in fact, rebates, and were treated accordingly. Additionally, we recalculated credit expenses in Germany using the reported dates of shipment and payment.

For Japanese sales, we excluded certain sales of control paper, hobby paper, crystal paper, and softech paper from our analysis because these sales were made outside of the ordinary course of trade due to the nature of the products and were made in insignificant quantities. We omitted error entries and inventory adjustment entries because these entries are not sales of CNPP, nor did respondent directly tie these entries to the pertinent sales in the CNPP database. We also dropped cancelling transactions as respondent stated that it could not identify the original transaction to which a specific cancellation entry applies. Finally, we excluded certain low-priced sales of CNPP in Japan because, despite a specific request to do so, respondent did not adequately explain the nature of, or circumstances surrounding, these low-priced sales.

Additionally, for Japanese sales, we made no adjustment for those rebate programs where respondent did not identify in the database which customer actually received the rebate. Additionally, we disallowed any rebate not established before the filing of the petition. For one expense claimed as a rebate, we determined that the expense, although viewed as a direct selling expense to CNPP, was overstated through a misallocation of the costs; consequently, we did not make any adjustment for this expense, but will consider doing so subsequent to verification and further explanation. With regard to one promotional program reported as a direct selling expense, we did not make an adjustment to FMV because respondent failed to report the expense properly. Because respondent failed to report shipment dates, we were unable to recalculate credit expenses; thus, we made no adjustments for credit expenses. We treated all advertising costs as direct selling expenses because respondent reported that all advertising is directed towards the customers' customers.

For Japan sales, we recalculated indirect selling expenses incurred in the Japanese home market by reallocating certain rebates and promotional programs as indirect selling expenses rather than as charges or direct selling expenses, respectively, because we found that respondent has misclassified these expenses. We classified product liability expenses as indirect selling expenses because respondent's explanations demonstrate that its liability policy is general in nature and not tied to specific sales. We also reclassified technical expenses as indirect selling expenses because respondent's documentation illustrates that these expenses relate to general long-term assistance, rather than customer- or sales-specific expenses.

For both German and Japanese sales, we used the Department's current related party test, which considers differences in the level of trade, to determine whether sales to related customers were made on an arm's-length basis. For purposes of the preliminary determination, we considered a party as related to respondent in Japan whenever there was evidence of substantial ownership in, or contractual agreements constituting business control over, the party. See Appendix II to the Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina (58 FR 37077, July 9, 1993) for more information on the Department's related party test. For both German and Japanese sales, we did not include in our analysis any sales to related customers that we determined were not at arm's length.

We calculated German and Japanese FMVs based on delivered prices, inclusive of packing. We made deductions for discounts and rebates, where applicable. For purposes of the preliminary determination, we have treated all movement expenses as direct selling expenses. Therefore, in accordance with the decision in *Ad Hoc Committee of AZ–NM–TX–FL Producers of Gray Portland Cement* v. *United States*, Slip Op. 93–1239 (Fed. Cir., January 4, 1994), we made a circumstance-of-sale adjustment for foreign movement expenses.

We further deducted from the Japanese FMV the appropriate direct selling expenses, including advertising expenses and warranty expenses. We deducted credit expenses from the German FMV.

We deducted German and Japanese indirect selling expenses, including inventory carrying costs, technical services (Japan only), warehousing (Japan only), and product liability premiums (Japan only) from FMV, capped by the sum of U.S. indirect selling expenses and the U.S. commission amount.

We deducted German and Japanese packing costs and added U.S. packing costs, in accordance with section 773(a)(1) of the Act.

We included in FMV the amount of the consumption tax collected in the Japanese home market. We also calculated the amount of the tax that was due solely to the inclusion of expenses in the original tax base that are later deducted from home market price to calculate FMV (i.e., three percent of the sum of any adjustments, expenses, charges, and offsets that were deducted from the home market price). We deducted this amount after all other additions and deductions were made. By making this additional tax adjustment, we avoid a distortion that would cause the creation of a dumping margin even when pre-tax dumping is zero. In addition, we calculated a re-adjustment of the amount of tax to take into account the amount of packing expenses added to FMV (i.e., three percent of the packing expenses).

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we will verify the information used in making our final determination.

Critical Circumstances

On March 2, 1994, petitioner alleged that "critical circumstances" exist with respect to imports of color negative photographic paper and chemical components thereof from the Netherlands. We will preliminary determine that critical circumstances exist in accordance with section 733(e)(1) of the Act if we determine that there is a reasonable basis to believe or suspect that:

(A)(i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the

exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Regarding requisite (A)(i) above, we normally consider whether there has been an antidumping order in the United States or elsewhere on the subject merchandise in determining whether there is a history of dumping. Regarding requisite (A)(ii) above, we normally consider margins of 25 percent or more for purchase price comparisons and 15 percent or more for exporter's sales price comparisons as sufficient to impute knowledge of dumping. Because the preliminary estimated dumping margin for all exporters of color negative photographic paper and chemical components thereof from the Netherlands is in excess of 15 percent, we can impute knowledge of dumping under section 733(e)(1)(A)(ii) of the Act.

Under 19 CFR 353.16(f), we normally consider the following factors in determining whether imports have been massive over a short period of time:

(1) The volume and value of the imports;

(2) Seasonal trends (if applicable); and

(3) The share of domestic consumption accounted for by imports.

To determine whether or not there have been massive imports of CNPP, we compared export volumes for the six months subsequent to the filing of the petition to the six months prior to the filing of the petition. We found that exports of the subject merchandise from the Netherlands during the period subsequent to receipt of the petition had increased by an amount sufficient to categorize the imports as massive. Accordingly, we preliminarily determine that critical circumstances do exist.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, and with 19 CFR 353.16(c), we are directing the Customs Service to suspend liquidation of all entries of CNPP from the Netherlands, as defined in the "Scope of Investigation" section of this notice, that are entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days prior to the date of publication of this notice in the **Federal Register**.

The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin, as shown below. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Margin percentage
Fuji Photo Film B.V.	321.23
All Others	321.23

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination.

If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, a U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Postponement of Final Determination

On March 8, 1994, in accordance with 19 CFR 353.20(b), the sole respondent requested that, in the event of an affirmative determination, the Department postpone the final determination. We find no compelling reason to deny the request. Accordingly, we are postponing the date of the final determination until not later than 135 days after the date of publication of this notice.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies may be submitted by any interested party to the Assistant Secretary for Import Administration no later than June 30, 1994, and rebuttal briefs no later than July 8, 1994. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to give interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on July 15, 1994, at 10 a.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B–099, within ten days of the publication of this notice in the **Federal Register**. Requests should contain:

(1) The party's name, address, telephone number;

(2) The number of participants; and

(3) A list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to the issues raised in the briefs.

This determination is published pursuant to section 733(f) of the Act (19 U.S.C. 1673b(f)) and 19 CFR 353.15(a)(4).

Dated: March 29, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–8261 Filed 4–5–94; 8:45 am]

BILLING CODE 3510–DS–P

[C–333–001]

Cotton Sheeting and Sateen From Peru; Determination Not To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of determination not to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the countervailing duty order on cotton sheeting and sateen from Peru.

EFFECTIVE DATE: April 6, 1994.

FOR FURTHER INFORMATION CONTACT: Brian Albright, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202)482–2786.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 1994, the Department of Commerce (the Department) published in the **Federal Register** (59 FR 4691) its intent to revoke the countervailing duty order on cotton sheeting and sateen from Peru (48 FR 4501; February 1, 1983). Under 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no domestic interested party objects to revocation or no interested party requests an administrative review by the last day of the fifth anniversary month.

On February 25, 1994, ATMI and five member companies who are interested parties objected to our intent to revoke the order. ATMI and its member companies were petitioners in the original investigation. Therefore, because the requirements of 19 CFR 355.25(d)(4)(iii) have not been met, we will not revoke the order.

This determination is in accordance with 19 CFR 355.25(d)(4).

Dated: March 22, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–8258 Filed 4–5–94; 8:45 am]

BILLING CODE 3510–DS–P

[C–549–803]

Malleable Iron Pipe Fittings From Thailand; Determination Not To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the countervailing duty order on malleable iron pipe fittings from Thailand.

EFFECTIVE DATE: April 6, 1994.

FOR FURTHER INFORMATION CONTACT: Brian Albright, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202)482–2786.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 1994, the Department of Commerce (the Department) published in the **Federal Register** (59 FR 4692) its intent to revoke the countervailing duty order on malleable iron pipe fittings from Thailand (54 FR 6439; February 10, 1989). Under 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no domestic interested party objects to revocation or no interested party requests an administrative review by the last day of the fifth anniversary month.

On February 28, 1994, the Cast Iron Pipe Fitting Committee, petitioners in the original investigation, objected to our intent to revoke the order. Because the requirements of 19 CFR 355.25(d)(4)(iii) have not been met, we will not revoke the order.

This determination is in accordance with 19 CFR 355.25(d)(4).

Dated: March 22, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–8257 Filed 4–5–94; 8:45 am]

BILLING CODE 3510–DS–P

[C–580–602]

Certain Stainless Steel Cooking Ware From the Republic of Korea; Determination Not to Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of determination not to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the countervailing duty order on certain stainless steel cooking ware from the Republic of Korea.

EFFECTIVE DATE: April 6, 1994.

FOR FURTHER INFORMATION CONTACT: Patricia W. Stroup or David Mason, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202)482–2786.

SUPPLEMENTARY INFORMATION:

Background

On December 30, 1993, the Department of Commerce (the Department) published in the **Federal Register** (58 FR 69342) its intent to revoke the countervailing duty order on certain stainless steel cooking ware from the Republic of Korea (52 FR 2140; January 20, 1987). Under 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no domestic interested party objects to revocation or no interested party requests an administrative review by the last day of the fifth anniversary month.

On January 7, 1994, the Department received an objection to our intent to revoke the countervailing duty order from Farberware, Inc., a U.S. producer of the subject merchandise and an interested party within the meaning of 19 CFR 355.2(i)(3). Because the requirements of 19 CFR 355.25(d)(4)(iii) have not been met, we will not revoke the order.

This determination is in accordance with 19 CFR 355.25(d)(4).

Dated: March 30, 1994.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 94–8259 Filed 4–5–94; 8:45 am]

BILLING CODE 3510–DS–P

Export Trade Certificate of Review

ACTION: Notice of Issuance of an Export Trade Certificate of Review, Application No. 93–00003.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to American Trade Partners, Inc. This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: Friedrich R. Crupe, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202–482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (1993).

The Office of Export Trading Company Affairs ("OETCA") is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the **Federal Register**. Under Section 305 (a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

1. *Products*

All products.

2. *Services*

All Services.

3. *Technology Rights*

All Technology rights.

4. *Export Trade Facilitation Services (as They Relate to the Export of Products, Services and Technology Rights)*

All export trade facilitation services.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

American Trade Partners, Inc. may:

a. Export specific Products and/or Services in response to specific orders and contact individual Suppliers as to competitive prices, quality, and availability of specific Products or Services for export;

b. Provide and arrange for Export Trade Facilitation Services;

c. Exchange information only in one-on-one discussions with specific Suppliers on specific orders or market conditions relating to the export of

specific Products and or Services for export;

d. Enter into exclusive licensing and distributorship agreements with Suppliers for the export of Products, Services, and Technology Rights to the Export Markets;

e. Allocate export sales or divide the Export Markets among Suppliers for the sale, licensing or distribution of Products, Services, and Technology rights in the Export Markets;

f. Establish the price of Products, Services, and Technology Rights for sale, licensing or distribution in the Export Markets;

g. Negotiate and manage licensing agreements for the export of Technology Rights; and

h. Collect information on trade opportunities in the Export Markets and distribute such information to clients.

Terms and Conditions of Certificate

a. In engaging in Export Trade Activities and Methods of Operation, American Trade Partners, Inc. will not intentionally disclose, directly or indirectly, to any Supplier any information about any other Supplier's costs, production, capacity, inventories, domestic prices, domestic sales, or U.S. business plans, strategies, or methods that is not already generally available to the trade or public.

b. American Trade Partners, Inc. will comply with requests made by the Secretary of Commerce on behalf of the Secretary of Commerce or the Attorney General for information or documents relevant to conduct under the Certificate. The Secretary of Commerce will request such information or documents when either the Attorney General or the Secretary of Commerce believes that the information or documents are required to determine that the Export Trade, Export Trade Activities, and Methods of Operation of a person protected by this Certificate of Review continue to comply with the standards of Section 303(a) of the Act.

Definitions

"Supplier" means a person who produces, provides, licenses, or sells a Product, Service, or Technology Right.

A copy of this certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: March 30, 1994.

Friedrich R. Crupe.

Acting Director, Office of Export Trading, Company Affairs.

[FR Doc. 94–8249 Filed 4–5–94; 8:45 am]

BILLING CODE 3510–DR–P

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce

ACTION: Notice of application to amend certificate.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review. This notice summarizes the proposed amendment and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Friedrich R. Crupe, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 85–5A018."

U.S. Shippers Association's ("USSA") original Certificate was issued on June 3, 1986 (51 FR 20873, June 9, 1986). Previous amendments to the Certificate were issued on January 16, 1990 (55 FR 2543, January 25, 1990); November 13, 1990 (55 FR 48664, November 21, 1990); and on September 22, 1993 (58 FR 51061, September 30, 1993).

Summary of the Application:

Applicant: U.S. Shippers Association 1209 Orange Street Wilmington, Delaware 19801.

Contact: Jerome D. Sorkin, Legal Counsel,Telephone: (202) 662–6000.

Application No.: 85–5A018.

Date Deemed Submitted: March 30, 1994.

Proposed Amendment: USSA seeks to amend its Certificate to add the following company as a "Member" within the meaning of Section 325.2(l) of the Regulations (15 CFR 325.2(l) (1993)): ANGUS Chemical Company, Buffalo Grove, Illinois (Controlling entity: Alberta Natural Gas Company Ltd., Calgary, Alberta, Canada).

Dated: March 31, 1994.

Friedrich R. Crupe,

Acting Director, Office of Export Trading, Company Affairs.

[FR Doc. 94–8250 Filed 4–5–94; 8:45 am]

BILLING CODE 3510–DR–P

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with Subsections 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC.

Docket Number: 94–022. *Applicant:* Oregon State University, Environmental Health Sciences Center, ALS 1011, Corvallis, OR 97331–7302. *Instrument:* Mass Spectrometer, Model API III Plus. *Manufacturer:* Perkin-Elmer Sciex Instruments, Canada. *Intended Use:* The instrument will be used for conducting the following experiments: (1)

Structural characterization of proteins and oligopeptides, oligonucleotides, oligosaccharides, drugs and metabolites, and pesticides and herbicides through measurement of molecular weight and by collision-induced dissociation in conjunction with tandem mass spectrometry of fragment ions, (2) analysis of mixtures of oligopeptides and oligonucleotides extracted from biological samples or produced by chemical or enzymatic degradation of larger biopolymers by liquid chromatography or capillary zone electrophoresis coupled directly to the ionspray ion source and (3) analysis of mixtures of drugs or metabolites extracted from environmental samples by liquid chromatography coupled directly to the ionspray ion source. *Application Accepted by Commissioner of Customs:* February 18, 1994.

Docket Number: 94–027. *Applicant:* University of Minnesota, UMHC Box 388, Minneapolis, MN 55455. *Instrument:* Muscle Research System, Model OPT1S. *Manufacturer:* Scientific Instruments, Germany. *Intended Use:* The instrument will be used for studies of what changes occur to muscles as one ages, and the effects of exercise, bed rest, etc. on muscles from aged animals. *Application Accepted by Commissioner of Customs:* March 21, 1994.

Docket Number: 94–031. *Applicant:* University of California, Los Angeles, Department of Radiation Oncology, 200 UCLA Medical Plaza, suite 265, Los Angeles, CA 90024–6951. *Instrument:* pO_2 Histograph. *Manufacturer:* Eppendorf, Germany. *Intended Use:* The instrument will be used for the investigation of tumors and muscle tissue in laboratory mice to determine the association between tumor size, systemic hematocrit, tumor histology and radiation on tumor and tissue oxygen levels. *Application Accepted by Commissioner of Customs:* March 7, 1994.

Docket Number: 94–032. *Applicant:* University of Michigan, Department of Geological Sciences, 1006 C.C. Little Bldg., 425 E. University, Ann Arbor, MI 48109–1063. *Instrument:* ICP Multicollector Mass Spectrometer, Model Plasma 54. *Manufacturer:* Fisons Elemental, United Kingdom. *Intended Use:* The instrument will be used for the study of rocks and minerals in solid and dissolved form and for a limited amount of work measuring natural waters such as ground waters and seawater. The experiments will consist of extracting and purifying the elements of interest and measuring their isotopic compositions, with or without added enriched spikes to measure concentrations. In addition, the instrument will be used for training graduate and undergraduate students in research and the principles of isotope geochemistry. *Application Accepted by Commissioner of Customs:* March 17, 1994.

Docket Number: 94–033. *Applicant:* Simpson College, 701 North C Street, Indianola, IA 50125. *Instrument:* Rapid Kinetics Accessory, Model SFA–12. *Manufacturer:* Hi-Tech Scientific, United Kingdom. *Intended Use:* The instrument will be used for educational purposes in the courses Chemistry 301 Physical Chemistry I which covers the basics of chemical thermodynamics and chemical kinetics and Chemistry 398 Research in which students may work on a research problem in any of the areas of chemistry. *Application Accepted by Commissioner of Customs:* March 17, 1994.

Docket Number: 94–034. *Applicant:* University of California, Davis, Purchasing Department, 1441 Research Park Drive #171, Davis, CA 95616. *Instrument:* SIR Mass Spectrometer, Model OPTIMA. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* The instrument will be used for the following: (1) Examination of the carbon and oxygen isotopic composition ($^{13}C/^{12}C$ and $^{18}O/^{16}O$) of very small samples of calcite and aragonite ($CaCO_3$) fossils, (2) study of the carbon and nitrogen ($^{15}N/^{14}N$) isotopic composition of organic matter in marine sediments, biological shell organic matrix material and bone collagen, and (3) analysis of the hydrogen (H/D) isotopic composition of water samples and the carbon isotopic composition of carbon dioxide dissolved in water. In addition, the instrument will be used in the course Geology 227, Stable Isotope Biogeochemistry which is intended to introduce graduate students to different applications of stable isotope geochemistry in the research environment. *Application Accepted by Commissioner of Customs:* March 17, 1994.

Docket Number: 94–035. *Applicant:* University of California, Santa Cruz, Santa Cruz, CA 95064. *Instrument:* Mass Spectrometer, Model PRISM Series II. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* The instrument will be used for measurements of isotopes in the following materials: small size (20–100 µg) carbonate samples from deep-sea sediments, seawater and freshwater samples, organic matter, silicates, and carbonate rocks and cements. In addition, the instrument will be used in the course 'Stable Isotopes' to demonstrate how to measure isotopes in various materials through small class projects. *Application Accepted by Commissioner of Customs:* March 17, 1994.

Docket Number: 94–036. *Applicant:* University of California, Santa Cruz, Santa Cruz, CA 95064. *Instrument:* Mass Spectrometer, Model OPTIMA. *Manufacturer:* Fisons Instruments, United Kingdom. *Intended Use:* The instrument will be used for the following materials: primarily medium size (50–100 µg) carbonate samples from deep-sea sediments, seawater and freshwater samples, organic matter, silicates, and carbonate rocks and cements. In addition, the instrument will be used in the course 'Stable Isotopes' to demonstrate how to measure isotopes in various materials through small class projects. *Application Accepted by Commissioner of Customs:* March 17, 1994.

Docket Number: 94–038. *Applicant:* University of South Dakota, 414 E. Clark Street, Vermillion, SD 57069. *Instrument:* Light Scattering Correlator and Goniometer System, Model ALV/DLS/SLS–5000. *Manufacturer:* ALV-Laser Vertriebsgesellschaft m.b.H., Germany. *Intended Use:* The instrument will be used for studies of a broad range of biological and synthetic polymer molecules and colloidal particles in solutions and in gels including from polystyrene, polyacrylamide of synthetic polymers to gelatin, hydroxpropylcellulose of biopolymers, and colloids such as sodium dodecylsulfate micelles, in common solvents including toluene, carbondisulfite, and water. The main objectives of the investigations will be the fundamental scientific research on polymer systems and improvement of emphasized education of students enhanced by the modern instrumentation. In addition, the instrument will be used for educational purposes in the courses PHYS 391 Advanced Topic Studies and PHYS 393 Special Topics. *Application Accepted by Commissioner of Customs:* March 18, 1994.

Pamela Woods,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 94–8256 Filed 4–5–94; 8:45 am]

BILLING CODE 3510–DS–F

Minority Business Development Agency

Business Development Center Applications: Anaheim, CA

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) Program. The total cost of performance for the first budget period (12 months) from August 1, 1994 to July 31, 1995, is estimated at $388,898. The application must include a minimum cost-share of 15% of the total project cost through non-Federal contributions. Cost-sharing contributions may be in the form of cash contributions, clients fees, in-kind contributions or combinations thereof. The MBDC will operate in the Anaheim, California Geographic Service Area.

The funding instrument for this project will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program provides business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of management and technical assistance to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, the MBDC will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

Quarterly reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and Agency priorities.

DATES: The closing date for applications is May 13, 1994. Applications must be postmarked on or before May 13, 1994.

The mailing address for submission is:

San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105, 415/744–3001.

A pre-application conference to assist all interested applicants will be held at the following address and time:

San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105. April 28, 1994 at 10 a.m.

FOR FURTHER INFORMATION CONTACT: Melda Cabrera, Regional Director San Francisco Regional Office at 415/744–3001.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address.

Pre-Award Costs

Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Outstanding Account Receivable

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, a repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management, honesty or financial integrity.

Award Termination

The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are unsatisfactory performance of MBDC work requirements, and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements

A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications

All primary applicants must submit a completed Form CD–511,

"Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension

Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug Free Workplace

Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying

Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000.

Anti-Lobbying Disclosures

Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

Lower Tier Certifications

Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance).

Dated: March 30, 1994.

Melda Cabrera,

Regional Director, San Francisco Regional Office.

[FR Doc. 94–8150 Filed 4–5–94; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

[I.D. 033194B]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of additional public hearings on scientific research permit application (P557), and extension of public comment period.

SUMMARY: In response to numerous requests, NMFS will hold additional public hearings and will extend the public comment period on an application for a scientific research permit to allow harassment of marine mammals and sea turtles by a low frequency sound source, and monitor its effects.

DATES: Public hearings will be held in Hawaii as follows: (1) On April 14, 1994, from 6 p.m. to 10 p.m. at Mabel Smyth Auditorium, 510 S. Beretania Street, Honolulu, Hawaii; and (2) on April 15, 1994, from 6 p.m. to 10 p.m. at Kauai War Memorial Convention Hall, 4191 Hardy Street, Lihue, Hawaii (Island of Kauai).

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, NMFS, NOAA, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802–4213 (310/980–4016); and

Coordinator, Pacific Area Office, NMFS, NOAA, 2570 Dole Street, room 106, Honolulu, HI 96822–2396 (808/955–8831).

FOR FURTHER INFORMATION: All non-Government organizations and scientists who wish to present prepared testimony should contact the following individual at least 48 hours in advance of the hearing so that a general agenda can be prepared: Jim McCallum, NMFS, Pacific Area Office, Southwest Region, 2570 Dole Street, room 105, Honolulu, HI 96822, 808/955–8831 or 808/949–7400 (facsimile). People who are deaf or hearing impaired may place a call through the GTE Hawaiian Telecommunications Relay Service at 808/643–8833 (text telephone users).

A written copy of each testimony to be presented is requested on the day of the hearing. It is advised to use slides or overheads only if absolutely necessary during presentations, and copies of any slides or overheads used are requested to be made available to NMFS on the day of the hearing.

Other people who are interested in making a statement at any of these hearings should bring a written copy of the statement to the hearing, and will be given an opportunity to make such statements following the prepared testimonies. Anyone who needs additional information or requires special accommodations to attend the public hearing should contact the appropriate person named above at least 7 days in advance of the hearing.

Additional written comments may be sent to the following address: Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, room 13130, Silver Spring, MD 20910, or may be sent by facsimile, if necessary, to 301/713–0376, and must be received by close of business April 29, 1994.

SUPPLEMENTARY INFORMATION: An application for a scientific research permit has been submitted by Scripps Institute of Oceanography, Institute for Geophysics and Planetary Physics, Acoustic Thermometry of Ocean Climate Program, 9500 Gilman Drive, La Jolla, CA 92093–0225.

On November 16, 1993, notice was published in the **Federal Register** (58 FR 60426) that a request for a scientific research permit (P557) was submitted, to take by incidental harassment, the following species of marine mammals for purposes of scientific research in waters off the northern coast of Kauai, Hawaii: humpback whale (*Megaptera novaeangliae*), sperm whale (*Physeter macrocephalus*), pygmy sperm whale (*Kogia breviceps*), short-finned pilot whale (*Globicephala macrorhynchus*), Cuvier's beaked whale (*Ziphius cavirostris*), Baird's beaked whale (*Berardius bairdii*), Blainville's beaked whale (*Mesoplodon densirostris*), spinner dolphin (*Stenella longirostris*), spotted dolphin (*Stenella attenuata*), false killer whale (*Pseudorca crassidens*), rough-toothed dolphin (*Steno bredanensis*), bottlenose dolphin (*Tursiops truncatus*), and monk seal (*Monachus schauinslandi*).

On February 17, 1994, notice was published in the **Federal Register** (59 FR 7983) that a modification to the above scientific research permit

application (P557) was submitted to request incidental harassment of sea turtles, and additional species of marine mammals which have only occasionally been observed in Hawaiian waters.

On March 10, 1994, notice was published in the **Federal Register** (59 FR 11254) that a public hearing would be held on this scientific research permit application (P557) (and on scientific research permit application P557A). This hearing was held in Silver Spring, Maryland.

Application P557 is a request to allow harassment of marine mammals and sea turtles by low frequency (70 Hz) sound sources at depths of 850–900m. This source is part of the Acoustic Thermometry of Ocean Climate (ATOC) program, and is proposed to be operated from March 1994 through December 1995 off Hawaii. The maximum duty cycle will be 8%, with a transmission bandwidth of 20 Hz at a level of 195 dB (re 1 uPa at 1m), and with a spectrum level for the peak frequency (70 Hz) at 182 dB. The effects of these transmissions on marine mammals and sea turtles will be monitored through a variety of methods.

The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Dated: April 1, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–8270 Filed 4–1–94; 4:11 pm]

BILLING CODE 3510–22–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Brazil

March 31, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: April 7, 1994.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The limits for Catgories 218, 225 and 350 are being reduced for carryforward used during the previous agreement period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 59 FR 13308, published on March 21, 1994.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 31, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 16, 1994, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Brazil and exported during the twelve-month period which began on April 1, 1994 and extends through March 31, 1995.

Effective on April 7, 1994, you are directed to amend the directive dated March 16, 1994, to reduce the limits for the following categories, as provided under the terms of the Memorandum of Understanding dated February 24, 1994 between the Governments of the United States and Federative Republic of Brazil:

Category	Twelve-month limit
218	4,475,708 square meters.
225	7,832,488 square meters.
350	134,949 dozen.

[1] The limits have not been adjusted to account for any imports exported after March 31, 1994

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–8252 Filed 4–5–94; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Navy

Government-Owned Invention; Availability for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice of availability of invention for licensing.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy.

Request for copies of patent application cited should be directed to the Office of Naval Research (Code 00CC3), Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660 and must include application serial number.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research (Code 00CC3), 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Patent Application 07/473,258: Selective Polygon Map Display Method; filed 31 January 1990.

Dated: March 29, 1994.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–8205 Filed 4–5–94; 8:45 am]

BILLING CODE 3810–AE–M

Government-Owned Invention; Availability for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice of availability of invention for licensing.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy.

Request for copies of patent application cited should be directed to the Office of Naval Research (Code 00CC3), Ballston Tower One, 800 North Quincy Street, Arlington, Virginia 22217–5660 and must include the application serial number.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of Naval Research (Code 00CC3), 800 North Quincy Street, Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Patent Application 08/200,049: Multimedia Medical Translator; filed 22 February 1994.

Dated: March 28, 1994.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–8206 Filed 4–5–94; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

Cooperative Demonstration Program (Correctional Education)

AGENCY: Department of Education.

ACTION: Notice of proposed priorities, required activities, selection criteria, and Other rquirements for grants to be made in Fiscal Year 1995.

SUMMARY: The Secretary proposes priorities for awards to be made in fiscal year (FY) 1995 using funds appropriated in FY 1994 under the Cooperative Demonstration Program, which is authorized by the Carl D. Perkins Vocational and Applied Technology Education Act (Perkins Act). Under the proposed absolute priority, funds under this competition would be reserved for applications proposing to demonstrate successful cooperation between the private sector and public agencies in vocational education programs that serve criminal offenders under the supervision of the justice system. In addition, the Secretary intends to invite applications that, within the absolute priority of correctional education, incorporate one or more of the following invitational priorities: (1) Advanced technologies; (2) community-based correctional education; and (3) juvenile justice education. The Secretary also proposes to impose requirements related to the priorities and other matters, and to use new selection criteria in evaluating applications submitted for this competition only.

DATES: Comments must be received on or before May 6, 1994.

ADDRESSES: All comments concerning these proposed priorities should be addressed to Gail M. Schwartz, U.S. Department of Education, 400 Maryland Avenue, SW., room 4529, Switzer Building, Washington, DC 20202–7242.

FOR FURTHER INFORMATION CONTACT: Gail M. Schwartz or Christopher Koch, U.S. Department of Education, 400 Maryland Avenue, SW, room 4529, Switzer Building, Washington, DC 20202–7242. Telephone: (202)-205–5621. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Cooperative Demonstration Program provides financial assistance for, among other things, model projects that demonstrate successful cooperation between the private sector (including employers, consortia of employers, labor organizations, building trade councils, and private agencies, organizations, and institutions) and public agencies in vocational education (including State boards for vocational education, State or local corrections or correctional education agencies, or eligible recipients as defined in 34 CFR 400.4). This program can help further the purposes of the National Education Goals. Specifically, the correctional education priority directly supports Goal 5, that every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The designation of correctional education as a priority under the Cooperative Demonstration program is based on the critical problems of illiteracy and recidivism pervading our Nation's adult and juvenile corrections population. The U.S. Department of Education's National Adult Literacy Survey Report, "Literacy Behind Prison Walls" described a 70 percent illiteracy rate among a sample of prisoners as follows:

> About seven in ten prisoners * * * are apt to experience difficulty in performing tasks that require them to integrate or synthesize information from complex or lengthy texts or to perform quantitative tasks that involve two or more sequential operations and that require the individual to set up the problem (1993, p.vi).

Additionally, a recent study, "Vocational and Academic Indicators of Parole Success" published in the Journal of Correctional Education, found that inmates who had received academic and vocational training while in prison were more likely to be employed and less likely to commit crimes after their release than other inmates (Schumacker, *et al.*, 1990).

Academic and vocational training is also critical for probationers and parolees since the majority of the Nation's criminal offenders are serving sentences within community corrections settings. There were about 4.5 million individuals under correctional supervision in the United States by the end of 1991, according to the Bureau of Justice Statistics. Of these, 3.3 million, or approximately 73 percent, were under active probation or parole supervision within the community.

Educational programs for criminal offenders that use applied learning strategies to teach life skills, job skills, and literacy can reduce the likelihood that the offenders will return to the criminal justice system. After completing their sentences, ex-offenders often have limited opportunities for meaningful employment and lack necessary basic life skills, including the job-seeking and job-retention skills needed to obtain and maintain employment. Without basic literacy and job skills, it is unlikely that these persons will become fully productive members of society.

The Secretary will announce the final priority in a notice in the **Federal Register**. The final priority will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the nature of the final priority, and the quality of the applications received. The publication of this proposed priority does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only this priority, subject to meeting applicable rulemaking requirements.

The Office of Vocational and Adult Education's Office of Correctional Education coordinates programs for criminal offenders with other Department of Education offices and other Federal offices, including the Department of Justice's Federal Bureau of Prisons, National Institute of Justice, and Office of Juvenile Justice and Delinquency Prevention. The Office of Correctional Education collaborated with these Department of Justice offices in preparing this notice.

Note: This notice of proposed priorities does *not* solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following publication of the notice of final priorities.

Priorities

Absolute Priority

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary will fund under this competition only model projects that demonstrate ways in which public agencies in vocational education and the private sector can work together effectively to assist vocational education students who are criminal offenders under the supervision of the justice system to attain the advanced level of skills they need to make a successful transition from correctional education programs to productive employment including—

(a) Work experience or apprenticeship programs;

(b) Transitional worksite job training for vocational education students that is related to their occupational goals and closely linked to classroom and laboratory instruction provided by an eligible recipient;

(c) Placement services in occupations that the students are preparing to enter;

(d) If practical, projects that will benefit the public, such as the rehabilitation of public schools or housing in inner cities or economically depressed rural areas; or

(e) Employment-based learning programs.

Required Activities

The Secretary requires that any projects funded under this competition—

(a) Coordinate with community agencies that furnish transitional supportive services to criminal offenders such as individual and family counseling, housing assistance, transportation, and social and cultural activities;

(b) Include a well-designed staff inservice education component to ensure the effective implementation of the program;

(c) Address the special learning needs of offenders;

(d) Use applied learning strategies to teach life skills, jobs skills, and literacy;

(e) If applicable, provide for a transition from institutional environments to community settings;

(f) Address State and local labor shortages and consult the State Occupational Information Coordinating Committee or State Labor Market Information Unit in making this determination; and

(g) Must submit proof of committed partnerships between public agencies and the private sector. The definitions of "private" and "public" contained in 34 CFR 77.1 do not include entities under the supervision or control of the Federal Government; thus, Federal entities, including Federal prisons, are not eligible members of the partnerships required by 34 CFR 426.4(b).

This program activity is authorized by section 420A(a)(2) of the Perkins Act (Pub. L. 101–392, 104 Stat. 753 (1990)).

Invitational Priorities

Within the absolute priority specified in this notice, the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, under 34 CFR 75.105(c)(1) an application that meets these invitational priorities does not receive competitive or absolute preference over other applications:

Invitational Priority 1—Advanced Technologies

Projects that incorporate the use of interactive instructional technologies, such as distance learning, in the context of both student training and staff inservice training.

Invitational Priority 2—Community Corrections

Projects that provide integrated vocational and academic education to individuals on probation or parole in community corrections.

Invitational Priority 3—Juvenile Justice Education

Projects that provide integrated vocational and academic education to students in the juvenile justice system. This may include youth placed in detention centers, training schools, boot camps, or community-based programs.

Definitions

As used in this notice—

"Applied learning" is actively student-oriented, characterized by lively classroom discussions, absorbing group projects, meaningful homework assignments, laboratory experiments, live and videotaped presentations, and other hands-on activities. The purpose of applied learning is to create an environment that actively engages students and teachers in a collaborative learning process.

"Community corrections" refers to programs serving probationers and parolees.

"Life skills" includes self-development, communication skills, job development, and education.

"Literacy" means an individual's ability to read, write, and speak in English and compute and solve problems, at levels of proficiency necessary to function on the job and in society, to achieve one's goals, and to develop one's knowledge and potential.

Criteria for Evaluating Applications

For the FY 1995 grant competition under the Cooperative Demonstration program (Correctional Education) only, the Secretary uses the selection criteria and assigned points in 34 CFR 426.21 with the exception of 34 CFR 426.21(a) and (b), which are replaced with the following:

(a) *Program factors.* (25 points) The Secretary reviews the application to assess the quality of the proposed project, including the extent to which the proposed project will provide—

(1) Integrated academic and vocational activities that reflect current and projected labor market trends and are based upon the Secretary of Labor's Commission on Achievement of Necessary Skills (SCANS) report recommendations;

(2) Transition from correctional education programs to productive employment including one or more of the following:

(i) Work experience or apprenticeship projects.

(ii) Transitional worksite job training for vocational education students that is related to their occupational goals and closely linked to classroom and laboratory instruction provided by an eligible recipient.

(iii) Placement services in occupations that the students are preparing to enter.

(iv) If practical, projects that will benefit the public, such as the rehabilitation of public schools or housing in inner cities or economically depressed rural areas.

(v) Employment-based learning programs.

(3) Post-sentence transitional services and follow-up assistance;

(4) Interdisciplinary staff in-service education that includes security personnel;

(5) Inmate assessment that addresses academic, vocational and special learning needs;

(6) Ongoing occupational counseling to assist with the development of an individual vocational plan;

(7) Coordination with community agencies that furnish transitional supportive services to criminal offenders such as individual and family counseling, housing assistance, transportation, and social and cultural activities;

(8) Coordination with the State Occupational Information Coordinating Committee or State Labor Market Information Unit in determining State and local labor shortages; and

(9) Adequate and appropriate involvement and cooperation of the public and private sectors in the projects, including—

(i) A clear identification of the public and private sector involvement in the planning of the project;

(ii) A description of public and private sector involvement in the planning of the project including letters of commitment; and

(iii) A description of public and private sector involvement in the operation of the project.

(b) *Educational significance.* (10 points) The Secretary reviews each application to determine the extent to which the applicant proposes—

(1) Project objectives that contribute to the improvement of education for criminal offenders;

(2) To use unique and innovative techniques to produce benefits that address educational problems and needs that are of national significance; and

(3) To base the proposed project on successfully designed, established, and operated model vocational education programs that include components similar to the components required by this program, as evidenced by empirical data that demonstrate impact from those programs in factors such as—

(i) Student performance and achievement;

(ii) GED completion; and

(iii) Post-sentence employment or enrollment in education or training programs or both.

Other Requirements

Purchase of Equipment

The projects funded under this competition may expend up to 10 percent of Federal funds for equipment as defined in 34 CFR 74.132 and 80.3.

Paperwork Reduction Act of 1980

This priority contains information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of the proposed priority to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 350(h)).

This priority would affect the following types of entities eligible to apply for a grant under this program: State boards of vocational education, State or local corrections or correctional education agencies, State or local educational agencies, postsecondary educational institutions, institutions of higher education, area vocational education schools, intermediate educational agencies, community correctional education agencies, other public or private non-profit agencies, institutions, or organizations, and the private sector (including employers, labor organizations, building trade councils, and private agencies, organizations, and institutions). The Secretary needs and uses the information to determine whether proposed projects are likely to meet identified national needs. The annual public reporting burden for the collection of information is estimated to average 90 hours per response for 130 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 priorities.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period in 330 C Street, SW., room 4529, Mary E. Switzer Building, Washington, DC, between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday of each week, except Federal holidays.

APPLICABLE PROGRAM REGULATIONS: 34 CFR parts 400 and 426. Program Authority: 20 U.S.C. 2420a.

(Catalog of Federal Domestic Assistance Number 84.199D Cooperative Demonstration Program)

Dated: March 30, 1994.

Augusta Souza Kappner,

Assistant Secretary, Office of Vocational and Adult Education.

[FR Doc. 94–8166 Filed 4–5–94; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Invitation for Proposals for Projects Designed To Support Risk Assessment and Risk Management Practices Associated With DOE's Environmental Management Programs

AGENCY: Office of Environmental Management, DOE.

ACTION: Notice of Program Interest; Amendment.

SUMMARY: This notice replaces and supersedes the Notice of Program Interest (NOPI) published in the Federal Register on February 22, 1994 (59 FR 8462). The purpose of this announcement is to correct the previous NOPI and clarify the program needs in risk assessment and risk management for the Office of Environmental Management.

DATES: This notice is effective on April 6, 1994 and will remain effective until September 30, 1994. This notice extends the due date for receipt of proposals from April 8, 1994 to September 30, 1994. Due to programmatic needs, proposals related to risk management support and risk assessment at DOE facilities need to be received as early as possible. Awards, if made, will not be available before October 1, 1994. Proposals that are received before June 30, 1994, will receive priority consideration. Proposals received after June 30, 1994 will receive consideration dependent upon funding availability after the initial awards are made.

ADDRESSES AND FURTHER INFORMATION CONTACT: Requests for technical information should be directed to Dr. Michael Heeb, Department of Energy, Office of Environmental Management, Washington, DC 20585, Telephone (202) 586–2661. For procurement related information, contact Dr. John Wengle, EM–53, U.S. Department of Energy, Office of Environmental Management, Office of Technology Development, Washington, DC 20585, (301) 903–8491. Proposals (original plus (5) copies), citing this NOPI, should be directed to: Office of Procurement Assistance and Program Management, Unsolicited Proposals Management Section, HR–522.2, Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION:

I. Purpose
II. Objective Merit Review
III. Proposal Format
IV. Evaluation Criteria
V. Awards

I. Purpose

The Office of Environmental Management (EM) is seeking to award grants or cooperative agreements to applicants, to fund (in whole or in part) projects, or cost share in projects, that will help EM implement a program to develop credible risk assessment and risk management practices to protect the public health and environment at DOE facilities and sites.

For more information about EM's needs in risk assessment and risk management, including information related to the integration of risk assessment and risk management, interested applicants are referred to the National Research Council's report "Building Consensus Through Risk Assessment and Management of the Department of Energy's Environmental Remediation Program," National Academy Press, 1994, and the presentations contained therein by Assistant Secretary Thomas Grumbly and concerned stakeholders. Copies of the National Research Council's report may be obtained from the Department of Energy by calling Ms. Mary Wilson, Telephone (202) 586–2661. It is strongly recommended that interested applicants review this document prior to submitting a proposal.

EM's program in integrated risk management faces two critical activity areas: First, a statutory requirement to report to Congress on the risks to the public health and safety posed by the conditions at the Nation's nuclear weapons complex; and second, the need for long-term assistance in risk assessment and risk management at DOE facilities and sites. The first activity was mandated by Congress in Public Law 103–126, enacted October 28, 1993. The DOE is addressing the Congressional requirement through actions that are on a separate track and not addressed by this announcement. It is the second activity that this solicitation addresses, i.e., the long-term needs for assistance in developing credible processes and methods for risk assessments and risk management decisions that include meaningful involvement of affected parties, future land and facilities use planning, cost of proposed remediation activities, public and worker health and safety, and environmental impacts.

As discussed in the National Research Council's report and in specific remarks by Assistant Secretary Thomas Grumbly, DOE is seeking to define the risks to human health and the environment on a site-by-site basis. Further, DOE is seeking approaches and methods:

- To systematically identify and characterize, on a site-by-site basis, the risks to human health and the environment;
- To systematically identify and characterize the data gaps and uncertainties, and identify methods for filling gaps and reducing uncertainties, in our present understanding of the above cited risks;
- To systematically review and recommend the process by which the above cited risks will be reduced;
- To systematically review and recommend how public participation should be involved in risk evaluation and how such risks should be communicated to non-technical audiences; and
- To systematically review and define the costs for risk reduction.

In addition, the credibility of DOE and its site contractors is a serious issue that must be appropriately addressed if valid and persuasive risk assessments are to be conducted, i.e., serious consideration must be extended to the question of who performs the risk assessment, who performs the risk reduction assessment, who performs the cost assessment, etc.

The National Research Council has identified several obstacles associated with using a risk based approach at DOE sites. These obstacles include the fact that:

- The use of risk assessment to set priorities for remediation is viewed with skepticism;
- Risk assessment is viewed as a mechanical process, without opportunity for public input, that often fails to give due consideration to affected stakeholders;
- Stakeholders have voiced concerns that risk assessments may result in an inequitable distribution of resources both among and within facilities and sites.

Notwithstanding these obstacles, the National Research Council has concluded that a risk based approach to environmental cleanup is both feasible and desirable. In order for such an approach to be effective in influencing Remedial Action Decisions, it is necessary that risk management and risk assessment theory and processes, robust public participation programs, and public policy decision makers be brought together and integrated into one coherent decision making process.

EM is interested in receiving proposals from applicants that propose creative and innovative methods for providing credible risk assessments and credible practices for implementation of risk-based decisions. Proposals should address cost/risk policy and priority setting at the DOE sites involving decontamination, decommissioning, environmental restoration, facilities transition, technology development, and site management.

Proposals that include an integrated-systems approach that includes technology-based solutions for reducing, eliminating, or mitigating risks at the weapons complex are most desirable. In addition, proposers should demonstrate an organizational capability both to work with diverse multi-disciplinary technical groups and to work with social and cultural issues in the risk assessment arena. Additional factors to be considered in decision-making and in establishing priorities include:

- Federal Facilities Agreements;
- State and local agreements;
- Tribal agreements;
- Public participation and outreach to affected citizen groups;
- Innovative approaches to development of credible risk assessments and implementation of risk-based decision making;
- Strategies and methods for identifying and filling data gaps and reducing uncertainties;
- Environmental justice, socioeconomic and sociopolitical issues; and
- Other environmental, worker, and public health and safety issues.

II. Objective Merit Review

An objective merit review of each proposal will be accomplished in accordance with EM's Merit Review System, as published in the **Federal Register** on May 6, 1991 (56 FR 20602). Applicants are advised that EM shall utilize the procedure detailed under subsection IV(E)(2) of its Merit Review System (56 FR 20604), i.e., field readers shall be utilized in lieu of standing review committees.

III. Proposal Format

The proposal shall contain two sections, technical and cost. Technical proposals shall be no more than fifty (50) pages in length; resumes of proposed key personnel should be submitted as an appendix to the technical proposal and will not be counted against the page limit. It is left to the proposer to determine how best to structure the proposal. However, the following information shall be included:

a. Proposals shall include a detailed project description that discusses the specific tasks to be performed under the proposed project.

b. Proposals must also demonstrate that the offeror is perceived as neutral and credible, and is capable of conducting scientifically valid and responsible assessments. Assessments must include clear statements of what is not known and what is uncertain, as well as statements of what is known. Proposals must demonstrate how independent, external peer-review will be conducted.

c. Proposals must demonstrate that the offeror has the experience and capability to plan, organize, manage, and facilitate public participation in communities. Proposals must also demonstrate that the offeror has the experience and ability to effectively communicate complicated scientific information on potential risks and uncertainties, to local and national stakeholders, other affected and concerned citizens, and decision makers at all levels.

d. Proposals must demonstrate that the offeror presently has or is capable of obtaining staff with the training, expertise, and experience needed to conduct scientifically complex risk assessments and cost assessments. Proposals must identify the technical and scientific staff that will actually conduct the studies and detail their professional experience as well as their level of program involvement.

e. Proposals must demonstrate that the offeror has the ability to integrate their work with the activities of other organizations conducting risk assessments.

f. Proposals must demonstrate that the offeror has management capability, for both financial and scientific management, and a demonstrated skill in planning and scheduling projects of comparable magnitude to that proposed under this NOPI.

Cost proposals shall have no page limit. The cost proposal shall include a summary breakdown of all costs, and provide a detailed breakdown of costs on a task-by-task basis for each task contained in the project description. In addition, any expectation concerning cost sharing shall be clearly stated. Cost sharing is encouraged, but it shall not be considered in the selection process.

IV. Evaluation Criteria

The evaluation criteria are as specified in subsection IV(G) of EM's Merit Review System (56 FR 20604).

V. Awards

Approximately $20 million may be available in FY 1995 for projects. If sufficient acceptable applications are received, available funding may determine the number of awards. Awards, if any, will be determined through evaluation of applications received against the evaluation criteria, and the availability of funds. Awards, either grants or cooperative agreements, will be made only to technically acceptable applicants. Budget and project periods may be negotiated to fit the requirements of particular projects; awards will be on a schedule to be agreed to by DOE and the awardee. DOE reserves the right to support or not support any portion, all, or none of the proposals submitted.

Issued in Washington, DC, on March 31, 1994.

Thomas P. Grumbly,

Assistant Secretary for Environmental Management.

[FR Doc. 94–8234 Filed 4–5–94; 8:45 am]

BILLING CODE 6450–01–P

Financial Assistance Award: Underground Injection Practices Research Foundation

AGENCY: Department of Energy, Metairie Site Office.

ACTION: Notice of intent.

SUMMARY: The Department of Energy (DOE), Metairie Site Office, announces that pursuant to 10 CFR 600.7(b)(2)(i)(A) and (D) it intends to make a Non-Competitive Financial Assistance Award (Grant) through the Pittsburgh Energy Technology Center to the Underground Injection Practices Research Foundation.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Center, P.O. Box 10940, MS 921–118, Pittsburgh, PA 15236, Attn.: Mary Beth J. Pearse, Telephone: (412) 892–4949.

SUPPLEMENTARY INFORMATION: The UIPRF has proposed a two-task project relating to Class II injection well operations in various states throughout the country. Task I of the proposed project is designed to extend the implementation of a Risk-Based Data Management System (RBDMS) in four states. Alaska, Mississippi, Montana, and Nevada would be given assistance with converting data from existing data management systems; coding and internal testing of the RBDMS; preparing documentation, training, and technology transfer; and project management. Task II of the proposed project would offer assistance in conducting four regional training seminars related to Area of Review (AOR) investigations and environmental compliance.

The Underground Injection Practices Council (UIPC) was formed in 1983 to work with various federal agencies, state underground injection control (UIC) officials, municipal and county officials, representatives of environmental groups, industry, scientists, and others on safe and effective methods for waste disposal. The UIPC, through its Research Foundation, conducts a comprehensive program of original research and data collection and serves as a clearinghouse for information on underground injection. The UIPC also conducts a variety of educational programs and serves as a forum for the development of more sound regulations and technical standards.

Greater emphasis is currently being placed on the ability of states to justify their regulatory decisions, with interest in developing reliable procedures for assessing the risks posed by oil and gas injection wells increasing rapidly. Under the Safe Drinking Water Act, agencies that implement UIC programs are required to prevent subsurface injection that endangers an underground source of drinking water (USDW).

The UIPRF just completed a grant from DOE that involved the investigation of state environmental, oil, and gas data, and data management systems that pertain to underground injection control. The primary goal of this research was to increase the base of technical and environmental knowledge related to the application of the UIPRF model that has been developed to assess the risk of injection water contaminating a USDW. The project involved four major tasks: (1) Conducting an inventory and needs assessment of the database management systems of the 21 states that have primacy to supplement the UIC requirements for Class II wells, (2) conducting investigations of six state's data management system capabilities and making hardware and software improvements, (3) conducting a Technical Symposium on Class II injection wells relating to the application of the UIPRF model that was developed to assess risk of injection water contaminating USDWs, and (4) conducting investigations of four states' data management system capabilities and making hardware and software improvements. Task I of the current project proposed by UIPRF seeks to expand upon Task IV of the just-completed grant by extending the

implementation of the RBDMS in four states (Alaska, Mississippi, Montana, and Nebraska). These states will be given assistance with converting data from existing data management systems, coding and testing RBDMS, preparing documentation, and training efforts.

In accordance with 10 CFR 600.7(b)(2)(i) criteria (A) and (D), a noncompetitive Financial Assistance Award to the UIPRF has been justified. This effort is a continuation of the just-completed grant and opening up a continuation effort to competition would have a significant adverse effect on continuity of the activity. The Applicant has exclusive domestic capability to perform this activity successfully, based upon the unique technical expertise of the UIPRF which will ensure maximum utilization of existing state, federal, industry and commercial sources of data necessary to complete the study. This effort therefore is considered suitable for noncompetitive financial assistance and would not be eligible for financial assistance under a solicitation, and a competitive solicitation would be inappropriate.

DOE funding for this research is estimated to be $499,745 for the duration of the project. These funds will be used to pay for the reasonable cost of research staff, administrative support personnel, consultants, experts, and printing costs as necessary for the research project.

Dated: March 28, 1994.

Richard D. Rogus,

Contracting Officer.

[FR Doc. 94-8235 Filed 4-5-94; 8:45 am]

BILLING CODE 6450-01-P-M

Energy Information Administration

Forms EIA-23, 23P and 64A, "Oil and Gas Reserves Surveys"

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Notice of the Proposed Extension of the Forms EIA-23, "Annual Survey of Domestic Oil and Gas Reserves," EIA-23P, "Oil and Gas Well Operator List Update Report," and EIA-64A, "Annual Report of the Origin of Natural Gas Liquids Production," and solicitation of comments.

SUMMARY: The Energy Information Administration (EIA), as part of its continuing effort to reduce paperwork and respondent burden (required by the Paperwork Reduction Act of 1980, Pub. L. No. 96-511, 44 U.S.C. 3501 *et seq.*), conducts a presurvey consultation program to provide the general public and other Federal agencies with an opportunity to comment on proposed and/or continuing reporting forms. This program helps to ensure that requested data can be provided in the desired format, reporting burden is minimized, reporting forms are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, EIA is soliciting comments concerning the proposed extension of the Forms EIA-23, "Annual Survey of Domestic Oil and Gas Reserves," EIA-23P, "Oil and Gas Well Operator List Update Report," and EIA-64A, "Annual Report of the Origin of Natural Gas Liquids Production." It is proposed that Forms EIA-23P and EIA 64A be extended without modification. For large operators reporting on Form EIA-23, the form will be modified to also collect estimates of reserves and production associated with enhanced oil recovery methods and nonconventional gas. This proposed modification reflects the growing importance to U.S. oil and gas supplies of enhanced oil recovery and nonconventional gas. To offset the incremental burden associated with this proposed modification, the requirement to report indicated additional reserves on Form EIA-23 will be discontinued. For small operators reporting on Form EIA-23, the form will be extended without modification.

DATES: Written comments must be submitted by May 6, 1994.

If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below of your intention to do so as soon as possible.

ADDRESSES: Send comments to Mr. Paul Chapman, Energy Information Administration, Dallas Field Office, 1114 Commerce Street, room 804, Dallas, Texas 75242-2899, Telephone (214) 767-2200.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Mr. Paul Chapman at the address above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Request for Comments

I. Background

In order to fulfill its responsibilities under the Federal Energy Administration Act of 1974 (Pub. L. No. 93-275) and the Department of Energy Organization Act (Pub. L. No. 95-91), the Energy Information Administration is obliged to carry out a central, comprehensive, and unified energy data and information program. As part of this program, EIA collects, evaluates, assembles, analyzes, and disseminates data and information related to energy resource reserves, production, demand, and technology, and related economic and statistical information relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

Operators of crude oil and natural gas wells are the target respondents of the Form EIA-23 and operators of natural gas plants are the target respondents of the Form EIA-64A. The amount of crude oil, associated-dissolved and nonassociated natural gas, and lease condensate production and reserves by field are requested of major oil and gas well operators. In addition a selected sample of small operators provides production and reserves of crude oil, natural gas and lease condensate at a State level on the Form EIA-23. The amount of natural gas processed, natural gas liquids produced, the resultant shrinkage of the natural gas, and the amount of natural gas used in processing are requested of natural gas plant operators. In response to Public Law 95-91 Section 657, estimates of U.S. oil and gas reserves are to be reported annually. These estimates are essential to the development, implementation, and evaluation of energy policy and legislation. Data will be used directly in the annual publication *U.S. Crude Oil, Natural Gas, and Natural Gas Liquids Reserves*, and incorporated in a number of other publications and analyses. Secondary publications which use the data include the *Annual Energy Review, Annual Energy Outlook, Petroleum Supply Annual*, and *Natural Gas Annual*.

II. Current Actions

This notice is for a proposed three-year extension of the Forms EIA-23, "Annual Survey of Domestic Oil and Gas Reserves," EIA-23P, "Oil and Gas Well Operator List Update Report," and EIA-64A, "Annual Report of the Origin of Natural Gas Liquids Production," until December 31, 1997. Forms EIA-23P and EIA-64A will be extended without modification. For large operators reporting on Form EIA-23, the form will be modified to also collect estimates of reserves and production associated with enhanced oil recovery methods and nonconventional gas. Implementation of this proposed modification is contingent upon the availability of resources required to

make the EIA–23 data system capable of handling the new data. To offset the incremental respondent burden associated with reporting enhanced oil recovery and nonconventional gas reserves and production, and to focus the survey more effectively on proved reserves, the requirement for large operators to report indicated additional reserves (a reserves category that is not proved) will be discontinued. For small operators reporting on Form EIA–23, the form will be extended without modification.

Prospective respondents and other interested parties should comment on the actions discussed in item II. The following general guidelines are provided to assist in the preparation of responses. Please indicate to which form(s) your comments apply.

As a potential respondent:

A. Are the instructions and definitions clear and sufficient? If not, which instructions require clarification?

B. Can the data be submitted using the definitions included in the instructions?

C. Can data be submitted in accordance with the response time specified in the instructions? Would it be possible for you to submit the data as much as two months earlier?

D. Public reporting burden for this data collection is estimated to range from 62 to 333 hours per response for the field level (i.e., large operator) version of Form EIA–23, "Annual Survey of Domestic Oil and Gas Reserves" and reporting burden is estimated to average 8 hours per response for the State level (i.e., small operator) version of Form EIA–23. Public reporting burden is estimated to average 5.9 hours per response for the Form EIA–64A, "Annual Report of the Origin of Natural Gas Liquids Production." Public reporting burden is estimated to average 0.25 hours per response for the Form EIA–23P, "Oil and Gas Well Operator List Update Report." How much time, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, do you estimate will be required for you to complete and submit the required form?

E. What is the estimated dollar cost of completing this form, including the direct and indirect costs associated with the collection?

F. How can the form be improved?

G. Do you know of any other Federal, State, or local agency that collects similar data? If you do, specify the agency, the data element(s), and the means of the collection.

As a potential user:

A. Can you use data at the levels of detail indicated on the form? In particular, can you use the proposed data on reserves and production associated with enhanced oil recovery methods and nonconventional gas?

B. For what purpose would you use the data? Please be specific.

C. Would you be adversely affected by discontinuation of indicated additional reserves data from the EIA–23 field form?

D. How could the form be improved to better meet your specific needs?

E. Are there alternative sources of oil and gas reserves data and do you use them? What are their strengths or deficiencies?

EIA is also interested in receiving comments on any other aspect of the data collection forms or the need for the information contained in the Oil and Gas Reserves Surveys.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the form; they also will become a matter of public record.

Statutory Authorities

Sections 3506(a) and (c)(1), Paperwork Reduction Act of 1980, as amended, Pub. L. No. 96–511, 44 U.S.C. 3506(a) and (c)(1).

Issued in Washington, DC, March 31, 1994.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 94–8245 Filed 4–5–94; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Projects No. 10808, 10809, 10810—Michigan]

Wolverine Hydroelectric Corp., Availability of Draft Multiple Project Environmental Assessment

March 31, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the applications for an original license for the Edenville, Secord, and Smallwood Hydroelectric Projects, located on the Tittabawassee River, Gladwin County, Michigan and has prepared a Draft Environmental Assessment (DEA) for the projects. In the DEA, the Commission's staff has analyzed the potential environmental impacts of the proposed projects and has concluded that approval of the projects, with appropriate mitigation or enhancement measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Please submit any comments within 30 days from the date of this notice. Comments should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please affix Project No. 10808, 10809, or 10810 to all comments as appropriate. For further information, please contact Charles T. Raabe, at (202) 219–2811.

Lois D. Cashell,

Secretary.

[FR Doc. 94–8168 Filed 4–5–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RM94–12–000]

Interstate Natural Gas Pipeline Gas Supply Realignment Costs; Public Conference

March 30, 1994.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of Public Conference.

SUMMARY: The Federal Energy Regulatory Commission is issuing this notice to establish a date for a public conference to discuss the use of pricing differential mechanisms by interstate natural gas pipelines to recover gas supply realignment costs.

DATES: The public conference will be held on May 26, 1994, in the Commission Meeting Room. Persons wishing to make a formal presentation to the Commission should submit a written request to the Secretary of the Commission no later than May 2, 1994.

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

FOR FURTHER INFORMATION CONTACT: Mary Hain, (202) 208–0996.

Take notice that on May 26, 1994 at 10 a.m., the Commission will convene a public conference in the above captioned proceeding to examine the use of pricing differential mechanisms by interstate natural gas pipelines to recover gas supply realignment costs.

In Order No. 636 [1] the Commission established policies for the recovery of

[1] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing

the costs incurred by pipelines in connection with the transition required by that restructuring rule. One category of costs recognized by the Commission were the costs the pipelines would incur to realign the gas supplies they had under contract with producers in order to make bundled sales. After unbundling, as required in the restructuring rule, the Commission expected that pipelines would have to reform their supply contracts to market levels or terminate the contracts altogether. In Order No. 636 the Commission adopted the policy that pipelines would be permitted full recovery of prudently incurred gas supply realignment costs.[2]

Subsequently, in cases concerning the implementation of the restructuring rule, the Commission decided that, in certain circumstances, it would permit a pipeline to recover the difference between the contract price and the market price as a gas supply realignment cost for a two-year period.[3] The premise underlying the Commission's decision was that allowing the recovery of pricing differentials for a two year period would be less costly than requiring the pipeline to hastily arrange to buy out of the contract.

The Commission's recent experience with pipeline filings to recover pricing differentials has raised questions about whether this method for recovering gas supply realignment costs is an effective way to minimize gas supply realignment costs—the Commission's original goal in approving the use of such mechanisms. If it is not an effective method for minimizing gas supply realignment costs, then the Commission requests proposals for alternatives that are consistent with the Commission's policy to permit pipelines the full recovery of their prudently incurred gas supply realignment costs. The purpose of the conference is limited to consideration of the pricing differential mechanism. The Commission does not intend to reexamine its other policies on the recovery of transition costs.

The public conference convened by this notice will be held at 10 a.m. on May 26, 1994, in the Commission Meeting Room, 825 N. Capitol St., NE., Washington DC 20426.

Any person who wishes to make a formal presentation to the Commission should submit a written request to the Secretary of the Commission no later than May 2, 1994. Every effort will be made to accommodate such requests. Members of the Commission intend to participate in this public conference and will reserve time for questions and answers. After the conference, participants and others may file written comments by June 24, 1994.

By direction of the Commission: Commissioner Santa concurred with a separate statement attached.

Lois D. Cashell,

Secretary.

Santa, Commissioner, concurring:

Issued March 30, 1994.

With this notice of Public Conference, the Commission is initiating an inquiry into whether permitting the recovery of pricing differential costs (PDC) is an "effective way to minimize gas supply realignment costs." The Notice includes the Commission's reassurance that, if PDC recovery is not an effective method for minimizing gas supply realignment (GSR) costs, we will limit ourselves to the consideration of "alternatives that are consistent with the Commission's policy to permit pipelines full recovery of their prudently incurred gas supply realignment costs." Notwithstanding this reassurance, I am troubled by the prospect that the Commission would appear to be considering a mid-stream change in its mechanism for the recovery of Order No. 636 transition costs.

In Texas Eastern Transmission Corp.,[1] the Commission authorized PDC recovery for a period of two years. The Commission made clear that at the end of this period, the effectiveness of PDC recovery as a means to minimize transition costs would be subject to reexamination. In particular, the Commission has provided pipelines with warnings that:

(1) the burden is on the pipeline to support the continuation of PDC recovery beyond the initial period;[2]

(2) a pipeline cannot prudently delay realigning its problem contracts on the basis of the possibility of an extension;[3] and

(3) after the two-year period, the Commission may revisit the issue of continuing the mechanism.[4]

The Commission already has established a procedure for determining whether, ultimately, these costs will be recoverable. In addition to examining the eligibility and prudence of PDCs, if raised by parties to the proceedings, the Commission has stated that the burden will be on the pipeline to demonstrate that the PDC methodology will minimize GSR costs.[5] Further, the pipeline will have the burden of demonstrating that it made a bona fide effort to renegotiate the contracts underlying the PDCs it has filed to recover.[6] Filings to recover PDCs have been set for hearing, and the records developed in those proceedings will give the Commission a basis for determining whether the PDC recovery procedure in fact minimizes Order No. 636 transition costs.

Consequently, it is troubling that approximately nine months into the two-year period[7] the Commission is initiating a proceeding, docketed as a rulemaking, to consider whether the PDC recovery mechanism is "an effective way to minimize gas supply realignment costs" and to consider proposals for alternatives. I would hope that the end result of this proceeding is not a termination or modification of the PDC recovery mechanism effective prior to the end of the two-year period. Rather, I would hope that the record developed in this proceeding, together with the case-specific records developed in the section 4 GSR cost proceedings, will be used to inform the Commission's decision whether to terminate, modify, or continue the PDC recovery mechanism beyond two years.

Absent compelling evidence that the PDC recovery mechanism is not minimizing GSR costs, I would be reluctant to modify the mechanism mid-stream. I believe that regulatory certainty is important, and that pipelines have relied on the two-year time horizon provided by the PDC recovery mechanism. Therefore, I would urge my colleagues to consider carefully the consequences of modifying this

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Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 57 FR 13,267 (April 16, 1992), III FERC Stats. & Regs. Preambles ¶ 30,939 (April 8, 1992); order on reh'g, Order No. 636–A, 57 FR 36,128 (August 12, 1992), III FERC Stats. & Regs. Preambles ¶ 30,950 (August 3, 1992); order on reh'g, Order No. 636–B, 57 FR 57,911 (December 8, 1992), 61 FERC ¶ 61,272 (1992).

[2] III FERC Stats. & Regs. Preambles at 30,458.

[3] See, e.g., Texas Eastern Transmission Corp., 62 FERC ¶ 61,015 (January 13, 1993); order on reh'g 63 FERC ¶ 61,100 (April 22, 1993); and Southern Natural Gas Co., 64 FERC ¶ 61,274 (September 3, 1993).

[1] 62 FERC ¶ 61,015 at 61,125 (1993).

[2] Id.

[3] Southern Natural Gas Co., 64 FERC ¶ 61,274 at 62,932 (1993).

[4] Texas Eastern Transmission Corp., 64 FERC ¶ 61,305 at 63,307 (1993).

[5] Texas Eastern Transmission Corp., 62 FERC at 61,125. Also, to ensure cost minimization, the Commission required that Texas Eastern maintain a list of above-market contracts (List A) and a list of below-market contracts (List B) and credit net revenues from List B gas sales against the pricing differential from List A gas sales.

[6] Id.

[7] Texas Eastern was the first pipeline to file to recover PDC costs, and approximately nine months of Texas Eastern's two-year period has elapsed.

aspect of the Order No. 636 transition cost recovery procedure at this time.

Donald F. Santa, Jr.

Commissioner.

[FR Doc. 94–8187 Filed 4–5–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. JD94–04063T Oklahoma–71]

State of Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

March 31, 1994.

Take notice that on March 25, 1994, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that part of the Atoka Formation at a depth of 12,436 feet, underlying portions of Caddo, Blaine and Custer Counties, Oklahoma, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The recommended area is described as all of Section 6, Township 12 North, Range 13 West; Section 31, Township 13 North, Range 13 West; Section 1, Township 12 North, Range 14 West and Section 36, Township 13 North, Range 14 West.

The notice of determination also contains Oklahoma's findings that the referenced formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 94–8167 Filed 4–5–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4859–9]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), this notice announces the Office of Management and Budget's (OMB) responses to Agency PRA clearance requests.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer (202) 260–2740.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency PRA Clearance Requests

EPA ICR No. 1361.04; Information Requirements for Boilers and Industrial Furnaces; was approved 01/31/94; OMB No. 2050–0073; expires 01/31/97.

EPA ICR No. 1633.04; SO_2 Emissions Control and NO_X Emissions Control Requirements of Title IV of the Clean Air Act Amendments of 1990; was approved 02/28/94; OMB No. 2060–0258; expires 01/31/96.

EPA ICR No. 0246.05; Contractor's Cumulative Claim and Reconciliation; was approved 02/28/94; OMB No. 2030–0016; expires 02/28/97.

EPA ICR No. 1650.01; Permits for Early Reductions Sources, Information Requirements; was approved 02/25/94; OMB No. 2060–0276; expires 02/28/97.

EPA ICR No. 0783.22; Motor Vehicle Emission Certification and Fuel Economy Labeling, Clean-Fuel Fleet Emission Standards, Conversions, and General Provisions, Clean-Fuel Fleet Program; was approved 02/23/94; OMB No. 2060–0104; expires 06/30/95.

EPA ICR No. 1596.03; Significant New Alternatives Policy (SNAP) Program (Final Rulemaking under Title VI of the Clean Air Act Amendments of 1990); OMB No. 2060; expires 02/28/97.

EPA ICR No. 0277.08; Application for New and Amended Registration; was approved 02/09/94; OMB No. 2070–0060; expires 02/28/95.

EPA ICR No. 1637.02; Determining Conformity of General Federal Action to State Implementation Plans; was approved 01/31/94; OMB No. 2060–0279; expires 01/31/97.

EPA ICR No. 1670.01; Small Community Survey; was approved 02/14/94; OMB No. 2090–0018; expires 02/28/95.

EPA ICR No. 1428.03; Trade Secret Claims for Emergency Planning and Community Right-to-Know Information; was approved 02/14/94; OMB No. 2050–0078; expires 02/28/97.

EPA ICR No. 0783.25; On-Board Diagnostic Systems; was approved 02/09/94; OMB No. 2060–0104; expires 06/30/95.

OMB Disapproval

EPA ICR No. 1325.05; Proposed Amendments to the Comprehensive Assessment Information Rule (CAIR)—TSCA Section 8(A); was not approved 01/26/94.

OMB Extension of Expiration Dates

EPA ICR No. 0010.4 Information Requirements for Importation of Nonconforming Vehicles; OMB No. 2060–0095; expiration date was extended to 06/30/94.

EPA ICR No. 1519.02; Notification of Stored Pesticides with Cancelled or Suspended Registrations under Section 6(G) of the Federal Insecticide, Fungicide, and Rodenticide Act; OMB No. 2070–0109; expiration date was extended to 08/31/94.

EPA ICR No. 0328.03; Spill Prevention, Control, and Countermeasure Plans; OMB No. 2050 0021; expiration date was extended to 09/30/94.

EPA ICR No. 1583.01; Request for Information (RFI) for Database of Innovative Treatment Technology Vendors (Vendor Database); OMB No. 2050–0114; expiration date was extended to 08/31/94.

Dated: March 31, 1994.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 94–8231 Filed 4–5–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4858–3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 6, 1994.

FOR FURTHER INFORMATION CONTACT: For further information, or to obtain a copy of this ICR, contact Sandy Farmer at 202–260–2740.

SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: New Source Performance Standards (NSPS) for the Phosphate Fertilizer Industry (Subparts T, U, V, W, and X). (EPA ICR No. 1061.06; OMB No. 2060–0037). This is a request for renewal of a currently approved information collection.

Abstract: Owners or operators of phosphate fertilizer plants must notify EPA or the delegated regulatory authority of construction, modification, startups, shutdowns, malfunctions, and dates and results of initial performance tests. Owners and operators must install, calibrate, and maintain monitoring devices to determine the mass flow of phosphate-bearing feed, and devices to measure and record continuously pressure drop across the scrubbers, and must keep records of the mass of phosphate bearing feed. This industry is not required to submit excess emission reports. EPA or the delegated authority reviews the records during routine inspections to ensure compliance with the standards.

Burden Statement: The reporting requirements apply only to the initial performance tests, and since no new or reconstructed sources are expected to become subject to the standards in the next three years, there is no burden projected for reporting. The public recordkeeping burden for this collection of information is estimated to average 87.5 hours per recordkeeper annually. The estimated burden includes the time needed to review instructions, search existing data sources, gather the data needed and review the collection of information.

Respondents: Owners or operators of phosphate fertilizer plants.

Estimated No. of Respondents: 11.

Estimated No. of Responses per Respondent: None.

Estimated Total Annual Burden on Respondents: 963 hours for recordkeeping only.

Frequency of Collection: Not applicable.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to:

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460.

and

Mr. Chris Wolz, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: March 31, 1994.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 94–8232 Filed 4–5–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4858–5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before May 6, 1994.

FOR FURTHER INFORMATION CONTACT: For further information, or to obtain a copy of this ICR, contact Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of Prevention, Pesticides and Toxic Substances

Title: Worker Characterization and Blood-Lead Study of Renovation and Remodeling Workers. (EPA ICR No. 1689.01). This is a new collection.

Abstract: The Residential Lead-Base Paint Hazard Reduction Act, also designated as Title IV of the Toxic Substances Control Act (TSCA), became law on October 29, 1992. Section 402(c)(2) of Title IV of TSCA, directs EPA to conduct a study of persons engaged in various types of building renovation and remodeling activities. The purpose of the study is to establish the extent to which workers involved in these activities are exposed to lead, or disturb lead and create a lead-based paint hazard on a regular or occasional basis. The study involves a targeted survey of three categories of renovation and remodeling workers in two cities, and the collection of venous blood samples from those workers. The categories of renovation and remodeling workers are: union laborers, union carpenters, and independent non-union contractors. The two types of data that will be collected are: (1) Worker blood samples that will be chemically analyzed for lead; and (2) questionnaire data that will characterize the workers and will be used to understand differences in blood-lead levels. The questionnaire will be administered either by telephone or self-administered and data collected includes information relevant to lead exposure on: (a) Demographics; (b) work history (both current and long-term); (c) personal characteristics and habits; (d) non-work activities; (e) medical history; and (f) previous training or knowledge of lead.

The EPA will use data resulting from the survey to determine which groups of workers require training, certification or educational materials. These data will also be used in conjunction with other studies conducted by the Agency, and may be distributed to other agencies in summary form for use in addressing other requirements of the Act.

Burden Statement: Burden for this collection of information is estimated to average .563 hour (40 minutes) per respondent. This estimate includes the time needed to listen to recruitment information, answer the screening questions, complete the questionnaire, provide a blood sample, and review the collection of information.

Respondents: Union laborers, union carpenters, and independent non-union contractors.

Estimated Number of Respondents: 1,620.

Estimated Number of Responses per Respondents: 1.

Estimated Total Annual Burden on Respondents: 912 hours.

Frequency of Collection: One time only.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460.

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: March 31, 1994.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 94–8233 Filed 4–5–94; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4859–6]

Public Water System Supervision Program Revision for the State of Michigan

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Public notice is hereby given in accordance with the provision of Section 1413 of the Safe Drinking Water Act, as amended, 42 U.S.C. 300f *et seq.*, and 40 CFR part 142, subpart B, the National Primary Drinking Water

Regulations (NPDWR), that the State of Michigan is revising its approved Public Water System Supervision (PWSS) primacy program. The Michigan Department of Public Health (MDPH), has adopted drinking water regulations for 27 synthetic organic chemicals and 8 inorganic chemicals that correspond to the NPDWR for synthetic organic chemicals and inorganic chemicals promulgated by the U.S. Environmental Protection Agency (U.S. EPA) on January 30, 1991, (56 FR 3526–3597) and, as amended on July 1, 1991, (56 FR 30266–30281). The U.S. EPA has completed its review of Michigan's PWSS primacy program revision.

The U.S. EPA has determined that the Michigan rule revision meets the requirements of the Federal rule. Therefore, the U.S. EPA is proposing to approve the MDPH's rule revision.

All interested parties are invited to submit written comments on these proposed determinations, and may request a public hearing on or before May 6, 1994. If a public hearing is requested and granted, the corresponding determination shall not become effective until such time following the hearing, at which the Regional Administrator issues an order affirming or rescinding this action.

Requests for public hearing should be addressed to: Jennifer Kurtz Crooks (WD–17J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Any request for a public hearing shall include the following: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing. (2) A brief statement of the requesting person's interest in the Regional Administrator's determinations and of information that the requesting person intends to submit at such hearing. (3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

Notice of any hearing shall be given not less than fifteen (15) days prior to the time scheduled for the hearing. Such notice will be made by the Regional Administrator in the **Federal Register** and in newspapers of general circulation in the State of Michigan. A notice will be sent to the person(s) requesting the hearing as well as to the State of Michigan. The hearing notice will include a statement of purpose, information regarding the time and location, and the address and telephone number where interested persons may obtain further information. The Regional Administrator will issue an order affirming or rescinding his determination upon review of the hearing record. Should the determination be affirmed, it will become effective as of the date of the order.

Should no timely and appropriate request for a hearing be received, and should the Regional Administrator not elect to hold a hearing on his own motion, these determinations shall become effective on May 6, 1994. Please bring this notice to the attention of any persons known by you to have an interest in these determinations.

All documents related to these determinations are available for inspection between the hours of 8:30 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

Michigan Department of Public Health, Division of Water Supply, 3423 North Logan/Martin L. King Jr., Blvd., P.O. Box 30195, Lansing, Michigan 48909. State Docket Officer: Mr. James K. Cleland, (517) 335–9216.

Safe Drinking Water Branch, Drinking Water Section, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Jennifer Kurtz Crooks, Region 5, Drinking Water Section at the Chicago address given above, telephone 312/886–0244.

(Section 1413 of the Safe Drinking Water Act, as amended (1986), and 40 CFR 142.10 of the National Primary Drinking Water Regulations)

Signed this 17th day of March, 1994.

Valdas V. Adamkus,

Regional Administrator, U.S. EPA, Region 5.

[FR Doc. 94–8227 Filed 4–5–94; 8:45 am]

BILLING CODE 6560–50–P

[OPP–300333; FRL–4767–7]

Pesticides; Prioritization of Actions Subject to the Delaney Clause; Policy Notice

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing that it will temporarily cease review and processing of tolerance petitions received under the Federal Food, Drug and Cosmetic Act (FFDCA) and the associated registration applications received under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) if any of the pesticide uses that are subject of the applications and petitions appear to result in a residue that needs a food additive regulation under section 409 of the FFDCA and such a regulation would be barred by the Delaney Clause. EPA is adopting this policy to concentrate on food additive regulations currently in force which are inconsistent with the Delaney Clause and to avoid expending EPA resources on action which may be revised once various policy issues are resolved.

EFFECTIVE DATE: April 6, 1994.

FOR FURTHER INFORMATION CONTACT: Tina E. Levine, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington DC 20460, (703)– 308–8393.

SUPPLEMENTARY INFORMATION:

I. Background

EPA's regulations regarding FIFRA registration in 40 CFR 152.112(g) require that all needed tolerances for pesticide residues in food be in place prior to the approval of a FIFRA registration for the use of a pesticide which will result in such residues. Raw food tolerances for pesticides are established under section 408 of FFDCA, 21 U.S.C. 346a, and tolerances for certain processed foods and for feed additives ("food additive regulations") for pesticides are established under FFDCA section 409, 21 U.S.C. 348.

EPA's current policy is that a food additive regulation is needed when there is a possibility that the processing of a raw food containing pesticide residues would result in residues in the processed food or in animal feed at a level greater than the raw food tolerance. EPA determines whether there is such a possibility based on the review of processing data supplied by the applicant for registration purposes or the petitioner for a tolerance.

Under section 409, a food additive regulation for a pesticide residue may not be promulgated if EPA concludes that the pesticide "induces cancer" in man or animal as specified in the Delaney Clause. 21 U.S.C. 348(c)(3). In *Les v. Reilly*, the United States Court of Appeals for the Ninth Circuit held that the Delaney Clause barred the establishment of a food additive regulation for any pesticide that meets the induce-cancer standard no matter how infinitesimal the risk, 968 F.2d 985 (9th Cir. 1992), *cert. denied*, 113 S. Ct. 1361 (1993). The court overturned EPA's interpretation of the Delaney Clause as subject to an exception for pesticide residues which pose a *de minimis* risk.

FIFRA and section 408 of the FFDCA contain no Delaney Clause and instead

require consideration of both risks and benefits in making regulatory decisions. Thus, pesticide uses which might qualify under the standards for registration and a section 408 tolerance could still fail to meet the standard for a food additive regulation under section 409. Where that is the case, and a section 409 food additive regulation is needed, EPA regulations state that a FIFRA registration may not be granted, and it is EPA policy not to approve a section 408 tolerance for such a use either.

In the wake of *Les v. Reilly*, the National Food Processors Association (NFPA) and other food processing and production groups have petitioned EPA to change its policy linking actions under section 408 (raw food) and section 409 (processed food). Such a change in policy would require EPA to amend its regulations concerning the registration requirement that all needed section 409 food additive regulations be in place. Additionally, the NFPA petition challenges the factual basis for EPA's conclusion that processing studies are an accurate measure of whether processed foods will contain pesticide residues greater than the section 408 tolerance and thus need a section 409 tolerance.

In response to the NFPA petition, EPA has published for public comment a notice ("NFPA petition notice") summarizing the petition and current EPA policies and procedures that are potentially affected by issues raised in the NFPA petition, including EPA's procedures for determining when a 409 food additive regulation is needed and EPA's policy of coordinating the decision on the 408 tolerance and registration with the 409 food additive regulation (58 FR 7473, Feb. 5, 1993). Further, EPA also has released, on Febrary 2, 1993, a list of 32 pesticides that either have or need section 409 food additive regulations under EPA's policy and that also appear to induce cancer within the meaning of the Delaney Clause. EPA intends to update this list periodically. Although EPA has not made a formal "induces cancer" finding for many of these pesticides, EPA currently believes that most, if not all, of the pesticides classified in Group A, B, or C according to EPA's Cancer Assessment Guidelines will come within the Delaney Clause standard. EPA places a high priority on responding to the legal, policy, science, and factual issues raised by the NFPA petition and the *Les v. Reilly* decision. However, these issues are both complex and interrelated and cannot be addressed quickly.

II. Reasons for Policy on Tolerance Petitions and Registration Actions Affected by Delaney Clause

EPA is adopting this policy at the present time as part of the priorities it has established following the decision in *Les v. Reilly*. The *Les v. Reilly* decision clearly established that the Delaney Clause bars the existence of a food additive regulation for any pesticide that induces cancer in man or animal. EPA has determined that there presently exist as many as 50 food additive regulations for pesticides that may meet the induce-cancer standard. EPA's first priority, thus, following the *Les v. Reilly* decision is to determine which of these regulations must be revoked and to do so promptly. Because food additive regulations are only established in situations where EPA believes they are needed to prevent the adulteration of food, EPA's second priority will be to determine what action should be taken, if any, against the FIFRA registrations and section 408 tolerances which are associated with the food additive regulations to be revoked. This issue has been made more complex, as explained above, by the NFPA petition which challenges EPA's existing policies on this matter. Finally, EPA's third priority is to address the many petitions for establishing food additive regulations which raise Delaney Clause problems.

Ideally, EPA would prefer to address simultaneously all pending petitions to establish food additive regulations and all existing food additive regulations which are inconsistent with the Delaney Clause. EPA, however, has limited resources. EPA estimates that in the next several months it will initiate revocation actions against over 25 food additive regulations based on the Delaney Clause. EPA will also have to resolve what policy to follow on the associated section 408 tolerances and registrations and implement those actions as well. This could result in EPA action against 80 or more pesticide uses. Aggressively moving to deny pending applications which raise Delaney Clause problems could exhaust EPA's limited resources on pesticide uses not on the market while tolerances inconsistent with the statute remain in place. Finally, EPA also must take into account that it receives thousands of registration and tolerance actions each year. Devoting substantial resources to petitions raising Delaney Clause issues will delay action on the more routine actions. This is especially the case where EPA has not yet resolved the important policy issues relating to the interrelationship of section 409 food additive regulations and section 408 tolerances and FIFRA registrations because actions taken today might have to be revised if EPA policies are altered. EPA will reexamine this policy once it has resolved the policy issues raised by the NFPA petition.

III. Policy

EPA will temporarily stop all review and processing work related to *establishing* a registration and/or tolerance(s) for any chemical/crop combination in which: (1) either the chemical has been found to induce cancer in man or animal or the chemical has shown evidence of carcinogenicity in animals or humans; and (2) the pesticide residue in or on a raw agricultural commodity concentrates when that commodity is processed or EPA otherwise determines that a food additive regulation is needed for the use. This will include any work on registrations under FIFRA section 3, experimental use permits under FIFRA section 5, associated tolerances under section 408 of the FFDCA, as well as food additive regulations under section 409 of the FFDCA.

Work on tolerances and registrations for other uses of the chemical, where a food additive regulation is not needed, may continue. However, EPA approves or denies tolerance petitions in toto. Therefore, if a petition seeks a tolerance for any residue that appears subject to the Delaney Clause, that petition cannot be approved and work on all tolerances in that petition will temporarily stop. The Agency advises any person who has submitted a pending tolerance petition containing a tolerance that appears to be subject to the Delaney Clause to amend the petition to separate the tolerances not affected by the Delaney Clause so that work on these tolerances may resume.

EPA will also disapprove any State registrations approved under section 24 of FIFRA if the registration depends on the existence of a food additive regulation that is subject to revocation under the Delaney Clause. The basis of such disapproval would be that the registration is "inconsistent with the Federal Food, Drug, and Cosmetic Act," FIFRA sec. 24(c)(3). States are urged not to approve such section 24(c) registrations, since State approval followed within 90 days by EPA disapproval will be disruptive and cause unncessary economic burdens.

IV. Implementation

Once the determination has been made that a pesticide use may result in a residue that appears to be subject to the Delaney Clause, the PM will notify

the applicant or petitioner in writing of the status of the tolerance petition and associated application(s), i.e., that all review and processing work has been stopped and the reason for this action. These registrations and petitions will continue to be considered pending; EPA is not denying these registrations and petitions. If a registrant wishes to amend the tolerance petition after such notification to allow work to continue on uses not affected by the Delaney Clause, such an amendment may be submitted to the PM by the usual procedure. The tolerance petitions or registration applications will not be returned to the registrant or subject to any "abandoned petition" policy unless EPA, in the future, prescribes some further action that registrants must respond to affirmatively within a set time period. EPA will notify applicants and petitioners if and when the the Agency resumes review and processing of a petition and associated registration applications on which review was stopped under this policy. Such notice may be by letter, or by issuance of a policy notice or rule in which implementation is addressed.

EPA believes its limited resources are best directed at first removing regulations inconsistent with the statute and EPA policies and then making final determinations on petitions which, because they meet the above criteria, are likely to be denied. To the extent, however, that a petitioner believes that EPA has wrongly characterized its petition as meeting the criteria or that there exists some other basis for granting the petition, EPA will, on a case-by-case basis, consistent with its obligation to protect the public health, adjust its priorities so that a formal action can be taken on the petition. In addition, EPA will give any petitioner a denial, if that is requested.

There are approximately 60 actions currently in review that EPA believes are subject to this policy. EPA will begin sending individual notices to registrants and petitioners within 30 days of this notice and expects to complete notification within 90 days. A registrant who receives no notification may assume that petitions and application actions continue in active review.

This policy does not affect the registration of new products or new uses which have an associated 409 tolerance that has already been established even if, under the Delaney Clause, that tolerance would not now be granted. However, EPA intends to revoke such tolerances in the future, and will, after revocation, immediately stop review and processing of additional pending actions dependent on the tolerance at that time. Registrants who intend to submit new registration applications under these circumstances may wish to await further Agency action before submitting applications that may be affected by such revocations.

A final decision on whether to approve or deny the tolerance petitions and associated FIFRA applications that appear to be subject to the Delaney Clause must await resolution of the complex, interrelated issues raised in the NFPA petition and summarized above and will be staggered in such a manner so as to conserve resources for addressing currently approved food additive regulations, tolerances, and registrations. Some of these issues may be addressed by pending legislation. In the absence of such legislative changes, EPA does not believe that most of the issues will be addressed until later this year.

List of Subjects

Environmental protection, Agricultural commodities, Food and feed additives, Pesticides and pests.

Dated: March 21, 1994.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

[FR Doc. 94–7701 Filed 4–5–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180929; FRL 4771–2]

Receipt of Application for Emergency Exemption To Use Imidacloprid; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received specific exemption requests from the Oregon and Utah Departments of Agriculture (hereafter referred to as the "Applicants") to use the pesticide Imidacloprid (CAS 105827–78–9) to treat up to 13,000 acres of apples to control aphids. The Applicants propose the use of a new chemical; therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before April 21, 1994.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180929," should be submitted by mail to: Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308–8791.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a State agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicants have requested the Administrator to issue specific exemptions for the use of imidacloprid on apples to control aphids. Information in accordance with 40 CFR part 166 was submitted as part of this request.

The Applicants state that aphids have been a chronic pest of apples in Oregon and Utah. Aphids feed on the plant tissues of young trees, which can stunt growth and affect future tree productivity. On large, vigorous trees, the primary concern is fruit damage. Aphids excrete such large amounts of honeydew that it drips on the fruit, causing russetting or providing a substrate for the growth of sooty mold. The value of such damaged fruit is considerably reduced, as it is diverted to a processing market. The Applicants state that some of the registered alternative pesticides, while once effective, have lost much of their effectiveness due to build-up of resistant

aphid populations. Others are said to only provide suppression, and not adequately control aphids. One of the registered alternatives (phosphamidon) that is still somewhat effective for this pest problem was withdrawn from the market in 1991, due to non-support for re-registration, and existing stocks have been mostly depleted. Another chemical (mevinphos) was previously used for this pest, but because of human risk concerns the manufacturer removed all labeled uses of mevinphos on apples and pears from the label in 1993. Therefore, the Applicants claim that Oregon and Utah apple growers are left without adequate means to control aphids. The Applicants anticipate crop value losses of approximately 10 percent without the availability of imidacloprid this growing season.

The Oregon and Utah Departments of Agriculture propose that imidacloprid be used at a maximum rate of 0.1 lb. active ingredient (a.i.), or 6.4 fluid oz. of product, per acre with a maximum of 5 applications. No more than 0.5 lb. a.i. (32 fluid oz. of product) applied per year. Oregon proposes treatment on up to 9,500 acres of apples. This would total approximately 4,750 lbs. of a.i, or 2,375 gal. of product. Utah proposes treatment on up to 3,363 acres of apples. This would total approximately 1,682 lbs. of a.i., or 841 gal. of product. This is the first time the Applicants have applied for the use of imidacloprid on apples. A section 18 for this use of imidacloprid was issued by the Agency to Washington State on March 7, 1994 for up to 160,980 acres.

This notice does not constitute a decision by EPA on the applications themselves. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide). Such notice provides for opportunity for public comment on the application. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Oregon and Utah Departments of Agriculture.

List of Subjects

Environmental protection, Pesticide and pests, Crisis exemptions.

Dated: March 25, 1994.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94-8102 Filed 4-5-94; 8:45 am]

BILLING CODE 6560-50-F

[OPP-180928; FRL 4771-1]

Receipt of Application for Emergency Exemption To Use Imidacloprid; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Arizona Department of Agriculture (hereafter referred to as the "Applicant") to use the pesticide imidacloprid (CAS 105827-78-9) to treat up to 25,000 acres of melons to control the sweet potato whitefly (*Bemesia tabaci*). The Applicant proposes the use of a new chemical; therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before April 21, 1994.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP-180928," should be submitted by mail to: Public Response and Program Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location and telephone number: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA. (703) 308-8791.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of imidacloprid on melons to control the sweet potato whitefly (SPWF). Information in accordance with 40 CFR part 166 was submitted as part of this request.

The SPWF is common on many wild and cultivated crops such as tomatoes, cotton, cucurbits and solanaceae. The sweet potato whitefly (SPWF) is a relatively new pest on melons. The SPWF has caused severe economic damage to several other commodities nationwide including cotton, lettuce, squash, beans, peanuts, and ornamentals. According to the Applicant, SPWF populations for this season are expected to be widespread, and heavy enough to cause serious economic loss to the melon crop. SPWF causes damage through feeding activities, and also indirectly through the production of a honeydew, which encourages growth of sooty mold and other fungi. The Applicant claims that adequate control of the SPWF is not being achieved with the currently registered compounds and that without imidacloprid, melon growers will incur a significant economic loss.

Along with this request, the Applicant has also requested a specific exemption for use of a different chemical (bifenthrin) on melons for control of the SPWF. The Applicant justifies requests for two chemicals, by stating that the imidacloprid would be applied at or near planting/transplanting, as a soil incorporated treatment; since imidacloprid is a systemic, it would be taken up by the small seedlings, and protect them from SPWF feeding during this early stage of development. The Applicant states that bifenthrin, being non-systemic, is only of use as a foliar spray, which is of little value during the early phase of development, when there is limited leaf area. Thus the Applicant proposes that use of bifenthrin be allowed later in the crop season, as a foliar treatment, to maintain season-long control. The Applicant indicates that

imidacloprid would not be of use as both a soil treatment and a foliar spray, because its mode of action is such that resistance development is a concern. The Registrant of imidacloprid will not support the use of this chemical further into the growing season for this reason.

The Applicant proposes to apply imidacloprid at a maximum rate of 0.25 lb. (dry) active ingredient (16 fluid oz. of product) per acre with a maximum of one application per crop season on a total of 25,000 acres of melons. Use under this exemption could potentially amount to a maximum total of 6,250 lbs. of active ingredient, or 3,125 gal. of product. This is the first time that the Applicant has applied for the use of imidacloprid on melons. However, the Applicant requested, and was granted, specific exemptions for the use of bifenthrin for SPWF control in melons for the past two years (this is the third consecutive year for the request for bifenthrin).

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide). Such notice provides for opportunity for public comment on the application. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Arizona Department of Agriculture.

List of Subjects

Environmental protection, Pesticide and pests, Crisis exemptions.

Dated: March 25, 1994.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94-8103 Filed 4-5-94; 8:45 am]

BILLING CODE 6560-50-F

[OPP-180931; FRL 4771-4]

Receipt of Application for Emergency Exemption To Use Mancozeb; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Wisconsin Department of Agriculture, Trade and Consumer Protection (hereafter referred to as the "Applicant") for use of the pesticide mancozeb (CAS 8018-01-7) to control leaf, stem blight on ginseng. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before April 21, 1994.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP-180931," should be submitted by mail to: Public Response and Human Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. In person, bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Margarita Collantes, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: 6th Floor, Crystal Station I, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703) 308-8347.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a State agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption.

The Applicant has requested the Administrator to issue a specific exemption for the use of the mancozeb, available as Dithane DF (EPA Reg. No. 707-180) from Rohm and Haas Co., to control leaf, stem blight, caused by the fungus *Alternaria panax* and *Phytophthora cactorum*, on a maximum of 4,167 acres in Wisconsin. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicant, Alternaria blight rarely kills the ginseng root, which is the marketed portion; however, loss of the foliage results in significant root yield loss in a harvested crop, and retards root growth and overwintering ability in younger crops. Infestations of Alternaria blight in one season greatly increase the potential for epidemics in subsequent seasons, since the fungus remains in the infected plant debris. *Alternaria panax* has become resistant to Rovral 50W, the only fungicide carrying a section 3 label for use against Alternaria blight on ginseng. Rovral by itself can no longer be effective to control Alternaris. Other fungicides are also substantially less effective than Dithane. If not controlled, the disease can be expected to infest all of Wisconsin's 5,000 acres of ginseng.

Under the proposed exemption 2.0 lbs of product (1.5 lbs of a.i.) per acre will be used on 4,167 acres. A maximum of 12 applications at a minimum of 7-day intervals will be made by ground equipment using a minimum of 80 gallons of water per acre. A 28-day pre-harvest interval will be observed. Applications will be made by certified private or commercial applicators or persons under their direct supervision. In addition, applicators, mixer/loaders, and persons entering treated ginseng gardens to work must wear chemical-resistant gloves, long-legged pants and long-sleeved shirts.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption if an emergency exemption has been subject to a Special Review, and is intended for a use that could pose a risk similar to the risk posed by any use of the pesticide which is or has been subject of the Special Review. [40 CFR 166.24 (a)(5)].

The Agency initiated a Special Review of the ethylene bisdithiocarbamate (EBDC) fungicides on July 17, 1987, which includes mancozeb. A notice of final determination was issued March 2, 1992. The Agency took this action based on an assessment of the risks from exposure to ethylenethiourea (ETU) present in, or formed as a result of metabolic conversion from, pesticide products containing the active

ingredient mancozeb. ETU, a potential human carcinogen, teratogen, and thyroid toxicant, is present as a contaminant, degradation product, and metabolite of all the EBDC pesticides. The Agency concluded that the estimated cumulative risk of 10^{-5} from all current 55 food uses was unacceptable and, therefore, canceled the following 11 food uses: apricots, carrots, celery, collards, mustard greens, nectarines, peaches, rhubarb, spinach succulent beans and turnips. These cancellations reduce estimated lifetime dietary risk to 1.6×10^{-6} which the Agency has determined does not outweigh the benefits of the 44 retained uses.

The regulations governing section 18 also require the Agency to publish a notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption if an emergency exemption has been requested or granted for that use in any 3 previous years, and a complete application for registration of that use has not been submitted to the Agency [40 CFR 166.24 (a) (6)]. Exemptions for the use of mancozeb on ginseng have been requested for the past 7 years (1987 thru 1993). Mancozeb was granted for use on ginseng in 1991 and 1993 and Wisconsin went crisis in 1992. An application for registration of this use has not been submitted to the Agency.

Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Wisconsin Department of Agriculture, Trade and Consumer Protection.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: March 25, 1994.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–8107 Filed 4–5–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30334A/30344A]; FRL–4768–4]

Roussel Bio Corp.; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications submitted by Roussel Bio Corporation to register the pesticide products K-Othrine SC 5.0 and Deltamethrin Technical, containing active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: George LaRocca, Product Manager (PM) 13, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 204, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703–305–6100).

SUPPLEMENTARY INFORMATION: EPA issued notices, published in the **Federal Register** of July 1, 1992 (57 FR 29311) and November 18, 1992 (57 FR 54402), which announced that Roussel Bio Corp., 170 Beaver Brook Road, Lincoln Park, NJ 07035, had submitted applications to register the pesticide products K-Othrine SC 5.0, and Deltamethrin Technical, (EPA File Symbols 432–TAG and 432–TAE), containing the active ingredients deltamethrin (s)-alpha-cyano-3-phenoxybenzyl-(1*R*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethyl cyclopropanecarboxylate at 4.75 percent and (1*R*,3*R*)-3-(2,2-dibromovinyl)-2,2-dimethyl cyclopropane carboxylic acid (S)-alpha-cyano-3-phenoxybenzyl ester at 98 percent respectively, active ingredients not included in any previously registered products.

On March 2, 1994, EPA approved two new products (one end-use and one technical) as follows:

1. K-Othrine SC 5.0 (EPA Registration Number 432–763) for use in and around residential, industrial, institutional structures, and their immediate surroundings.

2. Deltamethrin Technical (EPA Registration Number 432–762) for formulating purposes only.

The Agency has considered all required data on risks associated with the proposed use of deltamethrin, and information on social, economic, and environmental benefits to be derived from use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health safety determinations which show that use of deltamethrin when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects to the environment.

More detailed information on these registrations is contained in a Chemical Fact Sheet on deltamethrin.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 401 M St., SW., Washington, D.C. 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: March 21, 1994.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

[FR Doc. 94–7702 Filed 4–5–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–30290A; FRL–4766–8]

Sandoz Argo, Inc.; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications submitted by Sandoz Agro, Inc. to conditionally register the pesticide products Sentinel 40WG Turf Fungicide, Technical Cyproconazole, and Sentinel 40WG For Repackaging

Use Only containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Sidney C. Jackson, Acting Product Manager (PM) 21, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703–305–6900).

SUPPLEMENTARY INFORMATION: EPA issued a notice published in the **Federal Register** of September 28, 1988 (53 FR 37866), which announced that Sandoz Crop Protection Corp., 1300 E. Touchy Ave., Des Plaines, IL 60018, had submitted applications to register the pesticide products Cyproconazole 40% WG Fungicide containing the active ingredient (4-chlorophenyl)-(1-cyclopropylethyl) triazole-1-ethanol at 40 percent and Technical Cyproconazole containing the active ingredient cyproconazole-alpha-(4-chlorophenyl)-alpha-(1-cyclopropylethyl)-(1*H*-1,2,4-triazole-1-ethanol) at 93 percent (EPA File Symbols 55947–RGE and 55947–RGG) respectively, active ingredients not included in any previously registered products.

The company changed the name of one of the products from "Cyproconazole 40% WG Fungicide" to "Sentinel 40WG Turf Fungicide" and amended the active ingredient to read "cyproconazole [alpha-(4-chlorophenyl)-(1-cyclopropylethyl) triazole-1-ethanol."

EPA also received an application from Sandoz Agro, Inc. to conditonally register the product Sentinel 40WG For Repackaging Use Only (EPA File Symbol 55947–RLA), which was inadvertently omitted from the notice that published in the **Federal Register** of September 28, 1988. This product contains 40 percent of the active ingredient cyproconazole [alpha-(4-chlorophenyl)-alpha-(1-cyclopropylethyl)-(1*H*-1,2,4-triazole-1-ethanol). However, since the notice of receipt of application for Sentinel 40 WG was not published in **Federal Register**, as required by section 3(c)(4) of FIFRA, as amended, interested parties may submit written comments within 30 days from the date of publication of this notice for this product only.

These applications were approved on December 22, 1993 as Sentinel 40WG Turf Fungicide (EPA Registration Number 55947–132) for foliar application on turf, Technical Cyproconazole (EPA Registration Number 55947–133) for manufacturing purposes only, and Sentinel 40WG For Repackaging Use Only (EPA Registration Number 55947–156) for repackaging use only.

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking because a period reasonably sufficient for generation of the data has not elapsed since the Administrator first imposed the data requirements, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects on the environment; and that use of the pesticide is in the public interest.

The Agency has considered the available data on the risks associated with the proposed use of cyproconazole, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of cyproconazole during the period of conditional registration is not expected to cause any unreasonable adverse effect on the environment, and that use of the pesticide is in the public interest.

Consistent with section 3(c)(7)(C), the Agency has determined that these conditional registrations are in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

More detailed information on these conditional registrations is contained in the EPA Pesticide Fact Sheet on cyproconazole.

A copy of the fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 401 M St., SW., Washington, DC 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Product registration.

Dated: March 22, 1994.

Susan H. Wayland,
Acting Director, Office of Pesticide Programs.

[FR Doc. 94–7703 Filed 4–5–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–50777; FRL–4768–8]

Receipt of Notification to Conduct Small-Scale Testing of a Genetically Altered Microbial Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's receipt of a notification of intent to conduct small-scale testing of genetically altered strains of *Rhizobium leguminosarum* biovar *viceae* which contain the Cry III gene from *Bacillus thuringiensis* subspecies *tenebrionis* from Washington State University.

DATES: Written comments must be received by May 6, 1994.

ADDRESSES: Comments, in triplicate, should bear the docket control number OPP–50777 and be submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Information submitted in any comment concerning this notice may be claimed confidential by marking any

part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Written comments will be available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Phillip O. Hutton, Product Manager (PM) 18, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202 (703)305-7690

SUPPLEMENTARY INFORMATION: A notification of intent to conduct small-scale field testing pursuant to the EPA's Statement of Policy entitled "Microbial Products Subject to the Federal Insecticide, Fungicide, and Rodenticide Act and the Toxic Substances Control Act," published in the **Federal Register** of June 26, 1986 (51 FR 23313), has been received by Washington State University of Pullman, Washington. The purpose of the proposed testing is to determine if the Cry III endotoxin from the genetically altered strains of *Rhizobium leguminosarum* biovar *viceae*, containing the Cry III gene from *Bacillus thuringiensis* subspecies *tenebrionis*, affects: (1) Pea leaf weevil survival, (2) nodule-feeding damage to peas, (3) final pea yields and (4) nodule occupancy under field conditions. The proposed field tests are to take place in Washington over the next 2 years. Total acreage tested will be less than 1 acre. Following review of the Washington State University application and any comments received in response to this Notice, EPA will decide whether or not an experimental use permit is required.

Dated: March 24, 1994.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94-8106 Filed 4-5-94; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

[Gen Docket No. 90-119; DA 94-269]

Private Land Mobile Radio Services; Florida Public Safety Plan Amendment

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Deputy Chief, Land Mobile and Microwave Division and the Acting Chief, Spectrum Engineering Division released this Order amending the Public Safety Radio Plan for Florida (Region 9). As a result of accepting the amendment for the Plan for Region 9, the interests of the eligible entities within the region will be furthered.

EFFECTIVE DATE: March 30, 1994.

FOR FURTHER INFORMATION CONTACT: Betty Woolford, Private Radio Bureau, Policy and Planning Branch, (202) 632-6497.

SUPPLEMENTARY INFORMATION:

Order

Adopted: March 23, 1994.

Released: March 30, 1994.

By the Deputy Chief, Land Mobile and Microwave Division and the Acting Chief, Spectrum Engineering Division:

1. The Private Radio Bureau and the Office of Engineering and Technology, acting under delegated authority, accepted the Florida (Region 9) Public Safety Plan (Plan) on May 10, 1990, 5 FCC Rcd 3067 (1990).

2. By letter dated January 13, 1994, the Region proposed to amend its Plan. The proposed amendment would, in part, add an additional subregion, clarify timeframes for applications for pooled and dedicated channel allotments, clarify channel loading requirements, and clarify and enlarge upon mutual aid requirements. The Commission placed the letter on Public Notice for comments due on March 4, 1994, 58 FR 5429 (February 4, 1994), and received no comments.

3. We have reviewed the proposed amendment to the Region 9 Plan and, having received no comments to the contrary, conclude it furthers the interests of the eligible entities within the Region.

1. Accordingly, *it is ordered*, That the Public Safety Radio Plan for Florida (Region 9) *is amended*, as set forth in the Region's letter of January 13, 1994. This Amendment is effective immediately.

Federal Communications Commission.

Edward R. Jacobs,

Deputy Chief, Land Mobile and Microwave Division.

[FR Doc. 94-8185 Filed 4-5-94; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 2003]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

April 1, 1994.

Petitions for reconsiderations and clarifications 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 April 21, 1994. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards (CC Docket No. 91-115)

Number of Petitions Filed: 1.

Subject: Amendment of the Commissions Rules to Establish New Personal Communications Services. (Gen. Docket No. 90-314, RM No. 7140, RM-7175, RM-7618)

Number of Petitions: 7.

Subject: Amendment of Sections 2.106 of the Commission's Rules to allocate the 1610-1626.5 MHz and the 2483.5-2500 MHz Bands for Use by the Mobile-Satellite Service, Including Non-Geostationary Satellites. (ET Docket No. 92-28)

Number of Petitions: 1.

Subject: Implementation of section 309(j) of the Communications Act Competitive Bidding (PP Docket No. 93-253)

Number of Petitions: 5.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94-8186 Filed 4-5-94; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Notice of Item Submitted for OMB Review

The Federal Maritime Commission hereby gives notice that the following

item has been submitted to OMB for review pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et. seq.*). Requests for information, including copies of the collection of information and supporting documentation, may be obtained from Sandra L. Kusumoto, Director, Bureau of Administration, Federal Maritime Commission, 800 North Capitol Street, NW., room 900, Washington, DC 20573, telephone number (202) 523–5866. Comments may be submitted to the agency and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Federal Maritime Commission, within 15 days after the date of the **Federal Register** in which this notice appears.

Summary of Items Submitted for OMB Review

46 CFR Part 515—Filing of Tariffs by Terminal Operators

FMC requests an extension of clearance for 46 CFR 515 which requires marine terminal operators performing services in connection with common carriers by water in the foreign and domestic offshore commerce of the United States to file with the Commission a schedule or tariff in duplicate showing all its rates, charges, rules, and regulations relating to or connected with the receiving, handling, storing, and/or delivering of property at its terminal facility. Such persons must also keep the tariffs open for public inspection as well as file two copies of tariff changes. Total annual cost to the Federal Government is estimated at approximately $60,000; total annual estimated manhours and cost to respondents is estimated at approximately 4,000 hours and $78,500, respectively.

Joseph C. Polking,

Secretary.

[FR Doc. 94–8170 Filed 4–5–94; 8:45 am]

BILLING CODE 6730–01–M

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: 3700.
Name: Lahyan Y. Diab dba L. Dias Forwarding.
Address: 7822 Freehollow Dr., Falls Church, VA 22042.
Date Revoked: January 19, 1994.
Reason: Failed to maintain a valid surety bond.

License Number: 1906.
Name: Stair Cargo Services, Inc.
Address: 9020 N.W. 12th Street, Miami, FL 33172–2998.
Date Revoked: January 25, 1994.
Reason: Surrendered license voluntarily.

License Number: 2874.
Name: Amfran International Forwarding, Inc.
Address: 360 Gendron Road, Plainfield, CT 06374.
Date Revoked: January 29, 1994.
Reason: Surrendered license voluntarily.

License Number: 1780.
Name: B.W.S. Trade Coordinators, Inc.
Address: 1201 Corbin Street, Elizabeth, NJ 07201.
Date Revoked: January 31, 1994.
Reason: Surrendered license voluntarily.

License Number: 2561.
Name: Fontana International, Inc.
Address: 2053B, NW. 72nd Avenue, Miami, FL 33122.
Date Revoked: March 4, 1994.
Reason: Failed to maintain a valid surety bond.

License Number: 2458.
Name: Robara International Forwarders, Inc.
Address: 195 E. 22nd Street, Bayonne, NJ 07002.
Date Revoked: March 6, 1994.
Reason: Failed to maintain a valid surety bond.

License Number: 2635.
Name: Hydra Management, Inc.
Address: 10500 Richard, suite 228, Houston, TX 77042.
Date Revoked: March 9, 1994.
Reason: Failed to maintain a valid surety bond.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 94–8157 Filed 4–5–94; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Rene Ortiz Villafane, Inc., 2000 Kennedy Ave., MAI Basic Four Center, Suite 207, San Juan, Puerto Rico 00920, Officers: Rene Ortiz Villafane, President; Robert N. Altman, Vice President; Felipe N. Ortiz Melendez, Secretary; Juan Pimentel Vazquez, Treasurer; Nilda Pacheco de Manso, Sub-Treasurer.

"K" Line Air Service (U.S.A.) Inc., 144-35 157th Street, Jamaica, NY 11434, Officers: Tetsuo Shoji, President/Director, Koichi Inouye, Exec. Vice President/Director, Antonio Rodriguez, Vice President, Yuichi Aoyagi, Secretary/Treasurer.

Ana T. Binns dba AAA International Shipping, 5730 W. Manchester Blvd., Los Angeles, CA 90045, Sole Proprietor.

Franklin E. Cashman, Jr. dba CFS International Shipping, 312 Oakway Court, Joppa, MD 21085, Sole Proprietor.

Dated: March 31, 1994.
By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 94–8156 Filed 4–5–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Mary Alice Holden Conner, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 26, 1994.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Mary Alice Holden Conner; John L. Conner, Sr.; the John Louis Conner III Trust, and the Carla Michell Conner Trust, acting in concert to acquire an additional 3.11 percent, for a total of 10.77 percent, of the voting shares of M&P Community Bancshares, Inc., Newport, Arkansas, and thereby indirctly acquire Merchants & Planters Bank, Newport, Arkansas, and Greers Ferry Lake State Bank, Heber Springs, Arkansas.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Dwayne O. Andreas, Miami, Florida, to acquire 16.62 percent of the voting shares of National City Bancorporation, Minneapolis, Minnesota, and thereby indirectly acquire National City Bank of Minneapolis, Minneapolis, Minnesota.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. John D. Mapes and Lee D. Mapes, Norton, Kansas, to acquire 38.77 percent; John D. Mapes, Individual Retirement Account, Norton, Kansas, to acquire 5.47 percent; Lee D. Mapes, Individual Retirement Account to acquire 2.76 percent; Norman L. and Gloria A. Nelson, Norton, Kansas, to each acquire 23.75 percent; and David M. Hill, Norton, Kansas, to acquire 5.0 percent of the voting shares of Consolidated Insurance, Inc., Hill City, Kansas, and thereby indirectly acquire The Colsolidated State Bank, Hill City, Kansas.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Terry P. Gilmore, San Marcos, Texas, to acquire 24.52 percent, for a total of 49.04 percent of the voting shares of S.B.T. Bancshares, Inc., San Marcos, Texas, and thereby indirectly acquire State Bank and Trust Company, San Marcos, Texas.

Board of Governors of the Federal Reserve System, March 31, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–8183 Filed 4–5–94; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Assessment of Medical Technology

The Agency for Health Care Policy and Research (AHCPR), through its Office of Health Technology Assessment (OHTA), announces that it is initiating a Technology Assessment or a Technology Review (see below) of the safety, clinical effectiveness and indications for the use of signal-averaged electrocardiography (SAECG). This technique reduces the level of background noise that is present in the standard electrocardiography and allows the detection of signals of very low amplitude, such as ventricular late potentials. The AHCPR is particularly interested in whether the performance of SAECG has a positive effect on health outcomes and whether it influences the medical management of the patient.

A description of AHCPR's process for conducting technology assessments and technology reviews was published in the **Federal Register**, December 3, 1993. In brief, the full assessment process includes an extensive review of the published literature, consultation with other components of the Public Health Service (PHS), obtaining information from relevant specialty groups and evaluation of information received in response to a **Federal Register** notice. A technology review is a shorter evaluation of a technology; it may be performed if the medical or scientific questions posed are limited, the available evidence is limited and the published medical literature is insufficient in quantity or quality, or the time frame available precludes utilization of the full assessment process.

The AHCPR is interested in receiving information which would help in the assessment or review of the technology as described above. To enable the scientific community to evaluate the information included in the assessment or review, AHCPR will discuss in the assessment or review only those data and analyses for which a source(s) may be cited. Respondents are therefore encouraged to include with their submissions a written consent permitting AHCPR to cite the sources of the data and comments provided. Otherwise, in accordance with the confidentiality statute governing information collected by AHCPR, 42 U.S.C. 299a-l(c), no information received will be published or disclosed which could identify an individual or entity described in the information, or could identify an entity or individual supplying the information.

Information and comments should be submitted in writing no later than July 5, 1994 to the AHCPR Office of Health Technology Assessment at the address below.

Thomas V. Holohan, M.D., Director, Office of Health Technology Assessment, AHCPR, 6000 Executive Boulevard, suite 309, Rockville, MD 20852, Phone: (301) 594–4023.

Dated: March 30, 1994.

J. Jarrett Clinton,

Administrator.

[FR Doc. 94–8184 Filed 4–5–94; 8:45 am]

BILLING CODE 4160–90–P

Centers for Disease Control and Prevention

[Announcement Number 437]

RIN 0905–ZA27

Cooperative Agreements for Studies to Evaluate the Effectiveness of Interventions to Prevent or Reduce Childhood Lead Poisoning, Notice of Availability of Funds for Fiscal Year 1994

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1994 funds for a cooperative agreement program to conduct studies to evaluate the effectiveness of interventions to prevent or reduce childhood lead poisoning.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of "Healthy People 2000," see the section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program is authorized under sections 301(a) (42 U.S.C. 241(a)) and 317A (42 U.S.C. 247b-1) of the Public Health Service Act, as amended. Program regulations are set forth in 42 CFR part 51b.

Smoke-Free Workplace

The Public Health Service strongly encourages all cooperative agreement recipients to provide a smoke-free workplace and promote the non-use of

all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicants

Applications may be submitted by public and private, nonprofit and for-profit organizations and governments and their agencies. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, State and local health departments or their bona fide agents, and small, minority and/or women-owned businesses are eligible for these cooperative agreements.

Applications will be considered for funding to conduct studies in one or more programmatic interest areas. Applicants interested in conducting more than one study must submit a separate application for each. If a single study addresses more than one programmatic interest area, only one should be identified as the primary interest area. The programmatic interest area should be clearly indicated for each study.

Availability of Funds

Approximately $600,000 is available in FY 1994 to fund approximately three cooperative agreements. It is expected that the average award will be $200,000 (direct and indirect cost), ranging from $100,000 to $350,000. It is expected that the awards will begin on or about September 30, 1994. The awards will be made for 12-month budget periods within a project period up to 3 years. Funding estimates may vary and are subject to change based on the availability of funds.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of these awards is to study important epidemiologic questions critical to the implementation, operation, and expansion of childhood lead poisoning prevention programs, and to support the development of guidelines and policies. These awards are to study:

1. The effectiveness of environmental interventions for primary prevention of childhood lead poisoning;

2. The effectiveness of nutritional strategies in preventing and/or reducing childhood lead poisoning; and

3. The effectiveness of education strategies in preventing and/or reducing childhood lead poisoning.

Program Requirements

To fulfill the objectives of this cooperative agreement, an applicant must meet the following requirements:

1. A director who has specific authority and responsibility to carry out the requirements of the project.

2. Demonstrated ability to collect and analyze data needed to fulfill the study objectives.

3. Demonstrated experience in conducting relevant epidemiologic studies.

4. Demonstrated effective and well-defined working relationships within the performing organization and with outside entities which will insure implementation of the proposed study.

5. Demonstrated access to a laboratory with demonstrated proficiency in performing blood lead (and other laboratory measurements as indicated in the applicant's study protocol).

6. Demonstrated ability to insure that children identified with elevated blood levels receive appropriate medical and environmental management through an ongoing childhood lead poisoning prevention program (which need not be applicant's organization).

7. For applicants proposing to "evaluate the effectiveness of environmental lead hazard reduction interventions," the following additional requirements apply:

- Applicant has responsibility for ongoing lead hazard inspection and reduction activities or must document a close working relationship with the agency or organization responsible for ongoing lead hazard inspection and reduction activities. If the applicant does not have direct responsibility for such activities, a letter of support from the organization with that responsibility is required. Ongoing activities should include the inspection of residences of children identified with elevated blood lead levels for lead hazards and provide for or insure the reduction of identified lead hazards.
- The lead hazard identification and reduction program should be based on written guidelines, statutes, or regulations that specify methods used to inspect dwellings, and identify and reduce lead hazards. Lead hazard reduction standards should include: acceptable methods of controlling lead-based paint hazards (including dust); requirements for containment and clean-up of dust and debris generated by the lead hazard control process; and inspection of dwellings to ensure compliance with applicable lead hazard control standards.

Note: Eligible applicants may enter into contracts, including consortia agreements, as necessary to meet the requirements of the program and strengthen the overall application; however, applicants must perform a substantial portion of the activities for which funds are requested.

Programmatic Interest Areas

The studies must be in one of these following areas:

1. Prospective studies to evaluate the effectiveness of environmental lead hazard reduction interventions in primary prevention of childhood lead poisoning (e.g., preventing blood lead levels from increasing). Preferably, these studies should be done collaboratively with health, housing, and environmental government agencies, and community-based organizations.

2. Prospective studies to determine the effectiveness of nutritional supplements or dietary changes in preventing blood lead levels from increasing and/or in reducing blood lead levels in young children.

3. Prospective studies to determine the effectiveness of education of care givers in preventing blood lead levels from increasing and/or in reducing blood lead levels in young children. Educational activities may include provision of cleaning or other supplies.

Cooperative Activities

In conducting activities to achieve the purpose of these cooperative agreements, the recipient will be responsible for conducting activities under A. (Recipient Activities), and CDC will be responsible for conducting activities under B. (CDC Activities):

A. Recipient Activities

1. Conduct study activities, including: (1) Enrolling eligible study subjects, after obtaining informed consent; (2) collecting data; (3) ensuring appropriate medical and environmental management of study subjects, and (4) conducting all other components required for implementation of the study.

2. Enter and maintain data in a computerized database.

3. Analyze collected data and prepare a report of the study findings.

B. CDC Activities

1. Collaborate with the recipient in refining the approved study protocol and the data collection instrument(s), as appropriate.

2. Provide technical advice on data collection and management.

3. Assist in assessment of quality of laboratory measurements, if needed.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. Study Protocol (30%)—The protocol's scientific soundness, quality, feasibility, consistency with the project goals, and soundness of the evaluation plan.

2. Access to Study Subjects (20%)—Documented ability to identify, access, enroll, and follow study subjects.

3. Laboratory Capacity (15%)—Documented availability to a laboratory with demonstrated proficiency in performing lead measurements (and other laboratory measurements as indicated in applicant's proposed study).

4. Medical and Environmental Management (15%)—Documented ability to ensure that children identified with elevated blood lead levels receive appropriate medical and environmental management.

5. Project Personnel (10%)—The qualifications, experience, (including experience in conducting relevant studies) and time commitment of the staff needed to ensure implementation of the project.

6. Plan for Administration of Project (10%)—Schedule for implementing, monitoring, and evaluating the project.

7. Budget Justification (Not Scored)—The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds.

Executive Order 12372 Review

Applications are not subject to the review requirements of Executive Order 12372 entitled, Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirement

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number assigned to this program is 93.283.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from ten or more individuals and funded by this cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR Part 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Application Submission and Deadline

A. Preapplication Letter of Intent

Although not a prerequisite of application, a non-binding letter of intent-to-apply is requested from potential applicants. The letter should be submitted to the Grants Management Officer (whose address is reflected in section B, "Applications"). It should be postmarked no later than one month prior to the planned submission deadline (e.g., May 10 for June 10 submission). The letter should identify the announcement number, the intended submission deadline, name the principal investigator, and specify the study area addressed by the proposed project.

The letter of intent does not influence review of funding decisions, but it will enable CDC to plan the review more efficiently, and will ensure that each applicant receives timely and relevant information prior to application submission.

B. Applications

All applicants should use Form PHS–398 and adhere to the ERRATA Instruction Sheet for form PHS–398. The original and five copies must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 321, Atlanta, GA 30305, on or before June 10, 1994.

C. Deadline

1. Applications shall be considered as meeting the deadline if they are either:

A. Received on or before the deadline date, or

B. Sent on or before the deadline date and received in time for submission for the review process. Applicants must request a legibly dated U.S. Postal Service Postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

2. Late Applications—Applications which do not meet the criteria in 1.A. or 1.B. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address, and phone number and will need to refer to Announcement 437. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all documents, business management technical assistance may be obtained from Lisa Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 321, Mailstop E–13, Atlanta, GA 30305, telephone (404) 842–6796.

Please refer to Announcement Number 437 when requesting information and submitting an application.

Programmatic technical assistance may be obtained from Lisa Rosenblum, M.D., Lead Poisoning Prevention Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop F–42, Atlanta, GA 30341–3724, telephone (404) 488–7330.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

To receive a copy of the Strategic Plan for the Elimination of Childhood Lead Poisoning, contact the Lead Poisoning Prevention Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop F–42, Atlanta, GA 30341–3724, telephone (404) 488–7330.

Dated: March 31, 1994.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–8247 Filed 4–5–94; 8:45 am]

BILLING CODE 4163–18–P

[Announcement Number 438]

RIN 0905–ZA28

Cooperative Agreements for Studies To Determine Sources and Predictors of Lead Poisoning in Young Children; Notice of Availability of Funds for Fiscal Year 1994

Introduction

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1994 funds for a cooperative agreement program to conduct studies to determine sources and predictors of lead poisoning in young children.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2000," a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Environmental Health. (For ordering a copy of "Healthy People 2000," see the section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program is authorized under sections 301(a) (42 U.S.C. 241(a)) and 317A (42 U.S.C. 247b–1) of the Public Health Service Act, as amended. Program regulations are set forth in 42 CFR part 51b.

Smoke-Free Workplace

The Public Health Service strongly encourages all cooperative agreement recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicants

Applications may be submitted by public and private, nonprofit and for-profit organizations and governments and their agencies. Thus, universities, colleges, research institutions, hospitals, other public and private organizations, State and local health departments or their bona fide agents, and small, minority and/or women-owned businesses are eligible for these cooperative agreements.

Applications will be considered for funding to conduct studies in one or more programmatic interest areas. Applicants interested in conducting more than one study must submit a separate application for each. If a single study addresses more than one programmatic interest area, only one should be identified as the primary interest area. The programmatic interest area should be clearly indicated for each study.

Availability of Funds

Approximately $600,000 is available in FY 1994 to fund approximately three cooperative agreements. It is expected that the average award will be $200,000 (direct and indirect cost), ranging from $100,000 to $350,000. It is expected that the awards will begin on or about September 30, 1994. The awards will be made for 12-month budget periods within a project period up to 3 years. Funding estimates may vary and are subject to change based on the availability of funds.

Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Purpose

The purpose of these awards is to study important epidemiologic questions critical to the implementation, operation, and expansion of childhood lead poisoning prevention programs, and to support the development of guidelines and policies. These awards are to study:

1. Sources of lead exposure in children in high-risk communities or in the general population;
2. Sources of lead exposure in children in day care centers; and
3. The relationship between housing characteristics (that do not require environmental sampling) and the distribution of blood lead levels in children.

Program Requirements

To fulfill the objectives of this cooperative agreement, an applicant must meet the following requirements:

1. A director who has specific authority and responsibility to carry out the requirements of the project.
2. Demonstrated ability to collect and analyze data needed to fulfill the study objectives.
3. Demonstrated experience in conducting relevant epidemiologic studies.
4. Demonstrated effective and well-defined working relationships within the performing organization and with outside entities which will ensure implementation of the proposed study.
5. Demonstrated access to a laboratory with demonstrated proficiency in performing blood lead (and other laboratory measurements as indicated in the applicant's study protocol).
6. Demonstrated ability to ensure that children identified with elevated blood levels receive appropriate medical and environmental management through an ongoing childhood lead poisoning prevention program (which need not be applicant's organization).

Eligible applicants may enter into contracts, including consortia agreements, as necessary to meet the requirements of the program and strengthen the overall application; however, applicants must perform a substantial portion of the activities for which funds are requested.

Programmatic Interest Areas

The studies must be in one of the following areas:

1. Sources of lead exposure in children in high-risk communities or in the general population: Determine the relative contribution of different sources of lead in children. Quantify and model the contribution of various sources of lead exposure to blood lead levels among a probability sample of children living in a defined community (where an industrial point source, such as a smelter, is NOT the predominant source of lead exposure) in an urban, suburban, or rural area.
2. Children in day care centers: Assess lead hazards in day care centers and their contribution to blood lead levels among children ≤6 years of age, while controlling for household lead exposure, and other potential determinants of blood lead levels.
3. Lead-based paint hazard predictors of childhood lead poisoning: Evaluate the relationship between housing characteristics that do not require environmental sampling (e.g., housing age and condition) and the geometric mean (and distribution of) blood lead levels in children, while controlling for other determinants of blood lead levels.

Cooperative Activities

In conducting activities to achieve the purpose of these cooperative agreements, the recipient will be responsible for conducting activities under A. (Recipient Activities), and CDC will be responsible for conducting activities under B. (CDC Activities):

A. Recipient Activities

1. Conduct study activities, including (1) enrolling eligible study subjects, after obtaining informed consent; (2)

collecting data; (3) ensuring appropriate medical and environmental management of study subjects; and (4) conducting all other components required for implementation of the study.

2. Enter and maintain data into a computerized database.

3. Analyze collected data and prepare a report of the study findings.

B. CDC Activities

1. Collaborate with recipient in refining approved study protocol and data collection instrument(s), as appropriate.

2. Provide technical advice on data collection and management.

3. Assist in assessment of quality of laboratory measurements, if needed.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. Study Protocol (30%)

The protocol's scientific soundness, quality, feasibility, consistency with the project goals, and adequacy of the evaluation plan.

2. Access to Study Subjects (20%)

Documented ability to identify, access, enroll, and follow study subjects.

3. Laboratory Capacity (15%)

Documented availability of a laboratory with demonstrated proficiency in performing lead measurements (and other laboratory measurements as indicated in applicant's proposed study).

4. Medical and Environmental Management (15%)

Documented ability to ensure that children identified with elevated blood lead levels receive appropriate medical and environmental management.

5. Project Personnel (10%)

The qualifications, experience, (including experience in conducting relevant studies) and time commitment of the staff needed to ensure implementation of the project.

6. Plan for Administration of Project (10%)

Schedule for implementing, monitoring, and evaluating the project.

7. Budget Justification (Not Scored)

The budget will be evaluated for the extent to which it is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds.

Executive Order 12372 Review

Applications are not subject to the review requirements of Executive Order 12372 entitled, Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirement

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number assigned to this program is 93.283.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from ten or more individuals and funded by this cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects

If the proposed project involves research on human subjects, the applicant must comply with the Department of Health and Human Services Regulations (45 CFR part 46) regarding the protection of human subjects. Assurance must be provided to demonstrate that the project will be subject to initial and continuing review by an appropriate institutional review committee. The applicant will be responsible for providing assurance in accordance with the appropriate guidelines and form provided in the application kit.

Application Submission and Deadline

A. Preapplication Letter of Intent

Although not a prerequisite of application, a non-binding letter of intent-to-apply is requested from potential applicants. The letter should be submitted to the Grants Management Officer (whose address is reflected in section B, "Applications"). It should be postmarked no later than one month prior to the planned submission deadline, (e.g., May 17 for June 17 submission).

The letter should identify the announcement number, indicate the intended submission deadline, name the principal investigator, and specify the study area addressed by the proposed project.

The letter of intent does not influence review of funding decisions, but it will enable CDC to plan the review more efficiently, and will ensure that each applicant receives timely and relevant information prior to application submission.

B. Applications

All applicants should use Form PHS–398 and adhere to the ERRATA Instruction Sheet for form PHS–398. The original and five copies must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 321, Atlanta, GA 30305, on or before June 17, 1994.

C. Deadline

1. Applications shall be considered as meeting the deadline if they are either:

A. Received on or before the deadline date, or

B. Sent on or before the deadline date and received in time for submission for the review process. Applicants must request a legibly dated U.S. Postal Service Postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

2. Late Applications: Applications which do not meet the criteria in 1.A. or 1.B. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

To receive additional written information call (404) 332–4561. You will be asked to leave your name, address and phone number and will need to refer to Announcement 438. You will receive a complete program description, information on application procedures, and application forms.

If you have questions after reviewing the contents of all documents, business management technical assistance may be obtained from Lisa Tamaroff, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 321, Mailstop E–13, Atlanta, GA 30305, telephone (404) 842–6796.

Please refer to Announcement Number 438 when requesting information and submitting an application.

Programmatic technical assistance may be obtained from Lisa Rosenblum, M.D., Lead Poisoning Prevention Branch, Division of Environmental

Hazards and Health Effects, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop F–42, Atlanta, GA 30341–3724, telephone (404) 488–7330.

Potential applicants may obtain a copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

To receive a copy of the Strategic Plan for the Elimination of Childhood Lead Poisoning, contact the Lead Poisoning Prevention Branch, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop F–42, Atlanta, GA 30341–3724, telephone (404) 488–7330.

Dated: March 31, 1994.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–8246 Filed 4–5–94; 8:45 am]

BILLING CODE 4163–18–P

[Announcement Number 424]

RIN 0905-ZA36

State-Based Programs to Reduce the Burden of Diabetes: A Health Systems Approach; Notice of Availability of Funds for Fiscal Year 1994

Introduction

The Centers for Disease Control and Prevention (CDC), announces the availability of fiscal year (FY) 1994 funds for new applications for cooperative agreements to develop, implement, and evaluate State-based diabetes control programs (DCPs). The program is designed to establish the DCP as a key component of an evolving health care environment. The conceptual framework within which successful applicants should operate is characterized by four areas of program activity: (1) Defining the nature, extent, distribution, and causes of the burden of diabetes; (2) Developing new, effective approaches for reducing the diabetes burden which complement emerging health care systems; (3) Implementing specific measures to ensure the widespread application of accepted standards, policies, and protocols to reduce the burden of diabetes; and (4) Coordinating the diabetes-related efforts of the public health system with private health care providers and payers, as well as with all appropriate governmental, voluntary, professional, and academic institutions.

This announcement addresses two distinct levels of program support, both of which are consistent with the conceptual framework described above. The first is a Core Capacity Program, which defines basic diabetes prevention and control activities to be carried out through existing and evolving health care systems. The second is an Enhanced Program, which is intended to introduce additional, innovative elements to a State's diabetes prevention and control efforts, and is also carried out through existing and evolving health care systems.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led, national activity to reduce morbidity and mortality and improve the quality of life. This announcement is primarily related to Priority Area 17, Diabetes and Chronic Disabling Conditions—with particular attention to populations at disproportionate risk of developing diabetes, including minorities and the elderly. However, it also is relevant to other priority areas, including Physical Activity and Fitness, Nutrition, Tobacco, Educational and Community-Based Programs, Maternal and Infant Health, Heart Disease and Stroke, Clinical Preventive Services, and Surveillance and Data Systems. (To order a copy of Healthy People 2000, see the section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program is authorized under sections 301(a) and 317(k)(3) [42 U.S.C. 241(a) and 247b (k) (3)] of the Public Health Service Act. Applicable program regulations are found in 45 CFR part 92.

Smoke-Free Workplace

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Eligible Applicants

Eligible applicants are the official public health agencies of States or their bona fide agents or instrumentalities. This includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the U. S. Virgin Islands, the Federated States of Micronesia, Guam, Northern Mariana Islands, the Republic of the Marshall Islands, and the Republic of Palau.

Availability of Funds

Approximately $9,750,000 is available in FY 1994 to fund approximately 42 awards in two categories (Core Capacity Programs and Enhanced Programs).

A. Core Capacity Program to Reduce the Burden of Diabetes

Approximately $8,750,000 is available to fund approximately 40 awards for Core Capacity Programs. It is expected that the average award will be $230,000, ranging from $150,000 to $350,000.

B. Enhanced Program to Reduce the Burden of Diabetes

Approximately $1,000,000 is available to fund approximately 2 awards for Enhanced Programs. It is expected that the average award will be $500,000, ranging from $300,000 to $700,000. Enhanced Program awards will only be considered for those applicants who compete successfully and are funded for Core Capacity Program awards.

It is expected that awards will begin on or about July 1, 1994, and will be made for a 12-month budget period within a project period of up to 5 years. Funding estimates may vary and are subject to change.

Continuation awards within the project period will be made on the basis of satisfactory progress and availability of funds.

At the request of the applicant, Federal personnel may be assigned to a project in lieu of a portion of the financial assistance.

Purpose

The purpose of this program is to provide financial and programmatic assistance to States and territories for integrating diabetes prevention and control activities within existing and evolving health care systems.

Program Requirements

The program described in this announcement reflects a significant shift by the DCP from the direct provision of personal health services to a responsibility for leadership and coordination of overall efforts of the health system to reduce the burden of diabetes. Both a Core Capacity Program and an Enhanced Program are conceptualized by the four categories of program activity described under INTRODUCTION in this announcement. The central objective of a Core Capacity Program is to assist the State to establish the basic public health framework for

leading and coordinating the efforts of the health care system and other public and private resources to reduce the burden of diabetes. A Core Capacity Program must address all four categories of program activity.

An established Core Capacity Program is the foundation on which an Enhanced Program is built. The central objective of an Enhanced Program is to move the State program vigorously into a position from which it can take the lead in ensuring that diabetes-specific, community preventive health services are an integral part of a reformed health system. An Enhanced Program must involve the addition of innovative approaches not employed in the Core Capacity Program to reduce the burden of diabetes. Simple expansion of Core Capacity Program activities does not constitute an Enhanced Program.

A recipient of an award for an Enhanced Program may choose to focus its initial enhancement efforts on fewer than all four of the basic categories of program activity. However, at a minimum, the recipient must indicate that activities will be undertaken in the first budget year related to (1) defining the burden of diabetes and (2) coordinating the overall effort to reduce the diabetes burden. It is expected that each Enhanced Program will be fully operational, including all four categories, within four years of the State's initial Enhanced Program award.

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities described under A., below, and CDC shall be responsible for carrying out the activities described under B., below.

A. Recipient Activities

1. Define and monitor the burden of diabetes through the establishment and maintenance of a State-based surveillance system which focuses on diabetes as a public health problem.

2. Develop new approaches to reduce the burden of diabetes through the development or adaptation of specific interventions to be applied within the existing and evolving health care system.

3. Implement specific measures to reduce the burden of diabetes by ensuring the widespread application of accepted standards, policies, and protocols developed for that purpose. These should include protocols designed to prevent or postpone the occurrence of the major complications of diabetes, as well as diabetes-related cardiovascular disease. In addition, they should include protocols to ensure that persons with diabetes improve their efforts to achieve levels of glycemic control consistent with the results of the Diabetes Control and Complications Trial (DCCT).

4. Coordinate overall program efforts of the health system to reduce the burden of diabetes through the establishment of appropriate linkages with other governmental agencies; private health care providers; academic institutions; community-based organizations; voluntary agencies; health care reimbursement organizations; national organizations representing populations disproportionately burdened by diabetes, such as minorities and the elderly; and others.

B. CDC Activities

1. Define and monitor the burden of diabetes by providing technical assistance in the development of surveillance and other data systems to measure and characterize the burden of diabetes and its complications.

2. Develop new approaches for reducing the burden of diabetes through the provision of program guidelines for, and technical assistance in, the development or adaptation of specific interventions to be applied within the existing and evolving health care system.

3. Implement specific measures to reduce the burden of diabetes through the provision of program guidelines for, and by collaborating in the implementation of, accepted standards, policies, and protocols within the existing and evolving health care system.

4. Coordinate overall program efforts of the health care system to reduce the burden of diabetes through the provision of program guidelines, and by facilitating communication among DCPs and with other governmental agencies, private health care providers, academic institutions, community-based organizations, voluntary agencies, health care reimbursement organizations, and others, to assist them in ensuring optimal coordination among all components of the public health and health care systems to address the burden of diabetes.

Evaluation Criteria (Total 100 Points for Core Capacity Program and 100 Points for Enhanced Program)

Applications for Core Capacity Program support will be reviewed and evaluated according to the following criteria:

A. Background and Need for the Core Capacity Program

The extent to which the need is demonstrated, including adequate documentation of the barriers to diabetes care and education and the degree of experience the applicant has in each of the four areas of program activity (Define, Develop, Implement, and Coordinate). (20 points)

B. Core Capacity Program Work Plan

For each of the four areas of program activity, the Core Capacity Work Plan will be evaluated in terms of the following items (80 points):

1. *Objectives.* The extent to which work plan objectives are measurable, feasible, appropriate, and specific, and are identified for all four areas of program activity (Define, Develop, Implement, and Coordinate). (25 points)

2. *Methods.* The feasibility, appropriateness, and specificity of the proposed methods for achieving the stated objectives and are related to the four areas of program activity (Define, Develop, Implement, Coordinate). (25 points)

3. *Evaluation Plan.* The feasibility and appropriateness of the proposed plan for evaluating progress toward attainment of the stated objectives and are related to the four areas of program activity (Define, Develop, Implement, Coordinate). (25 points)

4. *"Milestones to Completion" Chart.* The completeness of the chart describing the timeline and milestones leading to attainment of the stated objectives for each of the four areas of program activity (Define, Develop, Implement, Coordinate). (5 points)

C. Core Capacity Program Budget

The extent to which this budget is adequately justified, reasonable, and consistent with this program purpose and objectives. (Not Weighted)

Applications for Enhanced Program support will be reviewed and evaluated according to the following criteria:

A. Background and Need for the Enhanced Program

The extent to which the need is demonstrated, including adequate documentation of the barriers to diabetes care and education and the degree of experience the applicant has in each of the four areas of program activity (Define, Develop, Implement, and Coordinate). (20 points)

B. Enhanced Program Work Plan

For each of the four areas of program activity, the Enhanced Program Work Plan will be evaluated in terms of the following items (80 points):

1. *Objectives.* The extent to which work plan objectives are measurable, feasible, appropriate, and specific, and are identified for all four areas of

program activity (Define, Develop, Implement, and Coordinate). (25 points)

2. *Methods.* The feasibility, appropriateness, and specificity of the proposed methods for achieving the stated objectives and are related to the four areas of program activity (Define, Develop, Implement, Coordinate). (25 points)

3. *Evaluation Plan.* The feasibility and appropriateness of the proposed plan for evaluating progress toward attainment of the stated objectives and are related to the four areas of program activity (Define, Develop, Implement, Coordinate). (25 points)

4. *"Milestones to Completion" Chart.* The completeness of the chart describing the timeline and milestones leading to attainment of the stated objectives for each of the four areas of program activity (Define, Develop, Implement, Coordinate). (5 points)

C. Enhanced Program Budget

The extent to which this budget is adequately justified, reasonable, and consistent with this program purpose and objectives. (Not Weighted)

Funding Priority

Priority will be given to applications directed to those providers and systems which serve population groups disproportionately impacted by diabetes and its complications. These populations include certain racial and ethnic minorities (African Americans, Hispanic Americans, American Indians, and Asian-Pacific Islanders), the elderly, and the economically disadvantaged.

Public comments are not being solicited regarding the funding priority because time does not permit solicitation and review prior to the funding date.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order (E.O.) 12372. E.O. 12372 sets up a system for State and local government review of proposed Federal assistance applications. The applicant should contact its State Single Point of Contact (SPOC) as early as possible to alert it to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC for each affected State. A current list of SPOCs is included in the application kit. If SPOCs have any State process recommendations on applications submitted to CDC, they should forward them to Elizabeth M. Taylor, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 305, Mailstop E–16, Atlanta, GA 30305, no later than 60 days after the application deadline. The granting agency does not guarantee to "accommodate or explain" State process recommendations it receives after that date.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.988.

Other Requirements

Paperwork Reduction Act

Projects that involve the collection of information from 10 or more individuals and funded by the cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Application Submission and Deadline

The program announcement and application kit were sent to all eligible applicants in February 1994.

Where To Obtain Additional Information

Business management technical assistance including information on application procedure and copies of application forms may be obtained from Bernice A. Moore, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 305, Mailstop E–16, Atlanta, GA 30305, telephone (404) 842–6802.

Programmatic technical assistance may be obtained from Stephen DePaul, Program Services Branch, Division of Diabetes Translation, National Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop K–10, Atlanta, GA 30341, telephone (404) 488–5046.

Please refer to Announcement Number 424 when requesting information and submitting an application.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report: Stock No. 017–001–00473–1) referenced in the INTRODUCTION through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: March 31, 1994.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–8174 Filed 4–5–94; 8:45 am]

BILLING CODE 4163–18–P

Health Resources and Services Administration

Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Public Law 92–463, the Annual Report for the following Health Resources and Service Administration's Federal Advisory Committee has been filed with the Library of Congress:

Advanced General Dentistry Review Committee.

Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE, Washington, DC. Copies may be obtained from: Dr. Richard Weaver, Executive Secretary, Advanced General Dentistry Review Committee, room 8C–15, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6837.

Dated: March 31, 1994.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 94–8151 Filed 4–5–94; 8:45 am]

BILLING CODE 4160–15–P

Office of Community Services

[Program Announcement No. OCS 94–02]

Request for Applications Under the Office of Community Services' Fiscal Year 1994 Community Food and Nutrition Program

AGENCY: Office of Community Services, Administration for Children and Families, Department of Health and Human Services.

ACTION: Request for applications under the Office of Community Services' Community Food and Nutrition Program.

SUMMARY: The Office of Community Services (OCS) announces that

competing applications will be accepted for new grants pursuant to the Secretary's discretionary authority under section 681A of the Community Services Block Grant Act of 1981 as amended. This Program Announcement contains forms and instructions for submitting an application. Grants made under this Program Announcement are subject to the availability of funds for support of these activities.

CLOSING DATES: The closing date for submission of applications is June 6, 1994.

FOR FURTHER INFORMATION CONTACT: Office of Community Services, 370 L'Enfant Promenade SW., Washington, DC 20447 (202) 401-9233, Contact: Joseph Reid.

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Part A—Preamble

1. Legislative Authority

The Community Services Block Grant Act as amended authorizes the Secretary of Health and Human Services to make funds available under several programs to support program activities which will result in direct benefits targeted to low-income people. This Program Announcement covers the grant authority found at Section 681A, Community Food and Nutrition, which authorizes the Secretary to make funds available for grants to be awarded on a competitive basis to eligible entities for local and statewide programs (1) to coordinate existing private and public food assistance resources, whenever such coordination is determined to be inadequate, to better serve low-income communities; (2) to assist low-income communities to identify potential sponsors of child nutrition programs and to initiate new programs in underserved or unserved areas; and (3) to develop innovative approaches at the State and local levels to meet the nutrition needs of low-income people. The Act also requires that 20 percent of appropriated funds in excess of $6 million be awarded on a competitive basis to eligible agencies for nationwide programs, including programs benefitting Native Americans and Migrant Farmworkers.

2. Definitions of Terms

For purposes of this Program Announcement the following definitions apply:

—Displaced worker: An individual who is in the labor market but has been unemployed for six months or longer.
—Indian tribe: A tribe, band, or other organized group of Native American Indians recognized in the State or States in which it resides or considered by the Secretary of the Interior to be an Indian tribe or an Indian organization for any purpose.
—Innovative project: One that departs from or significantly modifies past program practices and tests a new approach.
—Migrant Farmworker: An individual who works in agricultural employment of a seasonal or other temporary nature who is required to be absent from his/her place of permanent residence in order to secure such employment.
—Seasonal farmworker: Any individual employed in agricultural work of a seasonal or other temporary nature who is able to remain at his/her place of permanent residence while employed.
—Underserved area (as it pertains to child nutrition programs): A locality in which less than one-half of the low-income children eligible for assistance participate in any child nutrition program.
—Budget Period: The term "budget period" refers to the interval of time into which a grant period of assistance (project period) is divided for budgetary and funding purposes.
—Eligible Entity: States and other public and private non-profit agencies/organizations including agencies which administer nationwide programs.
—Project Period: The term "project period" refers to the total time a project is approved for support, including any approved extensions.
—Self-Sufficiency: A condition where an individual or family does not need and is not eligible for public assistance.

3. Purpose of Community Food and Nutrition Program

The Department of Health and Human Services is committed to improving the health and well-being of individuals through improved preventive health care and promotion of personal responsibility. The Department seeks to unify the approach to health promotion and disease prevention activities with personal messages aimed at families and communities, in various settings and environments in which individuals and groups can most effectively be reached. The Department is specifically interested in improving the health status of minority and low-income persons. HHS encourages community efforts to improve the coordination and integration of health services for all low-income families, and to identify opportunities for integrating other programs and services for this population.

a. Project Requirements

Projects funded under this program should:

(1) Be designed and intended to provide nutrition benefits, including those which incorporate the benefits of disease prevention, to a targeted low-income group of people;

(2) Provide outreach or public education to inform low-income individuals and displaced workers of the services available to them under the various Federally-assisted nutrition programs;

(3) Focus on one or more legislatively mandated program activities:

(a) Coordination of existing private and public food assistance resources, whenever such coordination is

determined to be inadequate, to better serve low-income populations;

(b) Assistance to low-income communities in identifying potential sponsors of child nutrition programs and initiating new programs in underserved or unserved areas; and

(c) Development of innovative approaches at the national, state or local levels to meet the nutrition needs of low-income people.

b. Project Elements

Projects must:

Focus on one or more of the legislatively mandated program activities in the above—Part A.3.1. OCS views this program as a capacity building program, rather than as a service delivery program.

Part B—Application Requirements

1. Eligible Applicants

Eligible applicants are States, public and private non-profit agencies/organizations with a demonstrated ability to successfully develop and implement programs and activities similar to those enumerated above. OCS encourages Historically Black Colleges and Universities to submit applications. In addition, applicants for the set-aside must be either: (1) Indian tribes, (2) private non-profit groups whose governing board is comprised of a majority of Indians and whose primary purpose is serving Indian populations, or (3) groups whose sole purpose is serving migrant and seasonal farmworker populations. Proof of non-profit status must be included in the Appendices of the Project Narrative where applicable. Any of the following is acceptable evidence of non-profit status: (1) A copy of the applicant organization's list in the Internal Revenue Service's most recent list of tax-exempt organizations described in section 501(c)(3) of the IRS code; or (2) A copy of the currently valid IRS tax exemption certificate. Failure to provide evidence of non-profit status will result in rejection of the application.

2. Availability of Funds and Grant Amounts

a. FY 94 Funding

The funds available for grant awards under the CFN Program in FY 94 are:

General Projects	$2,777,600
Set-Asides	400,000
Nationwide Programs	388,800

b. Grant Amounts

No individual grant application will be considered for an amount which is in excess of $50,000 for applications submitted under General Projects and Set-Asides. No eligible organization may receive more than $300,000 in the aggregate for a nationwide program.

c. Mobilization of Resources

OCS would like to mobilize as many resources as possible to enhance projects funded under this program. OCS supports and encourages proposals submitted by applicants whose programs will leverage other resources, either cash or third-party in-kind.

3. Project Periods and Budget Periods

For most projects OCS will grant funds for one year. However, in rare instances, depending on the characteristics of any individual project and on the justification presented by the applicant in its proposal, a grant may be made for a period of up to 17 months.

4. Administrative Costs/Indirect Costs

There is no administrative cost limitation for projects funded under this program. Indirect costs consistent with approved Indirect Cost Rate Agreements are allowable. Applicants should enclose a copy of the current approved rate agreement. However, it should be understood that indirect costs are part of, and not in addition to, the amount of funds awarded in the subject grant.

5. Program Beneficiaries

Projects proposed for funding under this Announcement must result in direct benefits targeted toward low-income people as defined in the most recent Annual Update of Poverty Income Guidelines published by DHHS. Attachment A to this Announcement is an excerpt from the most recently published guidelines. Annual revisions of these guidelines are normally published in the **Federal Register** in February or early March of each year and are applicable to projects being implemented at the time of publication. Grantees will be required to apply the most recent guidelines throughout the project period. The **Federal Register** may be obtained from public libraries, Congressional offices, or by writing the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. No other government agency or privately defined poverty guidelines are applicable to the determination of low-income eligibility for this OCS program.

6. Number of Projects in Application

An application may contain only one project and this project must address the basic criteria found in Part C. Applications which are not in compliance with these requirements will be ineligible for funding.

7. Multiple Submittals

There is no limit to the number of applications that can be submitted as long as each application contains a proposal for a different project. However, no applicant can receive more than one grant.

8. Sub-Contracting or Delegating Projects

OCS will not fund any project where the role of the eligible applicant is primarily to serve as a conduit for funds to other organizations.

Part C—Program Priority Areas

1. General Projects—FN

The application should include a description of the target area and population to be served as well as a discussion of the nature and extent of the problem to be solved. The application must contain a detailed and specific work program that is both sound and feasible. Projects funded under this Announcement must produce permanent and measurable results that fulfill the purposes of this program as described in the above. The OCS grant funds, in combination with private and/or other public resources, must be targeted to low-income individuals and communities.

Applicants will certify in their submission that projects will only serve the low-income population as stipulated in the DHHS Poverty Income Guidelines (Attachment A).

Failure to comply with the cited Act may result in the application being ineligible for consideration for funding. If an applicant is proposing a project which will affect a property listed in or eligible for inclusion in the National Register of Historic Places, it must identify this property in the narrative and explain how it has complied with the provisions of Section 106 of the National Historic Preservation Act of 1966 as amended. If there is any question as to whether the property is listed in or eligible for inclusion in the National Register of Historic Places, applicant should consult with the State Historic Preservation Officer. The applicant should contact OCS early in the development of its application for instructions regarding compliance with the Act and data required to be submitted to the Department of Health and Human Services. In the case of projects proposed for funding which mobilize or improve the coordination of existing public and private food assistance resources, the guidelines governing those resources apply. However, in the case of projects providing direct assistance to

beneficiaries through grants funded under this program, beneficiaries must fall within the official DHHS Poverty Income Guidelines as set forth in Attachment A.

Applications which propose the use of grant funds for the development of any printed or visual materials must contain convincing evidence that these materials are not available from other sources. OCS will not provide funding for such items if justification is not sufficient. Approval of any films or visual presentations proposed by applicants approved for funding will be made part of the grant award. In cases where material outlays for equipment (audio and visual) are requested, specific evidence must be presented that there is a definite programmatic connection between the equipment (audio and visual) usage and the outreach requirements described in Part A.1.b of this Announcement.

OCS also is interested in projects that address the needs of homeless families, welfare families, low-income and minority health initiatives.

OCS welcomes project proposals which seek to develop innovative approaches to promote health, particularly among low-income and minority populations. These proposals should have as their goals the reduction of incidences of premature death and chronic disease among the targeted populations.

2. Set-Asides—SA

In recognition of the special needs of Indians and Migrant and Seasonal Farmworkers, a set-aside will be established to afford priority consideration to proposals submitted by agencies serving these populations. Applications which are not funded within this set-aside will also be considered competitively within the larger pool of eligible applicants. See Part D, Section 1–6, (Criterion II) for special instructions on developing a work program.

3. Nationwide Programs—NA

Projects funded must be nationwide in scope and must meet the requirements of Part C.1 (General Projects). No eligible organization may receive more than $300,000 in the aggregate for a nationwide program.

Part D—Review Criteria

Applications which pass the initial screening and pre-rating review (See Part F, Section 5) will be assessed and scored by reviewers. Each reviewer will give a numerical score for each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and weaknesses under each applicable criterion published in the Announcement.

The in-depth evaluation and review process will use the following criteria coupled with the specific requirements as described in Part F.

Applicants should write their project narrative to the review criteria using the same sequential order.

(**Note:** The following review criteria reiterate collection of information requirements contained in Part D of this Announcement. These requirements are approved under OMB Control Number 0970–0062.)

Criteria for Review and Evaluation of Applications Submitted Under This Program Announcement

Criterion I: Analysis of Needs/Priorities (Maximum: 13 points)

(a) Target area and population to be served are adequately described (0–5 points).

In addressing the above criterion, the applicant should include the following:

The applicant should include a description of the target area and population to be served including specific details on any minority population(s) to be served.

(b) Nature and extent of problem are adequately described and documented (0–8 points).

In addressing the above criterion, the applicant should include the following:

Applicant should discuss the nature and extent of the problem including specific information on minority population(s).

Criterion II: Adequacy of Work Program (Maximum: 15 points)

(a) Set forth realistic quarterly time targets by which the various work tasks will be completed (0–7 points).

(b) Activities are adequately described and appropriately related to goals (0–8 points).

In addressing the above criterion, the applicant should include the following:

The applicant should address the basic criteria and legislatively-mandated activities found in Part A.3.a and should include:

(a) Project priorities and rationale for selecting them;

(b) Goals and objectives; and

(c) Project activities.

Criterion III: Significant and Beneficial Impact (Maximum 38 points)

(a) Applicant proposes to significantly improve or increase nutrition services to low-income people and such improvements or increases are quantified. (0–12 points).

(b) Project incorporates low-income health promotion activities, including minority low-income health promotion activities as appropriate, along with nutritional services (0–8 points).

(c) Project will significantly leverage or mobilize other community resources and such resources are detailed and quantified (0–6 points).

(d) Project builds on an existing outreach activity (0–5 points).

(e) Proposal addresses a problem which can be resolved by one-time OCS funding or demonstrates that non-Federal funding is available to continue the project without Federal support (0–7 points).

In addressing the above criterion, the applicant must include:

Quantitative data for items (a),(b),(c), and (d) and discuss how the beneficial impact relates to the relevant legislatively- mandated program activities identified in Part A.3.a.

Criterion IV: Coordination/Services Integration (Maximum 15 points)

Proposal addresses applicant's understanding of the importance of improving the integration, coordination, and continuity of various HHS-funded services potentially available to families with children living in poverty, and the difficulty of undertaking collaborative efforts between organizations.

In addressing the above criterion, the applicant should include the following:

Strategies should be identified which support coordinated community-based planning, maximize the efficient and effective use of scarce resources, reduce duplicative overhead, improve accountability, and result in measurable outcomes.

If the applicant is receiving funds from the State for community food and nutrition activities, the applicant should address how the funds are being utilized. If State funds are being used in the project for which OCS funds are being requested, their usage should be specifically described.

Criterion V: Organization Experience in Program Area and Staff Responsibilities (Maximum 12 points)

(a) Organizational experiences in program area (0–4 points).

Documentation provided indicates that projects previously undertaken have been relevant and effective and have provided permanent benefits to the low-income population. Organizations which propose providing training and technical assistance have detailed competence in the specific program priority area and as a deliverer with expertise in the fields of training and technical assistance. If applicable,

information provided by these applicants also addresses related achievements and competence of each cooperating or sponsoring organization

(b) Management History (0–4 points).

Applicants must fully detail their ability to implement sound and effective management practices and if they have been recipients of other Federal or other governmental grants, they must also detail that they have consistently complied with financial and program progress reporting and audit requirements. Applicants should submit any available documentation on their management practices and progress reporting procedures along with a statement by a Certified or Licensed Public Accountant as to the sufficiency of the applicant's financial management system to protect adequately any Federal funds awarded under the application submitted.

(c) Staffing skills, Resources and Responsibilities (0–4 points).

The application briefly describes the experience and skills of the proposed project director showing that the individual is not only well qualified, but that his/her professional capabilities are relevant to the successful implementation of the project. If the key staff person has not yet been identified, the application contains a comprehensive position description which indicates that the responsibilities to be assigned to the project director are relevant to the successful implementation of the project. The application must indicate that the applicant has adequate facilities and resources (i.e. space and equipment) to successfully carry out the work plan.

In addressing the above criterion, the applicant should include the following:

The applicant must clearly show that sufficient time of the Project Director and other senior staff will be budgeted to assure timely implementation and oversight of the project and that the assigned responsibilities of the staff are appropriate to the tasks identified for the project.

Criterion VI: Adequacy of Budget (Maximum: 7 points)

(a) Budget is adequate and administrative costs are appropriate in relation to the services proposed (0–7 points).

Part E—Instructions for Completing Application Package

(Approved by the OMB under Control Number 0970–0062)

The standard forms attached to this Announcement shall be used when submitting applications for all funds under this Announcement.

It is recommended that you reproduce single-sided copies of the SF–424, SF–424A and SF–424B, and type your application on the copies. Please prepare your application in accordance with instructions provided on the forms as well as with the OCS specific instructions set forth below:

1. SF–424—Application for Federal Assistance

Top of Page. Please enter the single priority area designation under which the application is being submitted. An application should be submitted under only one priority area. (See Item 11)

Item 1. For the purposes of this announcement, all projects are considered *Applications*; there are no *Pre-Applications.*

Item 2. Date Submitted and *Applicant Identifier*—Date application is submitted to ACF and applicant's own internal control number, if applicable.

Item 3. Date Received by State—N/A

Item 4. Date Received by Federal Agency—Leave blank.

Items 5 and 6. The legal name of the applicant must match that listed as corresponding to the Employer Identification Number. Where the applicant is a previous Department of Health and Human Services grantee, enter the Central Registry System Employee Identification Number (CRS/EIN) and the Payment Identifying Number, if one has been assigned, in the Block entitled *Federal Identifier* located at the top right hand corner of the form.

Item 7. If the applicant is a non-profit corporation, enter *N* in the box and specify *non-profit corporation* in the space marked *Other.* Proof of non-profit status, such as IRS certification, Articles of Incorporation, or By-laws, must be included as an appendix to the project narrative.

Item 8. Type of Application—Please indicate the type of application.

Item 9. Enter *DHHS-ACF/OCS.*

Item 10. The Catalog of Federal Domestic Assistance number for the OCS program covered under this announcement is *93.571.* The title is Community Services Block Grant Discretionary Awards—*Community Food and Nutrition Program.*

Item 11. In addition to a brief descriptive title of the project, indicate the priority area for which funds are being requested. Use the following letter designations:

FN—General Projects

SA—Projects where Migrant and Seasonal Farmworker organizations and Indian Tribes or Indian organizations are applying specifically for set-aside funds described in Part B.

NP—Grants to organizations with nationwide programs

Item 12. Areas Affected by Project—List only the largest unit or units affected, such as State, county or city.

Item 13. Proposed Project—The ending date should be calculated based on a 12-month project period.

Item 14. Congressional District of Applicant/Project—Enter the number of the Congressional District where the applicant's principal office is located and the number of the Congressional district(s) where the project will be located.

Item 15a. For purposes of this Announcement, this amount should reflect the amount requested for the entire project period.

Item 15b-e. These items should reflect both cash and third-party in-kind contributions for the total project period.

Item 15f. N/A.

Item 15g. Enter the sum of Items 15a–15e.

2. SF–424A—"Budget Information-Non-Construction Programs"

See Instructions accompanying this page as well as the instructions set forth below:

In completing these sections, the *Federal Funds* budget entries will relate to the requested OCS Community Food and Nutrition Program funds only, and *Non-Federal* will include mobilized funds from all other sources—applicants, State, and other. Federal funds other than those requested from the Community Food and Nutrition Program should be included in *Non-Federal* entries.

Sections A and D of SF–424A must contain entries for both Federal (OCS) and non-Federal (mobilized funds).

Section A—Budget Summary

Line 1–4

Col. (a):

Line 1—Enter *OCS Community Food and Nutrition Program;*

Col. (b):

Line 1—Enter *93.571.*

Col. (c) and (d): Not Applicable

Col. (e)—(g):

For each line 1–4, enter in columns (e), (f) and (g) the appropriate amounts needed to support the project for the entire project period.

Line 5—Enter the figures from Line 1 for all columns completed, (e), (f), and (g).

Section B—Budget Categories

This section should contain entries for OCS funds only. For all projects, the first budget period of 12 months will be entered in Column #1.

Allocability of costs is governed by applicable cost principles set forth in 45 CFR parts 74 and 92.

Budget estimates for national administrative costs must be supported by adequate detail for the grants officer to perform a cost analysis and review. Adequately detailed calculations for each budget object class are those which reflect estimation methods, quantities, unit costs, salaries, and other similar quantitative detail sufficient for the calculation to be duplicated. For any additional object class categories included under the object class *other* identify the additional object class(es) and provide supporting calculations.

Supporting narratives and justifications are required for each budget category, with emphasis on unique/special initiatives large dollar amounts; local, regional, or other travels new positions; major equipment purchases and training programs.

A detailed itemized budget with a separate budget justification for each major item should be included as indicated below:

Line 6a—Personnel: Enter the total costs of salaries and wages.

Justification

Identify the project director. Specify by title or name the percentage of time allocated to the project, the individual annual salaries and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project.

Line 6b—Fringe Benefits: Enter the total costs of fringe benefits unless treated as part of an approved indirect cost rate which is entered on line 6j.

Justification

Enter the total costs of fringe benefits, unless treated as part of an approved indirect cost rate.

Line 6c—Travel: Enter total cost of all travel by employees of the project. Do not enter costs for consultant's travel.

Justification

Include the name(s) of traveler(s), total number of trips, destinations, length of stay, mileage rate, transportation costs and subsistence allowances.

Line 6d—Equipment: Enter the total costs of all non-expendable personal property to be acquired by the project. Non-expendable personal property", for purposes of governmental entities, means tangible personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit.

Justification

Equipment to be purchased with Federal funds must be required to conduct the project, and the applicant organization or its subgrantees must not already have the equipment or a reasonable facsimile available to the project.

Line 6e—Supplies: Enter the total costs of all tangible personal property (surplus) other than that included on line 6d.

Line 6f—Contractual. Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and (2) contracts with secondary recipient organizations including delegate agencies and specific project(s) or businesses to be financed by the applicant.

Justification

Attach a list of contractors, indicating the names of the organizations, the purposes of the contracts, the estimated dollar amounts, and selection process of the awards as part of the budget justification. Also provide back-up documentation identifying the name of contractor, purpose of contract, and major cost elements.

Note: Whenever the applicant/grantee intends to delegate part of the program to another agency, the applicant/grantee must submit Sections A and B of this Form SF–424A, completed for each delegate agency by agency title, along with the required supporting information referenced in the applicable instructions.

The total costs of all such agencies will be part of the amount shown on Line 6f. Provide draft Request for Proposal in accordance with 45 CFR part 74, appendix H. Free and open competition is encouraged for any procurement activities planned using ACF grant funds. Applicants who anticipate evaluation procurements that will exceed $25,000 and are requesting an award without competition should call (202) 401–9234 for clarification on the process.

Line 6g—Construction: Not applicable.

Line 6h—Other: Enter the total of all other costs. Such costs, where applicable, may include, but are not limited to, insurance, food, medical and dental costs (noncontractual), fees and travel paid directly to individual consultants, local transportation (all travel which does not require per diem is considered local travel), space and equipment rentals, printing and publication, computer use training costs including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Line 6j—Indirect Charges: Enter the total amount of indirect costs. This line should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services or other Federal agencies.

If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the pertinent *DHHS Guide for Establishing Indirect Cost Rates,* and submit it to the appropriate DHHS Regional Office. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool cannot be also budgeted or charged as direct costs to the grant. Indirect costs consistent with approved Indirect Cost Rate Agreements are allowable.

Line 6k—Totals. Enter the total amounts of Lines 6i and 6j.

Line 7—Program Income: Enter the estimated amount of income, if any, expected to be generated from this project. Separately show expected program income generated from OCS support and income generated from other mobilized funds. Do not add or subtract this amount from the budget total. Show the nature and source of income in the program narrative statement.

Justification

Describe the nature, source and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources

This section is to record the amounts of *Non-Federal* resources that will be used to support the project. *Non-Federal* resources mean other than OCS funds for which the applicant has received a commitment. Provide a brief explanation, on a separate sheet, showing the type of contribution, broken out by Object Class Category, (See Section B.6) and whether it is cash or third-party in-kind. The firm commitment of these required funds must be documented and submitted with the application in order to be given credit in the criterion.

Except in unusual situations, this documentation must be in the form of letters of commitment or letters of intent from the organization(s)/individuals from which funds will be received.

Line 8—Grant Program

Col. (a): Enter the project title.

Col. (b): Enter the amount of cash or donations to be made by the applicant.

Col. (c): Enter the State contribution.

Col. (d): Enter the amount of cash and third party in-kind contributions to be made from all other sources.

Col. (e): Enter the total of columns (b), (c), and (d).

Lines 9, 10, and 11 should be left blank.

Line 12—Carry the total of each column of Line 8, (b) through (e). The amount in Column (e) should be equal to the amount on Section A, Line 5, Column (f).

Justification

Describe third party in-kind contributions, if included.

Section D—Forecasted Cash Needs

Line 13—Federal: Enter the amount of Federal (OCS) cash needed for this grant, by quarter, during the 12 month budget period.

Line 14—Non-Federal: Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Totals: Enter the total of Lines 13 and 14.

Section F—Other Budget Information

Line 21—Direct Charges: Include narrative justification required under Section B for each object class category for the total project period.

Line 22—Indirect Charges: Enter the type of HHS or other Federal agency approved indirect cost rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied and the total indirect expense. Also, enter the date the rate was approved, where applicable. Attach a copy of the approved rate agreement.

Line 23—Provide any other explanations and continuation sheets required or deemed necessary to justify or explain the budget information.

3. SF–424B "Assurances Non-Construction"

All applicants must sign and return the "Assurances" with the application.

4. Project Narrative

Each narrative should include the following major Sections:

a. Analysis of Need
b. Project Design (Work Programs)
c. Organizational Experience in Program Areas
d. Management History
e. Staffing and Resources
f. Staff Responsibilities

The project narrative must address the specific purposes mentioned in Part A of this Program Announcement. The narrative should provide information on how the application meets the evaluation criteria in part D of this Program Announcement.

Part F—Application Procedures

1. Availability of Forms

Applications for awards under this OCS program must be submitted on Standard Forms (SF) 424, 424A, and 424B. Part E and attachment B to this Program Announcement contain all the instructions and forms required for submittal of applications. The forms may be reproduced for use in submitting applications. Copies of the **Federal Register** issue containing this Announcement are available at most local libraries and Congressional District Offices for reproduction. If copies are not available at these sources they may be obtained by writing or telephoning the office listed in the section entitled **FOR FURTHER INFORMATION** at the beginning of this Announcement.

2. Application Submission

The closing date for submission of applications is June 6, 1994.

a. *Deadlines.* Applications shall be considered as meeting the deadline if they are either:

(1) Received on or before the deadline date at the Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 370 L'Enfant Promenade, SW., 6th Floor, Washington, DC 20447, or

(2) Sent on or before the deadline date and received by the granting agency in time for them to be considered during the competitive review and evaluation process under Chapter 1–62 of the Health and Human Services Grants Administration Manual. (Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks are not acceptable as proof of timely mailing.)

b. *Applications submitted by other means.* Applications which are not submitted in accordance with the above criteria shall be considered as meeting the deadline only if they are physically received before the close of business on or before the deadline date. Hand delivered applications will be accepted at the Department of Health and Human Services, Administration for Children and Families, Division of Discretionary Grants, 901 D Street, SW., 6th Floor, Washington, DC during the normal working hours of 8:30 a.m. to 5 p.m., Monday through Friday.

c. *Late Applications.* Applications which do not meet one of these criteria are considered late applications. The ACF Division of Discretionary Grants will notify each late applicant that its application will not be considered in this competition.

d. *Extension of Deadline.* The ACF Office of Community Services may extend the deadline for all applicants because of acts of God such as floods, hurricanes, etc. or when there is a disruption of the mails. However, if the granting agency does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

Applications once submitted are considered final and no additional materials will be accepted .

One signed original application and four copies should be submitted.

Note: Applicants should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, applicants should check with their local post office. In some instances packages presented for mailing after a pre-determined time are postmarked with the next day's date. In other cases, postmarks are not routinely placed on packages. Applicants are cautioned to verify that there is a date on the package, and that it list the correct date of mailing, before accepting a receipt.

Applications which have a postmark later than the closing date, or which are hand-delivered after the closing date, will be returned to the sender without consideration in the competition.

One signed original application and four copies is required.

3. Intergovernmental Review

This program is covered under Executive Order 12372, Intergovernmental Review of Federal Programs, and 45 CFR Part 100, Intergovernmental Review of Department of Health and Human Services Programs and Activities. Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Minnesota, Montana, Nebraska, Oklahoma, Oregon, Pennsylvania, Virginia, Washington, American Samoa and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these seventeen jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized

Indian Tribes are also exempt from the requirements of E.O. 12372. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a) (2), a SPOC has 60 days from the application deadline date to comment on proposed new or competing continuation awards. Applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services Administration for Children and Families Division of Discretionary Grants, 6th Floor 370 L'Enfant Promenade, SW. Washington, DC 20447.

A list of the Single Points of Contact for each State and Territory is included as Attachment E of this Announcement.

4. Application Consideration

Applications which meet the screening requirements in Section 5 below will be reviewed competitively. Such applications will be referred to reviewers for a numerical score and explanatory comments based solely on responsiveness to program guidelines and evaluation criteria published in this Announcement. Applications will be reviewed by persons outside of the OCS unit which would be directly responsible for programmatic management of the grant. The results of these reviews will assist the Director and OCS program staff in considering competing applications. Reviewers' scores will weigh heavily in funding decisions but will not be the only factors considered. Applications will generally be considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding since the Director may also consider other factors deemed relevant including, but not limited to, the timely and proper completion of projects funded with OCS funds granted in the last five (5) years: Comments of reviewers and government officials; staff evaluation and input; geographic distribution; previous program performance of applicants; compliance with grant terms under previous DHHS grants; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowances on OCS or other Federal agency grants. OCS reserves the right to discuss applications with other Federal or non-Federal funding sources to ascertain the applicant's performance record.

5. Criteria for Screening Applications

a. Initial Screening

All applications that meet the published deadline for submission will be screened to determine completeness and conformity to the requirements of this Announcement. Only those applications meeting the following requirements will be reviewed and evaluated competitively. Others will be returned to the applicants with a notation that they were unacceptable.

(1) The application must contain a completed and signed Standard Form SF–424.

(2) The SF–424 must be signed by an official of the organization applying for the grant who has authority to obligate the organization legally.

b. Pre-rating Review

Applications which pass the initial screening will be forwarded to reviewers for analytical comment and scoring based on the criteria detailed in the Section below and the specific requirements contained in Part A of this Announcement. Prior to the programmatic review, these reviewers and/or OCS staff will verify that the applications comply with this program announcement in the following areas:

(1) *Eligibility:* Applicant meets the eligibility requirements found in Part B.

(2) *Number of Projects:* The application contains only one project.

(3) *Target Populations:* The application clearly targets the specific outcomes and benefits of the project to low-income participants and beneficiaries as defined in the DHHS Poverty Income Guidelines (Attachment A).

(4) *Grant Amount:* The amount of funds requested does not exceed $50,000 (except for nationwide programs).

(5) *Program Focus:* The application addresses the purposes described in Part A of this Announcement.

c. Evaluation Criteria

Applications which pass the initial screening and pre-rating review will be assessed and scored by reviewers. Each reviewer will give a numerical score for each application reviewed. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and major weaknesses under each applicable criterion published in this Announcement.

Part G—Contents of Application and Receipt Process

(Approved by the OMB under Control Number 0970–0062)

1. Contents of Application

Each application submission must include:

A signed original and four additional copies of the application.

Each copy of the application must contain in the order listed each of the following:

a. *Table of Contents* with page numbers noted for each major section and subsection of the proposal and each section of the appendices. Each page in the application, including those in all appendices, must be numbered consecutively.

b. *Standard Form 424. Application for Federal Assistance.* The SF–424 should be completed in accordance with instructions provided with the form, as well as OCS specific instructions set forth in Part E of this Announcement. The SF–424 must contain an original signature of the certifying representative of the applicant organization.

Applicants must also be aware that the applicant's legal name as required in SF–424 (Item 5) must match that listed as corresponding to the Employer Identification Number (Item 6).

c. *Standard Form 424A, Budget Information.* Pages 1 and 2 should be completed.

d. *Standard Form 424B, Assurances—Non-Construction Programs.* This form must be signed and submitted with the Application.

e. *Restriction on Lobbying Activities*—Fill out, sign and date form found at Attachment F. Certification for Contracts, Grants, Loans, and Cooperative Agreements.

f. *Disclosure of Lobbying Activities*—SF–ILL: Fill out, sign and date form found at Attachment F, (required only if lobbying has actually taken place or is expected to take place in trying to obtain the grant for which the applicant is applying.)

g. *Project Narrative*—(See Part E, Section 3.)

h. By signing and submitting this application, the applicant is certifying that it will comply with the Federal requirements concerning debarment and

drug-free regulations set forth in Attachments C and D.

The total number of pages for the narrative portion of the application package must not exceed 30 pages in their entirety. Applications must be uniform in composition since OCS may find it necessary to duplicate them for review purposes. Therefore, applications must be submitted on 8½×11 inch paper only. They must not include colored, oversized or folded materials, organizational brochures, or other promotional materials, slides, films, clips, etc., in the proposal. Such materials will be discarded if included.

Applications should be two-holed punched at the top center and fastened separately with a compressor slide paper fastener, such as an ACCO clip, or a binder clip.

While applications must be comprehensive, OCS encourages conciseness and brevity in the presentation of materials and cautions the applicant to avoid unnecessary duplication of information.

2. Acknowledgment of Receipt

An acknowledgment postcard will be mailed to all applicants with an identification number which will be noted on the acknowledgment. This number must be referred to in all subsequent communications with OCS concerning the application. If an acknowledgment is not received within three weeks after the deadline date, applicants must notify ACF by telephone (202) 401–9234. Applicant should also submit a mailing label for the acknowledgment card.

Part H—Post Award Information and Reporting Requirements

Following approval of the applications selected for funding, notice of project approval and authority to draw down project funds will be made in writing. The official award document is the Financial Assistance Award which provides the amount of Federal funds approved for use in the project, the budget period for which support is provided, and the terms and conditions of the award.

In addition to the General Conditions and Special Conditions (where the latter are warranted) which will be applicable to grants, grantees will be subject to the provisions of 45 CFR parts 74 (non-governmental) and 92 (governmental) along with OMB Circulars 122 and 87.

Grantees will be required to submit semi-annual progress and financial reports (SF–269) as well as a final progress and financial report.

Grantees are subject to the audit requirements in 45 CFR Parts 74 and 92.

Section 319 of Public Law 101–121, signed into law on October 23, 1989, imposes [new] prohibitions and requirements for disclosure and certification related to lobbying when applicant has engaged in lobbying activities or is expected to lobby in trying to obtain the grant. It provides limited exemptions for Indian tribes and tribal organizations. Current and prospective recipients (and their subtier contractors and/or grantees) are prohibited from using appropriated funds for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement or loan. In addition, for each award action in excess of $100,000 (or $150,000 for loans) the law requires recipients and their subtier contractors and/or subgrantees (1) to certify that they have neither used nor will use any appropriated funds for payment to lobbyists, (2) to submit a declaration setting forth whether payments to lobbyists have been or will be made out of non-appropriated funds and, if so, the name, address, payment details, and purpose of any agreements with such lobbyists whom recipients or their subtier contractors or subgrantees will pay with the nonappropriated funds and (3) to file quarterly up-dates about the use of lobbyists if any event occurs that materially affects the accuracy of the information submitted by way of declaration and certification. The law establishes civil penalties for noncompliance and is effective with respect to contracts, grants, cooperative agreements and loans entered into or made on or after December 23, 1989. See Attachment F for certification and disclosure forms to be submitted with the applications for this program.

Attachment G indicates the regulations which apply to all applicants/grantees under the Discretionary Grants Program.

Dated March 22, 1994.

Donald Sykes,

Director, Office of Community Services

BILLING CODE 4184–01–P

ATTACHMENT A-1994 POVERTY INCOME GUIDELINES
FOR ALL STATES EXCEPT ALASKA AND HAWAII)
AND THE DISTRICT OF COLUMBIA

SIZE OF FAMILY UNIT	POVERTY GUIDELINE
1	$7,360
2	9,840
3	12,320
4	14,800
5	17,280
6	19,760
7	22,240
8	24,720

For family units with more than 8 members, add $2,480 for each additional member.

POVERTY INCOME GUIDELINES FOR
ALASKA

SIZE OF FAMILY UNIT	POVERTY GUIDELINE
1	$9,200
2	12,300
3	15,400
4	18,500
5	21,600
6	24,700
7	27,800
8	30,900

For family units with more than 8 members, add $3,100 for each additional member.

POVERTY INCOME GUIDELINES FOR
HAWAII

SIZE OF FAMILY UNIT	POVERTY GUIDELINE
1	$8,470
2	11,320
3	14,170
4	17,020
5	19,870
6	22,720
7	25,570
8	28,420

For family units with more than 8 members, add $2,850 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above.)

Attachment B

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: *Application* ☐ Construction ☐ Non-Construction; *Preapplication* ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify):

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: ☐☐ ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

BILLING CODE 4184-01-C

Instructions for the SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.

2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).

3. State use only (if applicable).

4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.

5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.

6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.

7. Enter the appropriate letter in the space provided.

8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:

—"New" means a new assistance award.

—"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.

—"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.

9. Name of Federal agency from which assistance is being requested with this application.

10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.

11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

12. List only the largest political entities affected (e.g., State, counties).

13. Self-explanatory.

14. List the applicant's Congressional District and any District(s) affected by the program or project.

15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.

16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.

17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.

18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184-01-P

OMB Approval No. 0348-0044

BUDGET INFORMATION — Non-Construction Programs

SECTION A – BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B – BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

BILLING CODE 4184-01-C

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16-19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21. Direct Charges:	22. Indirect Charges:

23. Remarks

SF 424A (4-88) Page 2
Prescribed by OMB Circular A-102

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Instructions for the SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary

Lines 1–4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in *Column* (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in Columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5—Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in Column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8–11—Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years.) This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object-class costs categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in

accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd–3 and 290 ee–3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statutes(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) Institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official _____

Title _____

Applicant Organization _____

Date submitted _____

BILLING CODE 4184-01-P

Attachment C

U.S. Department of Health and Human Services

Certification Regarding Drug-Free Workplace Requirements

Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the May 25, 1990 **Federal Register**, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the Department of Health and Human Services (HHS) determines to award the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, HHS, in addition to any other remedies available to the Federal Government, may taken action authorized under the Drug-Free Workplace Act. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios.)

If the workplace identified to HHS changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see above).

Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

"Controlled substance" means a controlled substance in Schedules I through V of the Controlled Substances Act (21 USC 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15).

"Conviction" means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

"Criminal drug statute" means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

"Employee" means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All "direct charge" employees; (ii) all "indirect charge" employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace; (2) The grantee's policy of maintaining a drug-free workplace; (3) Any available drug counseling, rehabilitation, and employee assistance programs; and, (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and, (2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or, (2) Requiring such employee to participate satisfactorily in a drug abuse-assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant (use attachments, if needed):

Place of Performance (Street address, City, County, State, ZIP Code)_____

Check ___ if there are workplaces on file that are not identified here.

Sections 76.630(c) and (d)(2) and 76.635(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central receipt point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517-D, 200 Independence Avenue, S.W., Washington, D.C. 20201.

DGMO Form#2 Revised May 1990

BILLING CODE 4184-01-C

Attachment D—Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) Have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transaction" provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

(To Be Supplied to Lower Tier Participants)

By signing and submitting this lower tier proposal, the prospective lower tier participant, as defined in 45 CFR Part 76, certifies to the best of its knowledge and belief that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.

(b) Where the prospective lower tier participant is unable to certify to any of the above, such prospective participant shall attach an explanation to this proposal.

The prospective lower tier participant further agrees by submitting this proposal that it will include this clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions" without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

Attachment E—Executive Order 12372—State Single Points of Contact

Arizona

Mrs. Janice Dunn, ATTN: Arizona State Clearinghouse, 3800 N. Central Avenue, 14th Floor, Phoenix, Arizona 85012, Telephone (602) 280–1315

Arkansas

Tracie L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Telephone (501) 682–1074

California

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Telephone (916) 323–7480

Colorado

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, room 520, Denver, Colorado 80203, Telephone (303) 866–2156

Delaware

Ms. Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Telephone (302) 736–3326

District of Columbia

Rodney T. Hallman, State Single Point of Contact, Office of Grants Management and Development, 717 14th Street, NW., suite 500, Washington, DC 20005, Telephone (202) 727–6551

Florida

Florda State Clearinghouse, Intergovernmental Affairs Policy Unit, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32399–0001, Telephone (904) 448–8441

Georgia

Mr. Charles H. Badger, Administrator, Georgia State Clearinghouse, 254 Washington Street, SW., Atlanta, Georgia 30334, Telephone (404) 656–3855

Illinois

Steve Klokkenga, State Single Point of Contact, Office of the Governor, 107 Stratton Building, Springfield, Illinois 62706, Telephone (217) 782–1671

Indiana

Jean S. Blackwell, Budget Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Telephone (317) 232–5610

Iowa

Mr. Steven R. McCann, Division of Community Progress, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone (515) 281–3725

Kentucky

Ronald W. Cook, Office of the Governor, Department of Local Government, 1024 Capitol Center Drive, Frankfort, Kentucky 40601, Telephone (502) 564–2382

Maine

Ms. Joyce Benson, State Planning Office, State House Station No. 38, Augusta, Maine 04333, Telephone (207) 289–3261

Maryland

Ms. Mary Abrams, Chief, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201–2365, Telephone (301) 225–4490

Massachusetts

Karen Arone, State Clearinghouse, Executive Office of Communities and Development, 100 Cambridge Street, room 1803, Boston, Massachusetts 02202, Telephone (617) 727–7001

Michigan

Richard S. Pastula, Director, Michigan Department of Commerce, Lansing, Michigan 48909, Telephone (517) 373–7356

Mississippi

Ms. Cathy Mallette, Clearinghouse Officer, Office of Federal Grant Management and Reporting, 301 West Pearl Street, Jackson, Mississippi 39203, Telephone (601) 960–2174

Missouri

Ms. Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, room 430, Truman Building, Jefferson City, Missouri 65102, Telephone (314) 751–4834

Nevada

Department of Administration, State Clearinghouse, Capitol Complex, Carson City, Nevada 89710, Telephone (702) 687–4065, Attention: Ron Sparks, Clearinghouse Coordinator

New Hampshire

Mr. Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review, Process/James E. Bieber, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone (603) 271–2155

New Jersey

Gregory W. Adkins, Acting Director, Division of Community Resources, N.J. Department of Community Affairs, Trenton, New Jersey 08625–0803, Telephone (609) 292–6613

Please direct correspondence and questions to: Andrew J. Jaskolka, State Review Process, Division of Community Resources, CN 814, room 609, Trenton, New Jersey 08625–0803, Telephone (609) 292–9025

New Mexico

George Elliott, Deputy Director, State Budget Division, room 190, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone (505) 827–3640, FAX (505) 827–3006

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, New York 12224, Telephone (518) 474–1605

North Carolina

Mrs. Chrys Baggett, Director, Office of the Secretary of Admin., N.C. State Clearinghouse, 116 W. Jones Street, Raleigh, North Carolina 27603–8003, Telephone (919) 733–7232

North Dakota

N.D. Single Point of Contact, Office of Intergovernmental Assistance, Office of Management and Budget, 600 East Boulevard Avenue, Bismarck, North Dakota 58505–0170, Telephone (701) 224–2094

Ohio

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, 34th Floor, Columbus, Ohio 43266–0411, Telephone (614) 466–0698

Rhode Island

Mr. Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Telephone (401) 277–2656

Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning

South Carolina

Omeagia Burgess, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, room 477, Columbia, South Carolina 29201, Telephone (803) 734–0494

South Dakota

Ms. Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Telephone (605) 773–3212

Tennessee

Mr. Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Telephone (615) 741–1676

Texas

Mr. Thomas Adams, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone (512) 463–1778

Utah

Utah State Clearinghouse, Office of Planning and Budget, ATTN: Carolyn Wright, room 116, State Capitol, Salt Lake City, Utah 84114, Telephone (801) 538–1535

Vermont

Mr. Bernard D. Johnson, Assistant Director, Office of Policy Research & Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Telephone (802) 828–3326

West Virginia

Mr. Fred Cutlip, Director, Community Development Division, West Virginia Development Office, Building #6, room 553, Charleston, West Virginia 25305, Telephone (304) 348–4010

Wisconsin

Mr. William C. Carey, Federal/State Relations, Wisconsin Department of Administration, 101 South Webster Street, P.O. Box 7864, Madison, Wisconsin 53707, Telephone (608) 266–0267

Wyoming

Sheryl Jeffries, State Single Point of Contact, Herschler Building, 4th Floor, East Wing, Cheyenne, Wyoming 82002, Telephone (307) 777–7574

Guam

Mr. Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone (671) 472–2285

Northern Mariana Islands

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM, Northern Mariana Islands 96950

Puerto Rico

Norma Burgos/Jose H. Caro, Chairman/Director, Puerto Rico Planning Board, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–9985, Telephone (809) 727–4444

Virgin Islands

Jose L. George, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802

Please direct correspondence to: Linda Clarke, Telephone (809) 774–0750

Attachment F—Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other then Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

State for Loan Guarantee and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature _____

Title _____

Organization _____

Date _____

BILLING CODE 4184–01–P

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
☐ a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance

2. Status of Federal Action:
☐ a. bid/offer/application
b. initial award
c. post-award

3. Report Type:
☐ a. initial filing
b. material change
For Material Change Only:
year _____ quarter _____
date of last report _____

4. Name and Address of Reporting Entity:
☐ Prime ☐ Subawardee
Tier _____, *if known:*

Congressional District, *if known:*

5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:

Congressional District, *if known:*

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, *if applicable:* _____

8. Federal Action Number, *if known:*

9. Award Amount, *if known:*
$

10. a. Name and Address of Lobbying Entity
(if individual, last name, first name, MI):

b. Individuals Performing Services *(including address if different from No. 10a)*
(last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*
$ _____ ☐ actual ☐ planned

12. Form of Payment *(check all that apply):*
☐ a. cash
☐ b. in-kind; specify: nature _____
value _____

13. Type of Payment *(check all that apply):*
☐ a. retainer
☐ b. one-time fee
☐ c. commission
☐ d. contingent fee
☐ e. deferred
☐ f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ **Date:** _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

BILLING CODE 4181-01-C

Attachment G

The following DHHS regulations apply to all applicants/grantees under the Community Food and Nutrition Program:

Title 45 of the *Code of Federal Regulations*:

Part 16—Procedures of the Departmental Grant Appeals Board
Part 74—Administration of Grants (non-governmental)
Part 74—Administration of Grants (state and local governments and Indian Tribal affiliates):

Sec.
74.62(a) Non-Federal Audits
74.173 Hospitals
74.174(b) Other Nonprofit Organizations
74.304 Final Decisions in Disputes
74.710 Real Property, Equipment and Supplies
74.715 General Program Income
Part 75—Informal Grant Appeal Procedures
Part 76—Debarment and Suspension form Eligibility for Financial Assistance
Subpart F—Drug Free Workplace Requirements
Part 80—Non-discrimination under Programs Receiving Federal Assistance through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act of 1964
Part 81—Practice and Procedures for Hearings Under Part 80 of this Title
Part 83—Non-discrimination on the basis of sex in the admission of individuals to training programs
Part 84—Non-discrimination on the Basis of Handicap in Programs
Part 91—Non-discrimination on the Basis of Age in Health and Human Services Programs or Activities Receiving Federal Financial Assistance
Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments **Federal Register**, March 11, 1988)
Part 93—New Restrictions on Lobbying
Part 100—Intergovernmental Review of Department of Health and Human Services Programs and Activities

Attachment H

Optional Checklist (for Use of Applicant Only) To Verify Contents of Application

	Check
A. Application contains:	
1. Table of Contents	[ ]
2. Completed SF 424, Application for Federal Assistance	[ ]
3. Completed SF 424, Budget Information—Non-Construction Programs	[ ]
4. Signed SF 424B, Assurances—Non-Construction Programs	[ ]
5. A project narrative with the following components:	
a. Analysis of need	[ ]
b. Project design	[ ]
c. Organizational experience in program	[ ]
d. Management history.	

Optional Checklist (for Use of Applicant Only) To Verify Contents of Application—Continued

	Check
e. Staffing and resources (résumé or job description).	
f. Staff responsibilities.	
6. Relevant portions of the organization's by-laws and articles of incorporation confirming eligibility	[ ]
7. A *signed* copy of Certification Regarding the Anti-Lobbying Provision;	[ ]
8. A completed Disclosure of Lobbying Activities form, if appropriate	[ ]
9. A self-addressed mailing label which can be affixed to a postcard to acknowledge receipt of application	[ ]
B. Application does not exceed a total of 30 pages	[ ]
C. Application includes one original and four copies, printed on white 8½ by 11 inch paper	[ ]
D. Applicant is aware that in signing and submitting the application for funds under the CFN Program, it is certifying that it has read and understood the Federal Guidelines concerning a drug-free workplace and the debarment regulations set forth in attachments E and F respectively	[ ]

[FR Doc. 94–8178 Filed 4–5–94; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

National Wild and Scenic Rivers System: Big and Little Darby Creeks, OH

AGENCY: Office of the Secretary, Interior.

ACTION: Notice of approval.

SUMMARY: The Secretary of the Interior hereby announces approval of an application by the Governor of Ohio to include segments of the Big and Little Darby Creeks, Ohio, as State-administered components of the National Wild and Scenic Rivers System.

FOR FURTHER INFORMATION CONTACT: Angie Tornes, Rivers, Trails and Conservation Program, National Park Service, Midwest Region, 1709 Jackson Street, Omaha, Nebraska, 68102–2571, 402–221–3481, or Bern Collins, Rivers, Trails and Conservation Program, National Park Service, P.O. Box 37127, Washington, DC 20013–7127, 202–343–3765.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted the Secretary of the Interior by section 2 of the Wild and Scenic Rivers Act (Pub. L. 90–542, as amended; 16 U.S.C. 1273, et seq.) and upon proper application of the Governor of the State of Ohio, 85.9 miles of the Big and Little Darby Creeks are hereby designated as State-administered components of the National Wild and Scenic Rivers System.

On October 1, 1990, the Governor of Ohio petitioned the Secretary of the Interior to add 85.9 miles of the Big and Little Darby Creeks to the National System. On January 24, 1992, the Governor of Ohio reaffirmed the same request which was followed by a revised application dated February 3, 1992. This river had been designated a State scenic river on June 22, 1984, pursuant to the Ohio Scenic Rivers Act. In response to the Governor's request, the Secretary conducted a complete review of the State application and documents associated with the designation decision. As a result of that review, the Secretary has determined that 85.9 miles of the Big and Little Darby Creeks should be designated as a State-administered component of the National Wild and Scenic Rivers System, as provided for in section 2(a)(ii) of the Wild and Scenic Rivers Act.

The State of Ohio has fulfilled the requirements of the act by designating these segments as a "State Scenic River" and by adopting a program of action that will adequately protect the creek from adverse State actions. The National Park Service evaluation of the river concluded that these segments of the Big and Little Darby Creeks meet the criteria for scenic classification under the act.

Accordingly, the following river segments are classified as scenic pursuant to section 2(b) of the act to be administered by State and local government:

Upper Darby Creek: Scenic—From the Champaign-Union County line (River Mile (RM) 71.8) downstream to the Conrail railroad trestle (RM 39.7), which is 0.9 mile upstream of US 40 (32.1 miles).

Lower Darby Creek: Scenic—From the confluence with Little Darby Creek (RM 34.1) near Georgesville to the Scioto River (34.1 miles).

Little Darby Creek: Scenic—From Lafayette-Plain City Road Bridge (RM 20.5) to 0.8 mile upstream from the confluence with Big Darby Creek (RM 0.8) (19.7 miles).

This action is taken following public involvement and consultation with the Departments of Agriculture, Army, Energy and Transportation, the Federal Energy Regulatory Commission, and the U.S. Environmental Protection Agency

as required by section 4(c) of the Wild and Scenic Rivers Act. A 45-day period for public comment on the State's application and river management plan and on the environmental assessment of the proposed national designation was provided from July 14, 1993, to August 30, 1993. All comments received have been carefully considered.

Notice is hereby given that effective upon this date, the above-described river segments are approved for inclusion in the National Wild and Scenic Rivers System to be administered by the State of Ohio.

Dated: March 10, 1994.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 94-8224 Filed 4-5-94; 8:45 am]

BILLING CODE 4310-70-M

Bureau of Land Management

[UT-080-4410-02; 4310-DQ 4-00152]

Proposed Plan Amendments to Management Plans

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to amend plans.

SUMMARY: Notice is hereby given of intent to prepare Category I plan amendments to the Diamond Mountain, Browns Park, and Ashley-Duchesne Management Frameworks Plans (MFPs) and the Book Cliffs Resource Management Plan (RMP). The proposed plan amendments will be prepared in conformance with the planning requirements and policies of the Federal Land Policy and Management Act of 1976. The proposed plan amendments and accompanying environmental assessment will provide the basis for designating additional public lands to those lands previously identified for sale in the land tenure adjustment portions of the existing MFPs and RMP. The sale of public lands not previously identified in the above-referenced planning documents will be subject to existing planning criteria and will meet the disposal standards established in section 203(a) of the Federal Land Policy and Management Act (43 U.S.C. 1713; 90 Stat. 2750).

DATES: For a period of May 6, 1994, written comments may be submitted to the BLM Vernal District Office listed below. All comments will be considered in preparing the environmental assessment for the proposed plan amendments.

ADDRESSES: Send comments on these proposed plan amendments to David Little, District Manager, Vernal District Office, Bureau of Land Management, 170 South 500 East, Vernal, Utah 84078.

FOR FURTHER INFORMATION CONTACT: Peter Kempenich, Natural Resource Specialist, Vernal District Office, (801) 781-4432.

SUPPLEMENTARY INFORMATION: The Vernal District's Diamond Mountain and Book Cliffs Resource Areas are situated in northeastern Utah near the Colorado-Utah border and include portions of Uintah, Daggett, and Duchesne Counties. The issue in completing the proposed plan amendments is the degree of potential adverse environmental impacts that may occur should the public land be conveyed into non-Federal ownership. As part of the proposed plan amendment process, an environmental assessment will be prepared to provide a detailed analysis of the following resource concerns: wildlife and fisheries habitat, recreation, watershed, paleontological and cultural resources, threatened and endangered plants and animals, and land uses. Upon completion of the environmental assessment and approval of the proposed plan amendments, additional public lands may be disposed of through public lands sales. The public, state and local governments, and other Federal agencies are asked to participate in the proposed plan amendment process.

James M. Parker,

State Director.

[FR Doc. 94-8149 Filed 4-5-94; 8:45 am]

BILLING CODE 4310-DQ-M

[WY-920-04-4140-03, WYW132103]

Sodium Exploration License, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Invitation for Sodium Exploration License.

SUMMARY: Pursuant to Section 302(b), and to the regulations of 43 CFR, subpart 3524, members of the public are hereby invited to participate with Solvay Minerals, Inc. on a pro rata cost sharing basis in its program for the exploration of sodium deposits owned by the United States of America in the following-described lands in Sweetwater County, Wyoming:

T. 18 N., R. 109 W., 6th P.M., Wyoming
Sec. 20: All;
Sec. 28: All;
T. 17 N., R. 110 W., 6th P.M., Wyoming
Sec. 12: All.

Containing 1920.00 acres.

All of the sodium in the above-described lands consists of unleased Federal sodium within the Green River Basin Known-Sodium Leasing Area. The purpose of the exploration program is to conduct off-lease exploration by drilling to recover trona core for testing of quantity and quality.

ADDRESSES: The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the BLM. Copies of the exploration plan are available for review during normal business hours in the following offices (serialized under number WYW132103): BLM, Wyoming State Office, 2515 Warren Avenue, Cheyenne, WY; and, BLM, Rock Springs District Office, Highway 191 North, Rock Springs, WY.

SUPPLEMENTARY INFORMATION: Any party electing to participate in this exploration program must send written notice to both the BLM and Solvay Minerals, Inc. by the close of business May 4, 1994. The written notice should be sent to the following addresses: Solvay Minerals, Inc., Attn: Larry Refsdal, P.O. Box 1167, Green River, WY 82935; and, BLM, Wyoming State Office, Chief, Branch of Mining Law and Solid Minerals, P.O. Box 1828, Cheyenne, WY 82003.

Vernon G. Rulli,

Acting Chief, Branch of Mining Law and Solid Minerals.

[FR Doc. 94-8052 Filed 4-5-94; 8:45 am]

BILLING CODE 4310-22-M

National Park Service

National Capital Region, National Capital Memorial Commission; Public Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the National Capital Memorial Commission will be held on Tuesday, April 12, 1994, at 3 p.m., at the National Building Museum, room 312, 5th and F Streets, NW.

The Commission was established by Public Law 99-652, the Commemorative Works Act, for the purpose of preparing and recommending to the Secretary of the Interior, Administrator, General Services Administration, and Members of Congress broad criteria, guidelines, and policies for memorializing persons and events on Federal lands in the National Capital Region (as defined in the National Capital Planning Act of 1952, as amended), through the media of monuments, memorials and statutes. It is to examine each memorial proposal for adequacy and appropriateness, make recommendations to the Secretary and Administrator, and to serve as information focal point for those

persons seeking to erect memorials on Federal land in the National Capital Region.

The members of the Commission are as follows:

Director, National Park Service,
Chairman, National Capital Planning Commission,
The Architect of the Capitol,
Chairman, American Battle Monuments Commission,
Chairman, Commission of Fine Arts,
Mayor of the District of Columbia,
Administrator, General Services Administration,
Secretary of Defense.

The purpose of the meeting will be to consider Area I recommendation for the Thomas Paine Memorial. The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed. Persons who wish to file a written statement or testify at the meeting or who want further information concerning the meeting may contact the Commission at 202–619–7097. Minutes of the meeting will be available for public inspection 4 weeks after the meeting at the Office of Land Use Coordination, National Capital Region, 1100 Ohio Drive, SW., room 201, Washington, DC 20242.

Dated: March 24, 1994.

John Parsons,

Acting Regional Director, National Capital Region.

[FR Doc. 94–8223 Filed 4–5–94; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–227]

Annual Report on the Impact of the Caribbean Basin Economic Recovery Act on U.S. Industries and Consumers

AGENCY: International Trade Commission.

ACTION: Notice of deadline to submit comments in connection with 1993 annual report.

EFFECTIVE DATE: March 31, 1994.

FOR FURTHER INFORMATION CONTACT: Magda Kornis (202–205–3261), Trade Reports Division, Office of Economics, U.S. International Trade Commission, Washington, DC 20436.

Background

Section 215(a) of the Caribbean Basin Economic Recovery Act (CBERA) (19 U.S.C. 2704(a)) requires that the Commission submit annual reports to the Congress and the President on the impact of the act on industries and consumers in the United States. Section 215(b) of the CBERA requires the Commission to assess the actual effect of the act on the United States economy generally as well as on appropriate domestic industries and to assess the probable future effects of the act. The Commission instituted the present investigation under section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(b)) on March 21, 1986, for the purpose of gathering and presenting such information on the CBERA. Notice of institution of the investigation and the schedule for such reports was published in the **Federal Register** of May 14, 1986 (51 FR 17678). The ninth report, covering calendar year 1993, is to be submitted by September 30, 1994.

Written Submissions

The Commission does not plan to hold a public hearing in connection with the ninth annual report. However, interested persons are invited to submit written statements concerning the matters to be addressed in the report. Statements also are invited on the potential effects of the North American Free-Trade Agreement on U.S. imports under the CBERA. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest practical date and should be received no later than May 29, 1994.

Address all submissions to the Secretary to the Commission, U.S. International Trade Commission, 500 E St., SW., Washington, DC 20436. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1809.

Issued: March 31, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–8239 Filed 4–5–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigations Nos. 731–TA–684 and 685 (Preliminary)]

Fresh Cut Roses From Colombia and Ecuador

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Colombia and Ecuador of fresh cut roses, provided for in subheading 0603.10.60 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On February 14, 1994, a petition was filed with the Commission and the Department of Commerce by the Floral Trade Council, Haslett, MI, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of fresh cut roses from Colombia and Ecuador. Accordingly, effective February 14, 1994, the Commission instituted antidumping investigations Nos. 731–TA–684 and 685 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of February 24, 1994 (59 FR 9000). The conference was held in Washington, DC, on March 8, 1994, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on March 31, 1994. The views of the Commission are contained in USITC Publication 2766 (March 1994), entitled "Fresh Cut Roses from Colombia and Ecuador: Investigations Nos. 731–TA–684 and 685 (Preliminary)."

Issued: April 1, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–8240 Filed 4–5–94; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[Investigation No. 337-TA-360]

Initial Determination Terminating Respondent on the Basis of Settlement Agreement

In the matter of certain devices for connecting computers via telephone lines.

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding administrative law judge in the above captioned investigation terminating the following respondent on the basis of a settlement agreement: Enhance Cable Technology.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on April 1, 1994.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205-1802.

Issued: April 1, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94-8242 Filed 4-5-94; 8:45 am]

BILLING CODE 7020-02-P

[Investigation No. 337-TA-360]

Initial Determination Terminating Respondent on The Basis of Settlement Agreement

In the matter of certain devices for connecting computers via telephone lines.

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding administrative law judge in the above captioned investigation terminating the following respondent on the basis of a settlement agreement: ABL Electronics Corporation.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on April 1, 1994.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone (202) 205-2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW, Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205-1802.

Issued: April 1, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94-8243 Filed 4-5-94; 8:45 am]

BILLING CODE 7020-02-P

[Investigations Nos. 731-TA-646 and 648 (Final)]

Certain Steel Wire Rod From Brazil and Japan

Determinations

On the basis of the record[1] developed in the subject investigations, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Brazil and Japan of certain steel wire rod,[3] provided for in

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[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Chairman Newquist dissenting.

[3] For purposes of these investigations, certain steel wire rod is defined as hot-rolled carbon steel and alloy steel wire rod, in irregularly wound coils, of approximately round cross section, between 5.08 mm (0.20 inch) and 19.0 mm (0.75 inch) in diameter. The following products are excluded from the scope of these investigations:

—steel wire rod 5.5 mm or less in diameter, with tensile strength greater than or equal to 1040 MPa, and having the following chemical content, by weight: carbon greater than or equal to 0.79 percent, aluminum less than or equal to 0.005 percent, phosphorus plus sulfur less than or equal to 0.04 percent, and nitrogen less than or equal to 0.006 percent (termed "1080 tire cord" quality wire rod);

—free-machining steel containing 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.4 percent of phosphorus, more than 0.05 percent of selenium, and/or more than 0.01 percent of tellurium;

—stainless steel rods, tool steel rods, free-cutting steel rods, resulfurized steel rods, ball bearing steel rods, high-nickel steel rods, and concrete reinforcing bars and rods; and

—wire rod 7.9 to 18 mm in diameter, containing 0.48 to 0.73 percent carbon by weight, and having

subheadings 7213.31.30, 7213.31.60, 7213.39.00, 7213.41.30, 7213.41.60, 7213.49.00, 7213.50.00, 7227.20.00, and 7227.90.60 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted these investigations effective November 26, 1993, following preliminary determinations by the Department of Commerce that imports of certain steel wire rod from Brazil and Japan were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the institution of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of December 16, 1993 (58 FR 65732). The hearing was held in Washington, DC, on February 15, 1994, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on March 25, 1994. The views of the Commission are contained in USITC Publication 2761 (March 1994), entitled "Certain Steel Wire Rod from Brazil and Japan: Investigations Nos. 731-TA-646 and 648 (Final)."

Issued: March 28, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94-8241 Filed 4-5-94; 8:45 am]

BILLING CODE 7020-02-P

partial decarburization and seams no more than 0.075 mm in depth (termed valve spring quality wire rod).

DEPARTMENT OF JUSTICE

National Institute of Justice

1994-95 National Institute of Justice Program Plan

AGENCY: U.S. Department of Justice, Office of Justice Programs, National Institute of Justice.

ACTION: Notice of the availability of the 1994-95 National Institute of Justice Program Plan.

SUMMARY: The National Institute of Justice (NIJ) is publishing this Notice of the availability of its 1994-95 National Institute of Justice Program Plan.

ADDRESSES: National Institute of Justice, 633 Indiana Avenue, NW., Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: Carol V. Petrie, Acting Director, National Institute of Justice, 633 Indiana Avenue, NW., Washington, DC 20531. To obtain copies of the 1994-95 National Institute of Justice Program Plan, call the National Criminal Justice Reference Service (NCJRS), 1-800-851-3420, Box 6000, Rockville, MD 20850. The Plan can also be accessed and downloaded—by section through the NCJRS Electronic Bulletin Board, (301) 738-8895, 24 hours a day, or in its entirety via the Library of Congress Internet Gopher Server; telnet to marvel.loc.gov.

SUPPLEMENTARY INFORMATION: The following supplementary information is provided:

AUTHORITY: This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, sections 201-03, as amended, 42 U.S.C. 3721-23 (1988).

Background

The 1994-95 National Institute of Justice Program Plan outlines the NIJ research and evaluation agenda for 1994, provides descriptions of program areas for which research and evaluation proposals will be solicited, provides application instructions and forms, outlines requirements for award recipients, given deadlines for receipt of proposals, and lists contact persons for program areas.

Carol V. Petrie,

Acting Director, National Institute of Justice.

[FR Doc. 94-8155 Filed 4-5-94; 8:45 am]

BILLING CODE 4410-18-M

Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States* v. *Hamm's Holiday Harbor, Inc.*, Civil Action No. 87-1287 (C.D. Ill.), was lodged with the United States District Court for the Central District of Illinois on March 11, 1994.

The proposed consent decree constitutes a final settlement of all claims against the defendant Hamm pertaining to environmental restoration to be undertaken at a site in Marshall County, Illinois, in connection with defendant's violations of Clean Water Act ("CWA") sections 301 and 404(a), 33 U.S.C. 1311 and 1344(a), and pertaining to civil penalties pursuant to CWA section 309, 33 U.S.C. 1319, for violations by defendants Hamm and Hamm's Holiday Harbor, Inc., at a site in Peoria County, Illinois.

The proposed consent decree permanently enjoins defendants from taking any action at the Marshall County Site which:

(i) Results in the discharge of dredged or fill material into the Illinois River, or

(ii) Results in the obstruction or modification of the course or condition of the Illinois River,

(iii) Results in the discharge of refuse into or upon the banks of the Illinois River, its tributaries, or adjacent wetlands; except in compliance with an individual permit issued pursuant to CWA section 404(a), 33 U.S.C. 1344(a), with any applicable general permit issued by the United States Army Corps of Engineers, or as may be necessary to effect remediation pursuant to the provisions of the Wetlands Restoration and Mitigation Plan submitted as an Exhibit to this Consent Decree. The civil penalty of $47,500 is intended to cover the violations at both the Peoria County and Marshall County Sites.

The Department of Justice will accept written comments relating to this proposed consent decree for thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Attention: Robert E. Lefevre, Esquire, 10th St. & Constitution Avenue, NW., room 7205—Main Building, Washington, DC 20530, and should refer to *United States* v. *Hamm's Holiday Harbor, Inc.*, Civil Action No. 89-1287 (C.D. Ill.), DJ Reference No. 90-5-1-1-3404.

The proposed consent decree may be examined at the Clerk's Office, United States District Court, 100 Northeast Monroe, room 174, Peoria, Illinois 61602.

Lois J. Schiffer,

Acting Assistant Attorney General, Environment & Natural Resources Division.

[FR Doc. 94-8204 Filed 4-5-94; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL COMMISSION ON MANUFACTURED HOUSING

Meeting

AGENCY: National Commission on Manufactured Housing.

ACTION: Notice of meeting.

SUMMARY: In announcements with the Federal Advisory Committee Act, Public

Law 101–625, as amended, the National Commission on Manufactured Housing announces a forthcoming meeting of the Commission.

DATES:

April 14, 1994, 8:30 a.m.—5 p.m., Full Commission Meeting.

April 15, 1994, 8:30 a.m.—3 p.m., Full Commission Meeting.

ADDRESSES: North Raleigh Hilton, 3415 Wake Forest Road, Raleigh, NC 27609–7330.

FOR FURTHER INFORMATION CONTACT: Carmelita Pratt, Administrative Officer, The National Commission on Manufactured Housing, 301 N. Fairfax Street, suite 110, Alexandria, VA 22314 (703) 603–0440.

TYPE OF MEETING: Open.

Carmelita R. Pratt,

Administrative Officer.

[FR Doc. 94–8152 Filed 4–5–94; 8:45 am]

BILLING CODE 6820–EA–M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Cooperative Agreement for a Compendium of Current Research in Arts Education

AGENCY: National Endowment for the Arts.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of a Cooperative Agreement for the research, writing, and distribution of a Compendium of Current Research in Arts Education. Those interested in receiving the Solicitation package should reference Program Solicitation PS 94–08 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored.

DATES: Program Solicitation PS 94–08 is scheduled for release approximately April 25, 1994 with proposals due May 25, 1994.

FOR FURTHER INFORMATION CONTACT: William I. Hummel, Contracts Division, National Endowment for the Arts, 1100 Pennsylvania Ave., NW. Washington, DC 20506 (202/682–5482).

William I. Hummel,

Director, Contracts and Procurement Division.

[FR Doc. 94–8202 Filed 4–5–94; 8:45 am]

BILLING CODE 7537–01–M

Federal Council On the Arts and the Humanities Arts and Artifacts Indemnity Panel Advisory Committee; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act Pub. L. 92–463 as amended) notice is hereby given that a meeting of the Arts and Artifacts Indemnity Panel of the Federal Council on the Arts and the Humanities will be held at 1100 Pennsylvania Avenue, NW., Washington, DC 20506, in room 730, from 9 a.m. to 5 p.m., on Friday, May 6, 1994.

The purpose of the meeting is to review applications for Certificates of Indemnity submitted to the Federal Council on the Arts and the Humanities for exhibitions beginning after July 1, 1994.

Because the proposed meeting will consider financial and commercial data and because it is important to keep values of objects, methods of transportation and security measures confidential, pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated July 19, 1993, I have determined that the meeting would fall within exemptions (4) and (9) of 5 U.S.C. 552(b) and that it is essential to close the meeting to protect the free exchange of views and to avoid interference with the operations of the Committee.

It is suggested that those desiring more specific information contact the Advisory Committee Management Officer, David Fisher, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, or call 202/606–8322.

David Fisher,

Advisory Committee Management Officer.

[FR Doc. 94–8237 Filed 4–5–94; 8:45 am]

BILLING CODE 7536–01–M

Museum Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel (Professional Training Section) to the National Council on the Arts will be held on April 6, 1994 from 9 a.m. to 5:30 p.m. This meeting will be held in room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 9 a.m. to 10 a.m. for opening remarks and a policy discussion.

The remaining portion of this meeting from 10 a.m. to 5:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of February 8, 1994 this session will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: April 1, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–8214 Filed 4–5–94; 8:45 am]

BILLING CODE 7537–01–M

Presenting and Commissioning Advisory Panel; Meeting

Pursuant to section 10 (a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Presenting and Commissioning Advisory Panel (Overview Section) to the National Council on the Arts will be held on April 27–28, 1994. The panel will meet from 9 a.m. to 6 p.m. on April 27 and from 8:30 a.m. to 5 p.m. on April 28 in room 714, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis for a discussion of guidelines and field issues.

Any interested person may observe meetings or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the

meeting chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506, 202/682–5532, TYY 202/682–5496, at least (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5439.

Dated: March 29, 1994.

Yvonne M. Sabine,

Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 94–8203 Filed 4–5–94; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Social and Political Science; 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 Social and Political Sciences (#1761).

Date and Time: April 25–26, 1994, 8 a.m. to 6 p.m.

Place: Room 365, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Part-Open.

Contact Person: Susan White and Patricia White, Program Directors, Division of Social, Behavioral, and Economic Research, room 980, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1760.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Open session: April 26, 1994; 10 a.m.–11 a.m. to discuss trends and opportunities in the area of global perspectives on sociolegal studies advisory panel.

Agenda: Closed session: April 25, 1994 to review and evaluate the law and social science proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed included 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: April 1, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–8236 Filed 4–5–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–213, 50–245, 50–336, 50–423]

Connecticut Yankee Atomic Power Company and Northeast Nuclear Energy Company; Haddam Neck Plant and Millstone Nuclear Power Station, Unit Nos. 1, 2 and 3

Exemption

I.

The Connecticut Yankee Atomic Power Company (CYAPCO or the licensee) is the holder of Facility Operating License No. DPR–61 which authorizes operation of the Haddam Neck Plant, and Northeast Nuclear Energy Company (NNECO or the licensee) is the holder of Facility Operating License Nos. DPR–21. DPR–65 and NPF–49 which authorize operation of the Millstone Nuclear Power Station, Unit Nos. 1, 2, and 3 (Millstone) respectively. The license provide, among other things, that the Haddam Neck Plant and Millstone plants are subject to all rules, regulations and Orders of the Commission now or hereafter in effect.

The Haddam Neck Plant is a single-unit pressurized water reactor located at the licensee's site located in Middlesex County, Connecticut. The Millstone plants consist of a boiling water reactor and two pressurized water reactors located at the licensee's site in New London County, Connecticut.

II.

Section 26.21(b) of title 10, of the Code of Federal Regulations requires that Fitness-For-Duty (FFD) refresher training be completed on a nominal 12-month frequency or more frequently where the need is indicated.

By letter dated February 10, 1994, the licensees requested a one-time exemption from their requirements of 10 CFR 26.21(b). The exemption is needed because the licensees perform FFD refresher training as part of a consolidation of various annual training requirements. While the consolidation of annual training requirements results in substantial gains in efficiency, it also results in the potential for individuals who would have been scheduled to receive FFD refresher training during January 1994, to go until October 1994, before receiving this training. In addition, there will be individuals whose scheduled training interval is extended for shorter durations. However, the 9-month delay is the most bounding, so an overall extension from 12 to 21 months has been requested by the licensees.

The licensees state in there February 10, 1994, application that they are confident that affected personnel understand the FFD program and requirements, and that no adverse impact will result from this requested change. Between the four units, approximately 15 percent of the on-shift personnel will fall outside of the nominal 12-month window. All of the individuals have received FFD training in the past, and will read and sign a synopsis of the FFD requirements prior to exceeding the nominal 12-month window. In addition, within each shift, the supervisory personnel will be trained within the nominal 12-month frequency pursuant to 10 CFR 26.22.

III.

The Commission has reviewed the licensees' rationale for a one-time exemption from 10 CFR 26.21(b) in order not to separate FFD refresher training from other annual training requirements.

Based on its review, the Commission finds the licensees have shown good cause for the requested exemption from 10 CFR 26.21(b). Therefore, the exemption to extend the time requirement to 21 months for completing FFD refresher training is acceptable.

IV.

Accordingly, the Commission has determined that, pursuant to 10 CFR 26.6, the exemption is authorized by law and will not endanger life or property or the common defense and security and is otherwise in the public interest and hereby grants an exemption from the time requirements of 10 CFR 26.21(b).

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of this exemption will have no significant impact on the quality of human environment (59 FR 13750).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, the 30th day of March 1994.

For the Nuclear Regulatory Commission.

Jose A. Calvo,

Acting Director, Division of Reactor Projects–I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–8180 Filed 4–5–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 04009024]

Energy Fuels Nuclear, Inc.; Receipt of Application from Energy Fuels Nuclear, Inc, for a Source Material License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has received, by letter dated November 18, 1993 from Energy Fuels Nuclear, Inc., an application for a source material license to commercially produce uranium oxide by in-situ leaching (ISL) of uranium ores, at its Reno Creek, Wyoming ISL facility.

The facility will be located approximately 12 miles southwest of the town of Wright, in Campbell County, Wyoming. The operation is anticipated to extract about 181,440 kilograms (400,000 pounds) of uranium oxide (U_3O_8) per year, with a maximum quantity of 7000 kilograms (15,400 pounds) of source material on site at any one time.

The applicant plans to use a series of injection wells, which will introduce hydrogen peroxide and sodium carbonate/bicarbonate (lixiviant) into the ore zone; and extract the mobilized uranium through a series of pumping wells. The uranium-rich water will be routed to an on-site processing building (satellite plant) where the uranium will be concentrated in ion-exchange resin tanks. The uranium-depleted fluids will be recharged with lixiviant and recirculated into the ore zone through the injection wells to mobilize more uranium. The loaded ion-exchange resin will be hydraulically transferred to tank trucks and periodically shipped to another NRC-licensed facility for elution and further processing. The designed production rate for total circulation of leaching solutions will be about 7570 liters per minute (2000 gallons per minute).

Following the extraction of the uranium from the ore zone, the ground water affected by the mining operation will be restored to a quality of use equal to or better than the water uses prior to extraction operations. The ground-water restoration techniques will include pumping the well field without lixiviant injection (ground-water sweep), followed by circulating and injecting water treated by reverse osmosis to achieve final restoration. Ground-water quality will be monitored in perimeter monitoring wells during extraction operations and ground-water restoration activities.

FOR FURTHER INFORMATION CONTACT: Michael C. Layton, Uranium Recovery Branch, Division of Low-Level Waste Management and Decommissioning, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 504–2584.

Availability of License Application by Energy Fuels Nuclear, Inc.

Energy Fuels Nuclear, Inc.'s source material license application and supporting documents, which describe the proposed in-situ leach facility, location, facility operations, and design, is being made available for public inspection at the Commission's Public Document Room at 2120 L Street, NW. (Lower Level), Washington, DC 20555.

Opportunity for Hearing on License Application Request by Energy Fuels Nuclear, Inc.

The licensee and any person whose interest may be affected by the issuance of this license may file a request for hearing. A request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publication of this notice in the **Federal Register**; be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852); be served on the applicant (Energy Fuels Nuclear, Inc., 1200 17th Street, suite 2500, Denver, Colorado 80202); and must comply with the requirements set forth in the Commission's regulations, 10 CFR 2.105 and 2.714. The request for hearing must set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding, including the reasons why the request should be granted, with particular reference to the following factors:

1. The nature of the petitioner's right, under the Atomic Energy Act, to be made a party to the proceeding;
2. The nature and extent of the petitioner's property, financial or other interest in the proceeding; and
3. The possible effect, on the petitioner's interest, of any order which may be entered in the proceeding.

The request must also set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes a hearing.

Dated at Rockville, Maryland, this 30th day of March 1994.

For the Nuclear Regulatory Commission.

Joseph J. Holonich,

Acting Chief, Uranium Recovery Branch, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Materials Safety and Safeguards.

[FR Doc. 94–8181 Filed 4–5–94; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50–445 and 50–446]

Texas Utilities Electric Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 50.71(e)(3)(i) to Texas Utilities Electric Company (the licensee) for the Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, located in Somervell County, Texas.

Environmental Assessment

Identification of Proposed Action

Section 50.71(e)(3)(i) of title 10 of the Code of Federal Regulations requires the licensees of nuclear power reactors to submit an Updated Final Safety Analysis Report (UFSAR). The UFSAR is defined as "a revision of the original FSAR [Final Safety Analysis Report] containing those original pages that are still applicable plus new replacement pages." By letter dated October 14, 1993, the licensee requested an exemption from 10 CFR 50.71(e) that would eliminate the requirement to resubmit those original pages of the FSAR that are still applicable when submitting the UFSAR.

The licensee has maintained the FSAR current since the original FSAR submittal in 1978 to the present by issuing amendments to the FSAR, which contain new replacement pages, approximately every three months. The licensee has committed to maintain the FSAR using this process until the issuance of the UFSAR. The final amendment to the FSAR, containing only replacement pages, would convert the FSAR to the UFSAR. The amendment to convert the FSAR to the UFSAR would be submitted by February 2, 1995.

The Need for the Proposed Action

Section 50.71(e) requires that licensee submit, within two years of receiving an operating license, a UFSAR that contains the original FSAR pages that are still applicable and new replacement pages. The purpose of this requirement is to assure that the Final Safety Analysis Report is updated to contain the latest material developed.

The Comanche Peak Steam Electric Station FSAR is approximately 7,500 to 8,000 pages of text and tables, and 1,500 to 2,000 sheets of figures. As the licensee has maintained the FSAR current by frequent amendments, the vast majority of this material does not require revision and the number of new replacement pages associated with the

UFSAR submittal would be relatively small. Thus, the CPSES FSAR meets the intent of 10 CFR 50.71(e) for issuance of the UFSAR because it contains the latest material developed.

Therefore, an exemption is warranted since the licensee has maintained the FSAR in a manner that is consistent with the underlying purpose of issuing the UFSAR in accordance with 10 CFR 50.71(e).

Environmental Impact of the Proposed Action

The proposed exemption affects only the size of the UFSAR submittal and does not affect the risk of facility accidents. Thus, post-accident radiological releases will not differ from those determined previously, and the proposed exemption does not otherwise affect facility radiological effluents, or any significant occupational exposures. With regard to potential nonradiological impacts, the proposed exemption does not affect plant nonradiological effluents and has no other environmental impact. Therefore, the Commission concludes that there are no measurable radiological or nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed exemption, any alternatives either will have no environmental impact or will have a greater environmental impact. The principal alternative to the exemption would be to require that the licensee submit the original FSAR pages that are still applicable with the UFSAR replacement pages. Such an action would not enhance the protection of the environment.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for Comanche Peak Steam Electric Station, Units 1 and 2, dated September 1981, and Supplement dated October 1989.

Agencies and Persons Contacted

The NRC staff reviewed the licensee's request. The staff consulted with the State of Texas regarding the environmental impact of the proposed action.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. On the basis of the environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to the proposed action, see the licensee's letter dated October 14, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P.O. Box 19297, Arlington, Texas 76019.

Dated at Rockville, Maryland, this 30th day of March 1994.

For the Nuclear Regulatory Commission.

Lawrence E. Kokajko,

Acting Director, Project Directorate IV-2, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 94-8182 Filed 4-5-94; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-33835; File No. SR-Amex-92-41]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange, Inc. Relating to Priority of Agency Orders to Cross Blocks of 25,000 Shares or More

March 30, 1994.

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 November 23, 1992, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On March 30, 1994, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change in order to increase the minimum size of agency crosses that would be entitled to priority under this proposal from 10,000 to 25,000 shares.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] See letter from Geraldine M. Brindisi, Corporate Secretary, Amex, to Diana Luka-Hopson, Branch Chief, Division of Market Regulation, SEC, dated March 28, 1994 ("Amendment No. 1").

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to add Commentary .02 to Rule 126(g) to provide for priority of agency orders to cross 25,000 shares or more; and to amend existing Commentary .01 to Rule 126(g) (size precedence for orders to cross 25,000 shares or more) to limit it to circumstances where one or both sides of a cross is for the account of a member or member organization. The text of the proposed rule change is available at the Office of the Secretary, Amex, 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 self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add new Commentary .02 to Rule 126(g), to allow a member who has an order to buy and an order to sell 25,000 shares or more of the same security, where neither order is for the account of a member or a member organization, to cross those orders at a price that is at or within the prevailing quotation without the transaction being broken up at the cross price. Thus, the member's bid or offer would be entitled to priority at such cross price, irrespective of pre-existing bids or offers at that price. The proposal, therefore, is intended to facilitate execution of agency cross transactions on the Exchange. In addition, confining the proposed size priority threshold to block size orders of 25,000 shares or more would limit the effects of the rule primarily to actively traded, liquid securities.

The member would be required to follow the crossing procedures of Rule 151 and make a public bid and offer on behalf of both sides of the cross. However, unlike existing block cross procedures under Rule 126(g),

Commentary .01,[2] such an order would not be required to be on parity with other orders on the Floor; that is, it would not be required that the priority of earlier bids and offers first be removed, by means of a sale, before effecting the cross.

The proposal furthers the important auction market principle of price improvement by allowing another member to trade with either the bid or offer side of the cross transaction to provide a price that is better than the proposed cross price; however, the other member could not trade with the cross bid or offer at a price which is the same as the cross price. The member who is providing a better price to one side of the cross transaction would be required to trade with all other market interest having priority at that price before trading with any part of the cross transaction. A transaction effected at the cross price in reliance on Commentary .02 would be printed as "stopped stock."

To avoid conflict with the proposed agency cross rule, Commentary .01 of Rule 126(g) would be amended so as to afford size precedence to orders to cross 25,000 shares or more only when members or member organizations are involved as principal on one or both sides of the cross. As is currently the case, such orders to cross would be entitled to precedence only when they are on parity with other orders on the Floor.[3]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objective(s) of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

[2] See *infra*, note 3.

[3] Specifically, the Amex proposal would clarify that, in order to claim size precedence, both sides of the cross must be represented at the specialist's post when a sale clearing the Floor takes place.

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

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–92–41 and should be submitted by April 27, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–8164 Filed 4–5–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33836; File No. SR–CHX–94–08]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. to Waive Exchange Transaction Fees on Trades in the Chicago Stock Basket

March 30, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 17, 1994, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to waive, through June 30, 1994, Exchange transaction fees for trades in the Chicago Stock Basket ("CXM"). This would extend a waiver currently in effect through March 31, 1994.[1] Proposed new language is italicized and deleted language is bracketed:

(c) Transaction Fee Schedule Round Lots/Mixed Lots—45 cents per 100 shares; $100 maximum per trade.

Odd Lots—35 cents per trade; $400 maximum monthly fee.

The above fees shall not apply to transactions in the Chicago Basket ("CXM") through [March 31, 1994] *June 30, 1994.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in

[1] This waiver became effective in Securities Exchange Act Release No. 33056 (October 15, 1993), 58 FR 54387 (October 21, 1993) (File No. SR–CHX–93–24), and was extended until March 31, 1994 in Securities Exchange Act Release No. 33381 (December 23, 1993), 58 FR 69415 (December 30, 1993) (File No. SR–CHX–93–34).

Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed change is to extend the waiver of certain Exchange fees for trades in the CXM through June 30, 1994.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable fees and other charges among members using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and therefore has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the 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 CHX. All submissions should refer to File No. SR–CHX–94–08 and should be submitted by April 27, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–8162 Filed 4–5–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33837; File No. SR–CHX–94–09]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Inc. To Extend a Credit against Dues Given to Registered Market Makers for Trading the Chicago Stock Basket

March 30, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 17, 1994, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The 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 Exchange proposes to extend a credit against dues given to registered Market Makers in the Chicago Stock Basket ("CXM"), for trading the CXM through May 31, 1994.[1]

Proposed new language is italicized and deleted language is bracketed:

Membership Dues and Fees

Member Dues (all members)—$3,200 per annum, payable monthly in equal installments.

Through [March] *May* 31, 1994, registered Market Makers in the CXM will be given a credit towards their monthly installment of their dues at the rate of $1 for each contract of CXM that they trade. The maximum credit given to any registered Market Maker in the CXM pursuant to the preceding sentence shall be $15 per day up to a maximum of $266 per month.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to encourage more trading and participation in the CXM product by registered Market Makers. This filing will extend the credit towards dues for trading in the CXM to May 31, 1994, from its current March 31, 1994 expiration date.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable fees and other charges among members using its facilities.

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[1] This credit became effective in Securities Exchange Act Release No. 33380 (December 23, 1993), 58 FR 69416 (December 30, 1993) (File No. SR–CHX–93–32) and was extended until March 31, 1994 in Securities Exchange Act Release No. 33585 (February 7, 1994), 59 FR 6986 (February 14, 1994) (File No. SR–CHX–94–05). According to the CHX, the credit applies only to CXM trades for a registered Market Maker's proprietary market making account. Telephone conversation between David T. Rusoff, Foley & Lardner, and Beth Stekler, Attorney, Division of Market Regulation, SEC, on December 14, 1993.

For further discussion of the market structure for trading the CXM and, in particular, of the role of registered Market Makers, see Securities Exchange Act Release No. 33053 (October 15, 1993), 58 FR 54610 (October 22, 1993) (File No. SR–CHX–93–18).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and therefore has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–94–09 and should be submitted by April 27, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–8165 Filed 4–5–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33842; File No. SR–NASD–94–16]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Arbitration Surcharge on Members

March 31, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on March 22, 1994, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission"), and amended on March 31, 1994[1] the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one establishing or changing a fee under section 19(b)(3)(A)(ii) of the Act, which renders the rule effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend section 45 of the Code of Arbitration Procedure to clarify that the member surcharge of $200 is not subject to reimbursement under Subsections 43(c) and 44(c) of the Code. Below is the text of the proposed rule change. Proposed new language is italicized.

PART III. UNIFORM CODE OF ARBITRATION

* * * * *

Member Surcharge

Sec. 45.

(a) Each member who is named as a party to an arbitration proceeding, whether in a Claim, Counterclaim, Crossclaim or Third-Party claim, shall be assessed a $200 non-refundable surcharge when the Arbitration Department perfects service of the claim naming the member on any party to the proceeding. For each associated person who is named, the surcharge shall be assessed against the member or members which employed the associated person at the time of the events which gave rise to the dispute, claim or controversy. No member shall be assessed more than a single surcharge in any arbitration proceeding. The surcharge shall not be subject to reimbursement under Subsections 43(c) or 44(c) of the Code.

(b) For the purposes of this Section, service is perfected when the Director of Arbitration properly serves the Respondents to such proceeding under Subsection 25(a) of the Code.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On February 25, 1994, the NASD filed SR–NASD–94–11 adopting section 45 to the Code of Arbitration Procedure ("Code") to impose a $200 non-refundable surcharge on any member named as a party to an arbitration proceeding. The last line of section 45(a) stated that the surcharge would not be subject to reimbursement under Subsection 43(c) of the Code, which references customer disputes.[3]

Subsequently, the NASD determined that it had inadvertently omitted reference in the last sentence of new section 45(a) to Subsection 44(c), which provision relates to industry and clearing controversies. The NASD is, therefore, proposing to amend Subsection 45(a) to the Code of Arbitration Procedure to clarify that the member surcharge is not subject to reimbursement under Subsections 43(c) and 44(c) of the Code. Thus, the

[1] See Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Ethan Corey, Staff Attorney, Over-the-Counter Branch, SEC, dated March 31, 1994.

[3] See Securities Exchange Act Release No. 33731 (March 8, 1994), 59 FR 11817 (March 14, 1994).

provision of Subsection 45(a) that the member surcharge is not subject to reimbursement shall apply in cases involving customer disputes as well as industry and clearing controversies.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(5) of the Act,[4] which require that the rules of the Association provide for the equitable allocation of reasonable dues, fees and other charges among members in that the proposed rule clarifies that the member surcharge will be assessed equitably on each member who is named and for whom service is perfected in an arbitration proceeding.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to section 19(b)(3)(A)(ii) of the Act and subparagraph (e) of rule 19b–4 thereunder in that it constitutes a due, fee or other charge.

At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by April 27, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–8192 Filed 4–5–94; 8:45 am]

BILLING CODE 8010–01–M

[4] 15 U.S.C. 78o–3.

[Release No. 34–33834; File No. SR–NYSE–94–05]

Self-Regulatory Organizations; Filing of Proposed Rule Change by New York Stock Exchange, Inc. Relating to Additions to the "List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A"

March 30, 1994.

Pursuant to sections 19 (b)(1) and (d)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s (b)(1) and (d)(1), notice is hereby given that on March 2, 1994, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On March 21, 1994, the NYSE submitted to the Commission Amendment No. 1 to the proposed rule change in order to clarify certain aspects of the original filing.[1] 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

This proposal would revise the Rule 476A Violations List for imposition of fines for minor violations of rules and/or policies by adding to the list Exchange policy regarding a two-week probationary period for execution of orders by new members on the Exchange trading floor.[2] As part of the proposed rule change, the NYSE is also seeking approval of the policy itself.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 476A[4] provides that the Exchange may impose a fine, not to exceed $5,000, on any member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization for a minor violation of certain specified Exchange rules.

The purpose of the Rule 476A procedure is to provide for a response to a rule violation when a meaningful sanction is appropriate, but when initiation of a disciplinary proceeding under Rule 476 is not suitable because such a proceeding would be more costly and time-consuming than would be warranted given the minor nature of the violation. Rule 476A provides for an appropriate response to minor

[1] See letter from Donald Siemer, Director, Market Surveillance Division, NYSE, to Beth Stekler, Attorney, Division of Market Regulation, SEC, dated March 16, 1994 ("Amendment No. 1")

[2] The Exchange also has requested approval, under Rule 19d–1(c)(2), to amend its Rule 19d–1 Minor Rule Violation Enforcement and Reporting Plan ("Plan") to include its policy in regard to execution of orders by new members. See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Sandra Sciole, Special Counsel, Division of Market Regulation, SEC, dated March 1, 1994.

[3] See Amendment No. 1, *supra*, note 1.

[4] Rule 476A was approved by the Commission on January 25, 1985. See Securities Exchange Act Release No. 21688 (January 25, 1985), 50 FR 5025 (February 5, 1985). Subsequent additions of rules to the Rule 476A Violations List were made in Securities Exchange Act Release Nos. 22037 (May 14, 1985), 50 FR 21008 (May 21, 1985); 23104 (April 11, 1986), 51 FR 13307 (April 18, 1986); 24985 (October 5, 1987), 52 FR 41643 (October 29, 1987); 25763 (May 27, 1988), 54 FR 20925 (June 7, 1988); 27878 (April 4, 1990), 55 FR 13345 (April 10, 1990); 28003 (May 8, 1990), 55 FR 20004 (May 14, 1990); 28505 (October 2, 1990), 55 FR 41288 (October 10, 1990); 28995 (March 21, 1991), 56 FR 12967 (March 28, 1991); 30280 (January 22, 1992), 57 FR 3452 (January 29, 1992); 30536 (March 31, 1992), 57 FR 12357 (April 9, 1992); 32421 (June 7 1993), 58 FR 32973 (June 14, 1993).

violations of certain Exchange rules or policies, while preserving the due process rights of the party accused through specified, required procedures. Violations of these rules and policies that are deemed by the Exchange not to be minor in nature are also subject to formal disciplinary proceedings under Exchange Rule 476. The list of rules and policies which are eligible for the Rule 476A procedures specifies those rule violations which may be the subject of fines under the rule and also includes a schedule of fines.

In File No. SR–NYSE–84–27, which initially set forth the provisions and procedures of Rule 476A,[5] the Exchange indicated it would amend the list of rules from time to time, as it considered appropriate, in order to phase in the implementation of Rule 476A as experience with it was gained.

The Exchange is seeking approval to add to the list of rules subject to possible imposition of fines under Rule 476A its policy with respect to a requirement for new members of the Exchange to have their order executions observed by another member for a period of two weeks.

As part of their training regimen, new Exchange members are required to participate in a New Member Orientation Program ("Program"). The Program, consisting of six one-hour sessions over a two-week period, is designed to familiarize the new members with regulations, systems and trading practices. Subsequent to the Program and passing the member examination (Series 15), a new member is required to wear a temporary badge (called on the Exchange today an "orange badge") for a minimum of two weeks, during which time the new member may execute orders only under the direct supervision of another experienced member.[6]

The purpose for the proposed rule change is to facilitate the Exchange's ability to ensure compliance with all aspects of the above-named policy. New members would be informed that, if they are found to have executed an order during the initial two-week period not under an experienced member's supervision, the requirement to wear the temporary badge and have their executions observed by an experienced member would be extended for an additional week. A second violation of the policy would result in a possible fine under the provisions of Rule 476A.[7]

The Exchange believes failure to comply with the requirements of this policy should be addressed with an appropriate sanction and seeks Commission approval to add violations of these requirements to the Rule 476A List.

2. Statutory Basis

The proposed rule change will advance the objectives of Section 6(b)(6) of the Act in that it will provide a procedure whereby members and member organizations can be "appropriately disciplined" in those instances when a rule violation is minor in nature, but a sanction more serious than a warning or cautionary letter is appropriate. The proposed rule change provides a fair procedure for imposing such sanctions, in accordance with the requirements of Section 6(b) (7) and 6(d) (1) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–94–05 and should be submitted by April 27, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-8163 Filed 4–5–94; 8:45 am]

BILLING CODE 8010-01-M

[5] See Securities Exchange Act Release No. 21688, *supra*, note 4.

[6] According to the NYSE, a new member may execute an order under the direct supervision of any fully qualified NYSE member who is a disinterested third party to the transaction. The experienced member observes the trade, and reviews it for compliance with the relevant Exchange rules and trading practices. This review is evidenced by placing the experienced member's badge number on the back of the order ticket. See Amendment No. 1, *supra*, note 1.

[7] The Exchange has clarified that, because the initial violation of this policy would result in an extension of the probationary period, the second violation would be subject to the first time fine provided by Rule 476A. See Amendment No. 1, *supra*, note 1.

[Release No. 34–33838; File No. SR–Phlx–94–04]

Self-Regulatory Organizations; Order Granting Accelerated Approval and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1 and 2 to a Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Amending the Net Capital Requirements in Phlx Rule 703

March 30, 1994.

On January 28, 1994, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule 703 (Financial Responsibility and Reporting) to correspond to recent Commission amendments to SEC Rule 15c3–1 ("SEC

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

Net Capital Rule").[3] Notice of the proposed rule change appeared in the **Federal Register** on March 4, 1994.[4] No comment letters were received on the proposed rule change. The Exchange subsequently filed Amendment Nos. 1 and 2 to the proposed rule change.[5] This order approves the Exchange's proposal, as amended.

Pursuant to the amendments to the SEC Net Capital Rule, all specialists, except options market makers,[6] who are currently exempt from the net capital requirements of Rule 703, will be subject to a minimum net capital requirement of $100,000.[7] As a result, the Exchange believes that these amendments require the deletion of Phlx Rule 703(a) (iii), (iv), and (v). Currently, Rule 703(a) (iii), (iv), and (v) impose a minimum net liquid asset[8] requirement of $50,000 for equity specialists, $75,000 for options specialists, and $100,000 for firms which are both equity and options specialists.

The Exchange also proposes to amend Rule 703 to require each member organization and participant organization, including each ROT, to notify the Exchange if it fails to maintain the minimum net capital required by the SEC Net Capital Rule or it fails to maintain liquid assets in accordance with Phlx Rule 703. Specifically, the Exchange is proposing to add a new paragraph (v) to Phlx Rule 703(a) which would require a member organization or foreign currency option participant organization to promptly notify the Exchange if it ceases to be in compliance with the SEC Net Capital Rule or Phlx Rule 703(a) (iii) or (iv) (*i.e.*, former sections (a)(vi) or (a)(vii)).

Lastly, the Phlx proposes to amend paragraph (c)(vi) of Rule 703 to add the requirement that a floor broker's clearing agent guarantee orders entrusted on the floor with that floor broker, in addition to transactions and balances carried in the account.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5),[9] in that the proposal is designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, and to protect investors and the public interest. Specifically, the amendments to the SEC Net Capital Rule make all specialists, except options market makers, that previously were exempt from the SEC Net Capital Rule under subparagraph (b)(1), subject to the rule. The amendments to the SEC Net Capital Rule, therefore, will have the following effects on Phlx specialists: instead of the current minimum net liquid assets requirements under Phlx Rule 703(a) of $50,000 for equity specialists, $75,000 for options specialists, and $100,000 for firms that act as both equity and options specialists, the SEC's minimum net capital requirement of $100,000 for dealer's would apply.[10] The Commission finds that the proposal will conform Rule 703 to the SEC Net Capital Rule, as amended, and is therefore consistent with the Act.

The Commission believes that the notification portion of the proposed rule change may prevent fraudulent and manipulative acts and practices and protect investors and the public interest by providing the Exchange with the ability to respond promptly to such notification, especially respecting options market makers. Currently, Commission Rule 17a–11 requires, among other things, prompt telegraphic notice to a broker-dealer's designated examining authority, as well as the SEC, when a broker-dealer falls below its minimum net capital requirement pursuant to the SEC Net Capital Rule. This rule does not apply to options market makers, because they are exempt from the SEC Net Capital Rule. The Exchange's proposed notification provision would apply to all member organizations and participant organizations, including options market makers. As a result, the Commission finds that the proposed notification provision is consistent with the Act, in general, and with SEC Rule 17a–11, in particular.

Finally, the Commission finds that the proposed requirement that a floor broker's clearing agent guarantee orders entrusted on the floor with that floor broker may serve to protect investors and the public interest by promoting liquidity and confidence in the credibility of floor broker orders, consistent with Section 6(b)(5) of the Act.

The Commission finds good cause for approving the proposed rule change and Amendment Nos. 1 and 2 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** in order to ensure that the amendments to Rule 703 are in place prior to the April 1, 1994, effective date of the Commission's amendments to the SEC Net Capital Rule. The Commission believes that by granting accelerated approval, the potential for any confusion between the current net capital standards provided in Rule 703 and those that will apply on April 1, 1994, pursuant to the SEC Net Capital Rule, will be adequately minimized. Finally, the original proposal was published for the full 21-day comment period and no comments were received, and Amendment Nos. 1 and 2 are simply clarifications of the original proposal. As a result, the Commission finds good cause for accelerating approval of the proposed rule change and Amendment Nos. 1 and 2 to the proposed rule change.

Interested persons are invited to submit written data, views and arguments concerning Amendment Nos. 1 and 2. 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

[3] These amendments go into effect on April 1, 1994. See Securities Exchange Act Release No. 32737 (August 11, 1993), 58 FR 43555 (August 17, 1993) ("Exchange Act Release No. 32737").

[4] See Securities Exchange Act Release No. 33692 (February 28, 1994), 59 FR 10447 (March 4, 1994).

[5] Amendment No. 1 to the proposal (1) added the phrase "foreign currency option" before "participant organization" in proposed Rule 703(a)(v), and (2) deleted the word "tentative" before the phrase "net capital" in proposed Rule 703(c)(ii)(A). Amendment No. 1 also clarified that the proposed rule change does not alter the Exchange's current net capital requirements applicable to Registered Options Traders ("ROTs"). See Letter from Gerald O'Connell, Vice President, Market Surveillance, Phlx, to Sharon Lawson, Assistant Director, Office of Derivatives and Equity Regulation, Division of Market Regulation, Commission, dated March 1, 1994 ("Amendment No. 1"). Amendment No. 2 requests accelerated approval of the proposed rule change. See Letter from Edith Hallahan, Special Counsel, Regulatory Services, Phlx, to Sharon Lawson, Assistant Director, Office of Derivatives and Equity Regulation, Division of Market Regulation, Commission, dated March 11, 1994.

[6] Phlx ROTs qualify as options market makers that are exempt from the SEC Net Capital Rule. ROTs, however, are, and will continue to be, subject to a minimum net capital requirement of $25,000 pursuant to Phlx Rule 703. See Amendment No. 1, *supra* note 5.

[7] In addition, for certain purposes under the SEC Net Capital Rule, certain specialists will be exempt from the application of the rules haircut and undue concentration charges with respect to their specialty securities. See Exchange Act Release No. 32737, *supra* note 3.

[8] "Net liquid assets" is defined in Phlx Rule 703(b).

[9] 15 U.S.C. 78f(b)(5) (1988).

[10] See *supra* note 6.

available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the File No. SR–Phlx–94–04 and should be submitted by April 27, 1994.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–Phlx–94–04), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–8161 Filed 4–5–94; 8:45 am]

BILLING CODE 8010–01–M

[11] 15 U.S.C. 78s(b)(2) (1988).

[12] 17 CFR 200.30–3(a)(12) (1993).

SMALL BUSINESS ADMINISTRATION

Kentucky District Advisory Council; Public Meeting

The U.S. Small Business Administration Kentucky District Advisory Council will hold a public meeting from 9 a.m. on Thursday and Friday, April 28 and 29, 1994, at the Beckham Room, The Galt House, located at 140 North Fourth Avenue, Louisville, Kentucky, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. William Federhofer, District Director, U.S. Small Business Administration, room 188, 600 Dr. Martin Luther King, Jr. Place, Louisville, Kentucky 40202, (502) 582–5971.

Dated: March 31, 1994.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 94–8191 Filed 4–5–94; 8:45 am]

BILLING CODE 8025–01–M

[License No. 01/01–5356]

Commonwealth Enterprise Fund, Inc.; Filing of an Application for Transfer of Ownership and Control

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1993)) by Commonwealth Enterprise Fund, Inc., 10 Post Office Square, Boston, Massachusetts 02109, for transfer of ownership and control of its license, under the Small Business Investment Act of 1958, as amended, (the Act) (15 U.S.C. *et. seq.*). Commonwealth Enterprise Fund, Inc., was licensed May 28, 1992.

The new proposed Shareholders of Commonwealth Enterprise Fund, Inc., are as follows:

Name	Percentage of ownership
Massachusetts Community Development Finance Corporation, 10 Post Office Square, Suite 1090, Boston, Massachusetts 02109	42.00
Massachusetts Technology Development Corporation, 148 State Street, 9th Floor, Boston, Massachusetts 02109	23.00
Massachusetts Government Land Bank, One Court Street, 2nd Floor, Boston, Massachusetts 02108	13.00
Thrift Institutions Fund for Economic Development, 50 Congress Street, suite 540, Boston, Massachusetts 02109	22.00

The new proposed Officers and Directors of Community Enterprise Fund, Inc., are as follows:

Name	Title
Milton J. Benjamin, Jr., President, Massachusetts Community Development Finance Corporation, 10 Post Office Square, Suite 1090, Boston, Massachusetts 02109.	President and Director.
Jesse M. Lanier, President, Springfield Food System, Inc., 644 State Street, Boston, Massachusetts 02109.	Director.
John E. Marston, Senior Vice President, Fleet Bank of Massachusetts, 75 State Street, Boston, Massachusetts 02109.	Treasurer and Director.
John F. Hodgman, President, Massachusetts Technology Development Corporation, 148 State Street, 9th Floor, Boston, Massachusetts 02109.	Director.
Gerald Algere, Director of Lending, Massachusetts Government Land Bank, One Court Street, 2nd Floor, Boston, Massachusetts 02108.	Director.
Gabrielle E. Greene, Managing Director, Commonwealth Enterprise Fund, Inc., 10 Post Office Square, Suite 1090, Boston, Massachusetts 02109.	Clerk.

The applicant will continue operations with private capital $1,912,000.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SSBIC to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in Boston, Massachusetts.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies)

Dated: March 30, 1994.

Robert D. Stillman,

Associate Administrator for Investment.

[FR Doc. 94–8190 Filed 4–5–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 1977]

Determination Under Subsection 2(b)(1)(B) of the Export-Import Bank Act of 1945 With Respect to Cameroon

Pursuant to subsection 2(b)(1)(B) of the Export-Import Bank Act of 1945, as amended, and in accordance with the authority delegated to the Secretary of State by Executive Order 12166 of October 19, 1979, as amended, I determine that it is in the national interest and would clearly and importantly advance United States policy in the area of human rights for the Export-Import Bank of the United States to deny, for nonfinancial or noncommercial considerations,

guarantees, insurance extensions of credit and participants in the extension of credit with respect to the purchase of automotive vehicles by the Government of Cameroon for use by that country's security force.

Dated: March 25, 1994.

Warren Christopher,

Secretary of State.

[FR Doc. 94–8200 Filed 4–5–94; 8:45 am]

BILLING CODE 4710–10–M

[Public Notice 1976]

Determination Under Section 498B(c) of the Foreign Assistance Act of 1961, as Amended

Pursuant to section 498B(c) of the Foreign Assistance Act of 1961, as amended (the "Act"), and section 2(c) of Executive Order 12884, I hereby determine that the Western NIS Enterprise Fund should be established and supported under chapter 11 of part I of the Act.

This determination shall be published in the **Federal Register**.

Dated: March 23, 1994.

Thomas W. Simons, Jr.,

Coordinator of U.S. Assistance to the New Independent States.

[FR Doc. 94–8199 Filed 4–5–94; 8:45 am]

BILLING CODE 4710–08–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc., Special Committee 159 Twenty-Ninth Meeting; Minimum Operational Performance Standards for Airborne Navigation Equipment Using Global Positioning System (GPS); Meeting

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for Special Committee 159 meeting to be held May 2–6, starting at 9 a.m. The meeting will be held at the RTCA Conference Room, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036.

The agenda for this meeting is as follows:

(1) Chairman's introductory remarks;

(2) Approval of summary of the Twenty-eighth meeting held on February 4;

(3) Review working group progress and identify issues for resolution:

(a) GPS/GLONASS (WG1)

(b) GPS/GIC/WADGNSS (WG2)

(c) GPS/Other Navigation Systems (WG3)

(d) GPS/Precision Landing Guidance and Airport Surface Surveillance (WG4)

(e) Fault Detection and Isolation (WG5)

(f) Equipment Class (Ad Hoc);

(4) Interference issues:

(a) Interference Ad-Hoc Working Group Report

(b) SATCOM (SC–165)

(c) Mobile Satellite Services;

(5) Review of EUROCAE Activities;

(6) Assignment/review of future work;

(7) Other business;

(8) Date and place of next meeting.

Attendance is open to the interested public but limited to space availability. 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 March 31, 1994.

Joyce J. Gillen,

Designated Officer.

Specific Working Groups Sessions

May 2—Working Group 1, GPS/GLONASS and Working Group 5, Fault Detection and Isolation.

May 3—Working Group 2, GPS/GIC/WADGNSS.

May 4—Working Group 3, GPS/Other Navigation Systems.

May 5—Working Group 4, Precision Landing Guidance and Airport Surface Surveillance.

Plenary Session—May 6.

[FR Doc. 94–8195 Filed 4–5–94; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc.; RTCA Technical Management Committee; Meeting

Pursuant to section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix I), notice is hereby given for the RTCA Technical Management Committee meeting to be held April 29, starting at 9 a.m. The meeting will be held at the RTCA Conference Room, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036.

The agenda for this meeting is as follows:

(1) Chairman's remarks:

(2) Approve summary of March 18 meeting;

(3) Consider/approve:

(a) Proposed Revision (2nd) of the Terms of Reference for Special Committee 180, Design Assurance Guidance for Airborne Electronic Hardware

(b) Proposed Final Draft: Guidance and Recommended Requirements for Airport Surface Movement Sensors, prepared by SC–178

(c) Proposed Final Draft: Guidelines on AMS(R)S Near-Term Voice Implementation and Utilization, prepared by SC–165

(d) Change 1 to RTCA DO–185, Minimum Operational Performance Standards for Traffic Alert and Collision Avoidance System (TCAS) Airborne Equipment, Consolidated Edition;

(4) Other business;

(5) Date and place of next meeting.

Attendance is open to the interested public but limited to space availability. 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 March 31, 1994.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 94–8196 Filed 4–5–94; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at the Adirondack Regional Airport, Harrietstown, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction of notice of intent to rule on application to impose and use the revenue from a Passenger Facility Charge (PFC) at the Adirondack Regional Airport, Harrietstown, New York.

SUMMARY: This correction amends information which was included in the previously published notice.

In notice document 94–5782 beginning on page 11647 in the **Federal Register** issued of Friday, March 11, 1994, under "supplemental information" the first sentence of the second paragraph should read "On January 31, 1994, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Town of Harrietstown was substantially complete within the requirement of § 158.25 of part 158".

FOR FURTHER INFORMATION CONTACT:

Mr. Philip Brito, Manager of the New York Airports District Office, 181 South Franklin Avenue, room 305, Valley Stream, New York, 11581, Tel. (718) 553–1882. the application may be reviewed in person at this same location.

Issued in Jamaica, New York on March 16, 1994.

Peter Nelson,

Acting Manager, Airports Division Eastern Region.

[FR Doc. 94–8193 Filed 4–5–94; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Burbank-Glendale-Pasadena Airport, Burbank, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Burbank-Glendale-Pasadena Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before May 6, 1994.

ADDRESSES: Comments on this application may be mailed in triplicate to the following address: Federal Aviation Administration, Airports Division, P.O. Box 92007, WWPC, Los Angeles, CA 90009 * * * or delivered in triplicate to the following street address: Federal Aviation Administration, Airports Division, 15000 Aviation Blvd., Hawthorne, CA 90261.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Thomas E. Greer, Director, Airport Services, Burbank-Glendale-Pasadena Airport, 2627 Hollywood Way, Burbank, CA 91505.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Burbank-Glendale-Pasadena Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Milligan, Supervisor, Standards Section, AWP–621, Airports Division, Federal Aviation Administration, 15000 Aviation Blvd., Hawthorne, CA 90261, Tel. (310) 297–1029. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Burbank-Glendale-Pasadena Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On March 24, 1994 the FAA determined that the application to impose and use the revenue from a PFC submitted by Burbank-Glendale-Pasadena Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 28, 1994.

The following is a brief overview of the application.

Level of the Proposed PFC: $3.00.

Proposed Charge Effective Date: September 1, 1994.

Proposed Charge Expiration Date: September 30, 2001.

Total Estimated PFC Revenue: $34,989,000.00.

Brief Description of Proposed Project(s):

Impose and Use Projects: AF–01 Reconstruct Runway 8/26; AF–02 Reconstruct Runway 15/33; LA–01 Acquire Land-Plant C–1.

Impose Only Projects: AF–03 Extend Taxiway B; AF–04 Construct ARFF Station; LA–02 Acquire Land-Plant B–6.

Class or Classes of Air Carriers Which the Public Agency Has Requested Not Be Required To Collect PFCs: Air Taxi/Commercial Operators (ATCO) filing Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.** In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Burbank-Glendale-Pasadena Airport Authority, Burbank-Glendale-Pasadena Airport.

Issued in Los Angeles, California on March 28, 1994.

Robert C. Bloom,

Acting Manager, Airports Division, Western-Pacific Region.

[FR Doc. 94–8194 Filed 4–5–94; 8:45 am]

BILLING CODE 4910–13–M

Federal Railroad Administration

Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of 49 CFR Part 236

Pursuant to 49 CFR Part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Block Signal Application (BS–AP) –No. 3283

Applicant: Kansas City Southern Railway Company, Mr. M.W. Hahn, Vice President-Transportation, 4601 Blanchard Road, Shreveport, Louisiana 71107.

The Kansas City Southern Railway Company seeks approval of the proposed discontinuance and removal of the traffic control system, on the single main track, between Zacha Junction, milepost 62.6 and proposed Union Pacific Railroad Company connection, milepost 56.95, near Garland, Texas, on the former Atchison, Topeka, and Santa Fe Railway Company, Dallas Subdivision; including the discontinuance and removal of two power-operated switches and associated signals at Zacha Junction.

The reason given for the proposed changes is to enhance the safety of train operations by placing control of all train movements under the direction of a local person, because the area will change to typical yard operations.

BS–AP–No. 3284

Applicant: Consolidated Rail Corporation, Mr. J.F. Noffsinger, Chief Engineer—C&S, 2001 Market Street, P.O. Box 41410, Philadelphia, Pennsylvania 19101–1410.

The Consolidated Rail Corporation seeks approval of the proposed modification of the automatic block signal system, on Track No. 2, between CP95, milepost 95.7 and Marion Interlocking, milepost 101.5, near Marion, Ohio, on the Indianapolis Line, Indianapolis Division; consisting of the discontinuance and removal of automatic signals 972 and 992, and the installation of automatic signal 982.

The reason given for the proposed changes is to retire facilities no longer required and improve train handling.

BS–AP–No. 3285

Applicants

Norfolk Southern Corporation, Mr. J.W. Smith, Chief Engineer—C&S,

Communication and Signal Department, 99 Spring Street, SW., Atlanta, Georgia 30303.

CSX Transportation, Incorporated, Mr. W.J. Scheerer, Chief Engineer—Train Control, 500 Water Street, Jacksonville, Florida 32202.

Norfolk Southern Corporation (NS) and CSX Transportation, Incorporated (CSX) jointly seek approval of the proposed modification of the limits to D&S Interlocking, milepost 57.4, near East Durham, North Carolina, Piedmont Division, Goldsboro to Greensboro Line, where a single main track of CSX crosses at grade two main tracks of the NS. The proposal includes the discontinuance and removal of signal 1LA and the relocation of signal 1R.

The reason given for the proposed changes is to allow for increased speed through the interlocking.

BS–AP–No. 3286

Applicant: Illinois Central Railroad, Mr. John T. Sharkey, Engineer—Signals, 455 N. Cityfront Plaza Drive, Chicago, Illinois 60611.

The Illinois Central Railroad seeks approval of the proposed modification of the Pass Manchac Bridge Interlocking, milepost 874.6, near Manchac, Louisiana, Southern Region, McComb District; consisting of the automated lowering of the bridge upon the approach detection of a train.

The reason given for the proposed changes is an ongoing schedule of modernization of facilities to provide a higher level of efficiency.

BS–AP–No. 3287

Applicant: Atchison, Topeka and Santa Fe Railway Company, Mr. W.S. Seery, Director Signal Systems, Communications and Signal, 4515 Kansas Avenue, Kansas City, Kansas 66106–1199.

The Atchison, Topeka and Santa Fe Railway Company seeks approval of the proposed discontinuance and removal of the traffic control system, on the auxiliary main tracks, between milepost 6.0 and milepost 8.0, near Argentine, Kansas, Eastern Region, Emporia Subdivision; consisting of the conversion of all auxiliary main tracks to yard tracks, the conversion of the existing power-operated switches to NA–15 pneumatic switches, and removal of all controlled signals.

The reason given for the proposed changes is that due to operational changes the Auxiliary Main Line will be converted to yard tracks.

BS–AP–No. 3288

Applicant: Soo Line Railroad Company, Mr. G.M. Short, Director Signals HH–US, 105 South 5th Street, Box 530, Minneapolis, Minnesota 55440.

The Soo Line Railroad Company seeks approval of the proposed discontinuance and removal of the signal system, on the single main track, between Merriam Park, milepost 416.0, Minneapolis, Minnesota and E14, milepost 435.0, Hopkins, Minnesota, a distance of approximately 19 miles, on the Heartland Division, Merriam Park Subdivision.

The reason given for the proposed changes is to reduce maintenance costs associated with maintaining the signal system, which is no longer needed, due to the removal of trackage and current train operations.

BS–AP–No. 3289

Applicant: Southern Pacific Lines, Mr. J.A. Turner, Engineer—Signals, Southern Pacific Building, One Market Plaza, San Francisco, California 94105.

The Southern Pacific Lines seeks approval of the proposed discontinuance and removal of the automatic block signal system, on the single main track, between Ashland, milepost C–429 and Glendale, milepost C–510, Oregon, on the Siskiyou District, Pacific Region, a distance of approximately 81 miles.

The reason given for the proposed changes is that the traffic on the route is such that the signal system is no longer required and the changes will reduce costs and improve train operations.

BS–AP–No. 3290

Applicants: National Railroad Passenger Corporation, Mr. P.A. Cannito, Vice President Engineering, 30th and Market Streets, Philadelphia, Pennsylvania 19104.

Consolidated Rail Corporation, Mr. J.F. Noffsinger, Chief Engineer—C&S, 2001 Market Street, P.O. Box 41410, Philadelphia, Pennsylvania 19101–1410.

Southeastern Pennsylvania Transportation Authority, Mr. J.W. Palmer, Assistant General Manager Railroad Division, 1515 Market Street, Philadelphia, Pennsylvania 19102.

The National Railroad Passenger Corporation (Amtrak), Consolidated Rail Corporation (Conrail), and Southeastern Pennsylvania Transportation Authority, jointly seek approval of the proposed discontinuance of Park Interlocking, milepost 43.9, Parkesburg, Pennsylvania, on Amtrak's Harrisburg Line, Philadelphia Division, consisting of the following:

1. Conversion of the No. 15 power-operated crossover to hand operation equipped with a center lever electric lock;

2. Installation of a new hand-operated crossover equipped with a center lever electric lock between Track No. 4 and the Industrial Track;

3. Conversion of interlocked signals 10R and 18L to automatic signals 442 and 439 respectively; and

4. Removal of all other tracks, signals, and switches.

The reason given for the proposed changes is to enable Conrail to perform switching by hand at Parkesburg from No. 1 and No. 4 main tracks to the industrial track without affecting other tracks.

BS–AP–No. 3291

Applicant: Chicago and North Western Transportation Company, Mr. D.E. Waller, Vice President Engineering and Materials, 165 N. Canal Street, Chicago, Illinois 60606.

The Chicago and North Western Transportation Company seeks approval of the proposed modification of the automatic block signal system on the single main track between Marcy Junction, milepost 18.0 and Northlake, milepost 28.8, Wisconsin, on the Adams Subdivision; consisting of the relocation of six and discontinuance and removal of two automatic block signals.

The reason given for the proposed changes is to maximize efficiency and safety of train operations by replacing aging pole line with modern solid state coded track circuitry.

BS–AP–No. 3292

Applicants: Springfield Terminal Railway Company and Maine Central Railroad Company, Mr. S.F. Nevero, Vice President Engineering, Iron Horse Park, North Billerica, Massachusetts 19104.

The Springfield Terminal Railway Company and Maine Central Railroad Company, jointly seek approval of the proposed modification of the traffic control system, on the single main track, between CPF–113, milepost 113.7 and CPF–112, milepost 112.81, near Waterville, Maine; consisting of the following:

1. The discontinuance and removal of 14 controlled signals;

2. The conversion of power-operated switches Nos. 41, 43, 45, 49, and 51 to hand operation; and

3. The conversion of No. 39 power-operated crossover to hand operation, equipped with an electric lock.

The reason given for the proposed changes is that reconfiguration of the existing track and signal facility is required for present needs and the power switching facility is no longer required.

BS–AP–No. 3293

Applicant: Burlington Northern Railroad Company, Mr. William G. Peterson, Director Signal Engineering, 9401 Indian Creek Parkway, Overland Park, Kansas 66210–2007.

The Burlington Northern Railroad Company seeks approval of the proposed modification of the traffic control system, on the single main track, between Zulch, Texas, milepost 158.0 and Newby, Texas, milepost 185.0, Southern Corridor, Fort Worth Division, Houston Subdivision; consisting of the discontinuance and removal of 10 automatic signals and the installation of 20 automatic signals.

The reason given for the proposed changes is to respace and relocate signals at the time of a pole line elimination project.

Rules Standards & Instructions Application (RS&I–AP) No. 1092

Applicant: Southern Pacific Lines, Mr. E.P. Reilly, Vice President and Chief Engineer, Southern Pacific Building, One Market Plaza, San Francisco, California 94105.

The Southern Pacific Lines (SP) seeks relief from the requirements of the Rules, Standard and Instructions, 49 CFR, Part 236, § 236.307, to the extent that the carrier not be required to install indication locking for approximately 224 signal locations on the SP, the aspects of which are not controlled by line circuits so arranged that a single fault will not permit a more favorable aspect than intended to be displayed.

The applicant's justification for relief is that the estimated cost of a program to achieve compliance is in excess of $700,000 and would take several years to complete the required work.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590 within 45 calendar days of the date of issuance of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC, on March 30, 1994.

Phil Olekszyk,

Acting Deputy Associate Administrator for Safety Compliance and Program Implementation.

[FR Doc. 94–8171 Filed 4–5–94; 8:45 am]

BILLING CODE 4910–06–P

National Highway Traffic Safety Administration

Announcing the Eleventh Meeting of the Motor Vehicle Safety Research Advisory Committee

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

ACTION: Meeting announcement.

SUMMARY: This notice announces the eleventh meeting of the Motor Vehicle Safety Research Advisory Committee (MVSRAC). The Committee was established in accordance with the provisions of the Federal Advisory Committee Act to obtain independent advice on motor vehicle safety research. At this meeting the Committee will discuss NHTSA's Research and Development's FY 94 and FY 95 research plans, air bag field performance, status of the National Advanced Driving Simulator Program, technology transfer, and MVSRAC's subcommittee activities.

DATE AND TIME: The meeting is scheduled to begin at 10:30 a.m., on Thursday, April 28, 1994, and conclude at 4 p.m. that afternoon.

ADDRESSES: The meeting will be held in Room 3200 of the U.S. Department of Transportation Building, which is located at 400 Seventh Street, SW., Washington, DC.

SUPPLEMENTARY INFORMATION: In May 1987, the Motor Vehicle Safety Research Advisory Committee was established. The purpose of the Committee is to provide an independent source of ideas for motor vehicle safety research. The MVSRAC will provide information, advice and recommendations to NHTSA on matters relating to motor vehicle safety research, and provide a forum for the development, consideration and communication of motor vehicle safety research, as set forth in the MVSRAC Charter.

The meeting is open to the public, but attendance may be limited due to space availability. Participation by the public will be determined by the Committee Chairman.

A public reference file (Number 88–01) has been established to contain the products of the Committee and will be open to the public during the hours of 9:30 a.m. to 4 p.m. at the National Highway Traffic Safety Administration's Technical Reference Division in Room 5108 at 400 Seventh Street, SW., Washington, DC 20590, telephone: (202) 366–2768.

FOR FURTHER INFORMATION CONTACT: Mary Coyle, Office of Research and Development, 400 Seventh Street, SW., Room 6206, Washington, DC 20590, telephone: (202) 366–5926.

Issued: April 1, 1994.

George L. Parker,

Chairman, Motor Vehicle Safety Research Advisory Committee.

[FR Doc. 94–8222 Filed 4–5–94; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

March 30, 1994.

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 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0745.

Regulation ID Number: LR–27–83 (Temporary Regulation).

Type of Review: Extension.

Title: Floor Stocks Credit or Refunds and Consumer Credits or Refunds With Respect to Certain Tax-Related Articles; Excise Tax on Heavy Trucks.

Description: LR–27–83 requires sellers of trucks, trailers and semi-trailers, and tractors to maintain records of the gross vehicle weights of articles sold to verify taxability.

Respondents: Businesses or other for-profit.

Estimated Number of Recordkeepers: 4,100.

Estimated Burden Hours Per Recordkeeper: 2 hours, 4 minutes.

Frequency of Response: Other.

Estimated Total Recordkeeping Burden: 4,140 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. 94–8215 Filed 4–5–94; 8:45 am]

BILLING CODE 4830–01–M

Public Information Collection Requirements Submitted to OMB for Review

March 31, 1994.

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 2110, 1425 New York Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–1241.

Regulation ID Number: PS–092–90 Final.

Type of Review: Extension.

Title: Special Valuation Rules.

Description: Section 2701 of the Internal Revenue Code allows various elections by family members who make gifts of common stock or partnership interests and retain senior interests. The elections affect the value of the gifted interests and the retained interests.

Respondents: Individuals or households.

Estimated Number of Respondents: 1,200.

Estimated Burden Hours Per Respondent: 25 minutes.

Frequency of Response: Other (one-time election).

Estimated Total Reporting Burden: 496 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. 94–8216 Filed 4–5–94; 8:45 am]

BILLING CODE 4830–01–M

Internal Revenue Service

Nonconventional Source Fuel Credit; Publication of Inflation Adjustment Factor, Nonconventional Source Fuel Credit, and Reference Price for Calendar Year 1993

AGENCY: Internal Revenue Service (IRS), Treasury

ACTION: Publication of inflation adjustment factor, nonconventional source fuel credit, and reference price for calendar year 1993 as required by section 29 of the Internal Revenue Code (26 U.S.C. 29).

SUMMARY: The inflation adjustment factor, nonconventional source fuel credit, and reference price are used in determining the availability of the tax credit for production of fuel from nonconventional sources under section 29 of the Internal Revenue Code.

DATES: The 1993 inflation adjustment factor, nonconventional source fuel credit, and reference price apply to qualified fuels sold during calendar year 1993.

INFLATION FACTOR: The inflation adjustment factor for calendar year 1993 is 1.8918.

CREDIT: The nonconventional source fuel credit for calendar year 1993 is $5.68 per barrel-of-oil equivalent of qualified fuels.

PRICE: The reference price for calendar year 1993 is $14.24.

Because the above reference price does not exceed $23.50 multiplied by the inflation adjustment factor, the phaseout of credit provided for in section 29(b)(1) of the Internal Revenue Code does not occur for any qualified fuel based on the above reference price.

FOR FURTHER INFORMATION CONTACT: *For the inflation factor and credit*—Thomas Thompson, CP:R, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224, Telephone Number (202) 874–0585 (not a toll-free number).

For the reference price—David McMunn, CC:DOM:P&SI:6, Internal Revenue Service, 1111 Constitution Ave., NW., Washington, DC 20224, Telephone Number (202) 622–3110 (not a toll-free number).

Stuart L. Brown,

Associate Chief Counsel (Domestic).

[FR Doc. 94–8160 Filed 3–31–94; 4:23 pm]

BILLING CODE 4830–01–U

Sunshine Act Meetings

Federal Register
Vol. 59, No. 66
Wednesday, April 6, 1994

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).

INTER-AMERICAN FOUNDATION BOARD MEETING

TIME AND DATE: April 19, 1994, 2:00 p.m., 4:00 p.m.

PLACE: 901 N. Stuart Street, Tenth Floor, Arlington, Virginia 22203.

STATUS: Open except for the portions specified as closed session as provided in 22 CFR Part 1004.4(b).

MATTERS TO BE CONSIDERED:

1. Approval of the Minutes of the January 11, 1994, Meeting of the Board of Directors.
2. Chairman's Report.
3. President's Report.
4. Designation of Interim President.
5. Audit Committee Report.
6. Board Meeting Schedule.
7. Procedure to Deal with Complex Issues.

CONTACT PERSON FOR MORE INFORMATION: Adolfo A. Franco, Secretary to the Board of Directors, (703) 841–3894.

Dated: April 4, 1994.

Adolfo A. Franco,

Sunshine Act Officer.

[FR Doc. 94–8398 Filed 4–4–94; 3:28 pm]

BILLING CODE 7025–01–M

DEPARTMENT OF JUSTICE

UNITED STATES PAROLE COMMISSION

Public Announcement

Pursuant To The Government In the Sunshine Act
(Public Law 94–409) [5 U.S.C. Section 552b]

TIME AND DATE: 10:00 a.m., Friday, April 8, 1994.

PLACE: 5550 Friendship Boulevard, Chevy Chase, Maryland, 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matter has been placed on the agenda for the open Parole Commission meeting.

Proposal to close one of the Commission's regional offices.

AGENCY CONTACT: Tom Kowalski, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: March 30, 1994.

Rockne Chickinell,

Deputy General Counsel, U.S. Parole Commission.

[FR Doc. 94–8386 Filed 4–4–94; 2:49 pm]

BILLING CODE 4410–01–M

federal register

Wednesday
April 6, 1994

Part II

Environmental Protection Agency

40 CFR Parts 86, 88, and 600

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Refueling Emission Regulations for Light-Duty Vehicles and Light-Duty Trucks; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 86, 88, and 600

[AMS–FRL–4831–6]

RIN 2060–AC64

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Refueling Emission Regulations for Light-Duty Vehicles and Light-Duty Trucks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document contains EPA's final rule implementing the control of vehicle refueling emissions through the use of vehicle-based systems. It applies to light-duty vehicles and light-duty trucks. The rule applies to all fuels used by a vehicle, and includes special provisions for vehicles/fuels judged to be inherently low in refueling emissions. For light-duty vehicles, the requirements begin in the 1998 model year, and phase in over three model years. In the 1998 model year, 40 percent of each manufacturer's light-duty vehicles must meet the requirements. This increases to 80 percent in the 1999 model year and rises to 100 percent in model years 2000 and later. A special provision for phase-in is also included for small volume manufacturers of light-duty vehicles.

This requirement also applies to light-duty trucks. For light-duty trucks with a gross vehicle weight rating of 0–6000 lbs, the requirement begins in model year 2001 and phases-in over three model years at the same rate as applied to light-duty vehicles. For light-duty trucks with a gross vehicle weight rating of 6001–8500 lbs, the requirement commences in model year 2004 and phases-in over three model years at the same rate as light-duty vehicles. The rule does not apply to heavy-duty vehicles.

This rule also establishes certification requirements covering test procedures for integrated and non-integrated control system designs, a refueling emission standard of 0.20 g/gallon and other related certification requirements and provisions. Finally, the rule contains enforcement provisions related to liability, Selective Enforcement Auditing and nonconformance penalties.

EFFECTIVE DATES: This final rule is effective on May 6, 1994.

The new information collection requirements contained in 40 CFR parts 86 and 88 applying to 1998 and later model year vehicles have not been approved by the Office of Management and Budget (OMB) and are not effective until OMB has approved them. EPA will publish a technical amendment in the **Federal Register** once the information collection requirements are approved.

ADDRESSES: Materials relevant to this final rule are contained in Public Docket No. A–87–11, located in the Air and Radiation Docket and Information Center of the U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC, 20460 and is available for public review in room M–1500. Relevant materials may also be found in Public Docket No. A–84–07, established in support of EPA's assessment of air pollution regulatory strategies for the gasoline marketing industry. The dockets may be inspected from 8 a.m. to 4 p.m. Monday through Friday, except for government holidays. Under 40 CFR part 2, a reasonable fee may be charged by EPA for copying docket materials.

FOR FURTHER INFORMATION CONTACT: James G. Bryson, U.S. EPA (RDSD–12), Special Regulatory Projects Branch, 2565 Plymouth Road, Ann Arbor, MI 48105, Telephone: (313) 741–7828.

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List of Key Acronyms

AA Attainment Area
AAMA American Automobile Manufacturers Association
AIAM Association of International Automobile Manufacturers
CAA Clean Air Act
CAAA CAA Amendments
DoT Department of Transportation
FMVSS Federal Motor Vehicle Safety Standards
GVWR Gross Vehicle Weight Rating
HDV Heavy-Duty Vehicle
LDV Light-Duty Vehicle
LDT Light-Duty Truck
LLDT Light LDT
HLDT Heavy LDT
NAA Non-Attainment Area
NCP Nonconformance Penalty
NHTSA National Highway Traffic Safety Administration
NPV Net Present Value
ORVR Onboard Refueling Vapor Recovery
RIA Regulatory Impact Analysis
RPE Retail Price Equivalent
RVP Reid Vapor Pressure
VOC Volatile Organic Compounds

I. Background

On August 19, 1987, EPA published in the **Federal Register** a Notice of Proposed Rulemaking (NPRM) for the control of vehicle refueling emissions (52 FR 31162). The proposal described the need for these controls as well as the conclusions of an EPA study of gasoline marketing emissions comparing the relative merits of the two available control technologies: Systems incorporated into the gasoline dispensing pump system design (known as Stage II vapor recovery) and systems incorporated into the design of the vehicle (known as onboard refueling vapor recovery (ORVR)) (see Public Docket A–84–07). Based on this study, along with EPA's analysis and response to public comments published in documents separate from the NPRM (Evaluation of Air Pollution Regulatory Strategies for Gasoline Marketing Industry—Response to Public Comments (II–A–20), Draft Regulatory Impact Analysis: Proposed Refueling Emission Regulations for Gasoline-Fueled Motor Vehicles, Vols. I and II)

(II–A–18, 19), and technical support documents related to ORVR test procedure (II–A–08) and ORVR vehicle safety (II–A–17). EPA proposed to require refueling emission control through ORVR systems. The above mentioned studies are available in public docket A–87–11. All future references of this nature can be found at the cited location in public docket A–87–11 unless otherwise indicated.

Subsequent to the publication of the NPRM, EPA held a public hearing in October 1987, followed by an extensive public comment period which closed in February 1988. Comments were analyzed by EPA and key issues were assessed. As a result, EPA determined that the final rulemaking should be delayed pending the resolution of safety concerns expressed by both the National Highway Traffic Safety Administration (NHTSA) (part of the Department of Transportation (DoT)) and a number of the commenters. The final rule was further delayed when it became evident that Congress would address issues concerning refueling controls in the 1990 Clean Air Act Amendments (CAAA).

The 1990 Amendments revised section 202(a)(6) of the CAA to read as follows:

> Within 1 year after the date of the enactment of the Clean Air Act Amendments of 1990, the Administrator shall, after consultation with the Secretary of Transportation regarding the safety of vehicle-based ('onboard') systems for the control of vehicle refueling emissions, promulgate standards under this section requiring that new light-duty vehicles manufactured beginning in the fourth model year after the model year in which the standards are promulgated and thereafter shall be equipped with such systems.

Subsequent to the enactment of the CAAA, EPA continued its consultation with DOT/NHTSA related to the potential safety concerns regarding the implementation of vehicle-based refueling emission controls. In July 1991, NHTSA completed an updated safety study entitled "An Assessment of the Safety on Onboard Refueling Vapor Recovery Systems". On September 3, 1991, EPA published an additional **Federal Register** notice (56 FR 43682) releasing the NHTSA report for public review and seeking further comment on key issues involved with ORVR controls, most notably on circumstances that had changed since the publication of the NPRM. The notice also described and sought comment on a document entitled "Summary of Changed Circumstances", which discussed statutory changes, technology development, and potential modifications to the refueling test procedure.

EPA held a public hearing on September 26 and 27, 1991, and public comments were received for 30 days thereafter. After reviewing these comments, EPA continued its consultation with NHTSA. Based on the outcome of the consultation, EPA determined that ORVR controls should not be required at that time. The Agency took this step because it concluded, after consultation with NHTSA and after considering the conclusions of NHTSA's safety study, that ORVR controls posed "unreasonable" safety risks relative to Stage II systems. A **Federal Register** notice detailing the decision and the supporting rationale was published on April 15, 1992 (57 FR 13220).

EPA's action was challenged by representatives of the petroleum refining, gasoline marketing, environmental and consumer auto safety communities. They argued that section 202(a)(6) of the CAA created a non-discretionary duty to promulgate ORVR standards for LDVs. The court agreed, holding that EPA had no choice but to promulgate such standards, and that the entire safety analysis in the April 15, 1992 notice was flawed because of the comparison with Stage II technology, a comparison not allowed by the text of the statute. *NRDC* v. *EPA*, 983 F. 2d 259, 261, 269–71 (D.C. Cir. 1993). The court stated further, in *dicta*, that the record did not establish that all ORVR systems present inherent and unreasonable safety risks. *Id.* at 261, 270. The court set aside the April 15, 1992 Agency action, and ordered EPA to promulgate regulations requiring vehicle-based refueling controls on LDVs in accordance with the CAA.

The petitioners further moved the court for an order requiring EPA to issue ORVR requirements by a particular date. Before the court ruled, EPA and the petitioners entered into a settlement agreement whereby the Agency agreed to promulgate such rules by January 22, 1994 (58 FR 33813, June 21, 1993).

Subsequent to the court's decision, EPA published two **Federal Register** notices (May 27, 1993, 58 FR 30731 and June 17, 1993, 58 FR 33418) seeking public comment on the key issues that had changed since the last public comment period. EPA also held a public hearing on these issues on July 22, 1993, and solicited comments for 30 days thereafter. EPA has analyzed these additional comments, and has revised its proposed regulations accordingly. To support this rule, two key documents, a Final Regulatory Impact Analysis and a Summary and Analysis of Comments have been completed and are available for review in the public docket.

The remainder of the document is divided into sections. Section II describes the various aspects of the rule as listed in the Table of Contents above, and provides rationale for the approaches being implemented. Section III describes the long and extended public participation in the rulemaking process and previous study. Section IV summarizes the Regulatory Impact Analysis. Finally, sections V through X describe various aspects of the rule with regard to compliance with various administrative requirements such as the Regulatory Flexibility Act and the Paperwork Reduction Act.

II. Description of the Rule

A. Applicability

1. Application of the Refueling Emission Standard to LDVs

Section 202(a)(6) of the Act mandates that EPA promulgate requirements for new light-duty vehicles (LDVs) to be equipped with ORVR systems. In the August 1987 NPRM, EPA proposed that ORVR requirements apply to LDVs and, in this rule, is finalizing that LDV portion of the original NPRM, consistent with the statutory requirements. The model year, phase-in, certification and other requirements for LDVs are discussed in sections B through F, below.

2. Extension of the ORVR Requirement to LDTs

Under the authority provided in Section 202(a)(1) of the Clean Air Act (CAA), EPA is applying the ORVR requirement to light-duty trucks (LDTs). EPA is finalizing portions of that proposal in today's rules. Each manufacturer's LDTs will have to meet the refueling emission requirements under the phase-in schedule and compliance program for trucks described in the Implementation section below.

In reaching this decision, EPA has conducted a detailed analysis of the need for and desirability of extending the requirement beyond the LDV class. The analysis is detailed in the supporting Regulatory Impact Analysis (RIA) available in the public docket. The key points are summarized below.

First, the rule affects pollutants which "cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare" (Section 202(a)(1)). Hydrocarbons, as ozone precursors, have long been an essential object of emission control strategies (both vehicles and non-vehicles). Ambient ozone is an irritant

that adversely affects pulmonary membranes, lung tissues, and lung functions, and is also associated with adverse ecological effects. Refueling emissions also contain benzene, a Group A human carcinogen. The gasoline vapors themselves also adversely affect public health and welfare.

Second, and perhaps most compelling, is the large amount of refueling emissions which arise from these LDTs. In 1990, trucks represented about 33 percent of the gasoline used by highway motor vehicles. Using American Automobile Manufacturers Association (AAMA) figures, retail truck sales have increased at a compound annual rate of 4–5 percent over the past ten years, and this growth is projected to continue well into the next century. This increase in sales and market fraction has led to an increase in the gasoline used by trucks. The fraction of gasoline used by LDTs is projected to increase to 37 percent by 2000 and continue at that level or higher in the future. Thus, the percentage of the refueling emissions inventory attributable to LDTs is large and is expected to increase in the future.

Another way to look at the magnitude of the emissions from LDTs is the equivalent gram per mile (g/mi) emission rate attributable to their uncontrolled refueling emissions. As shown in the RIA, taking into account Phase II RVP control and the RVP effects of reformulated gasoline, the nationwide uncontrolled refueling emission rate during the ozone season for LDTs is about 0.22 g/mi. These are large emission rates in contrast to those controlled by other strategies being implemented under the 1990 CAAA and being considered by the states in their State Implementation Plans. A good example is the Clean-Fuel Fleet requirements under section 246 of the CAA and the Low Emission Vehicle program being implemented in California and perhaps in other states. In these cases the equivalent emission reductions are in the range of 0.12 to 0.18 g/mile.

Third, EPA believes that ORVR controls are technologically feasible for LDTs. Reports and other materials submitted to the docket over the past several years as well as comments by the regulated industry indicate that prototype ORVR systems have been installed on a number of passenger cars and light trucks (IV–A–06, IV–D–682, 680, 682, 685, 688, 864, 701, 712, 718, 719, 720, 721, IV–E–50, 73). As is now the case with evaporative control systems, we anticipate that the control technology used for LDT ORVR systems will be very similar to that applied to LDVs. Although there are some differences between LDV and LDT fuel systems (e.g., tank size in some larger LDTs), the general fuel system concepts, designs, and configurations are very similar. In addition, vehicles in both classes must meet the recently promulgated enhanced evaporative emission control requirements beginning in the 1996 model year. As with LDVs, EPA anticipates that the same evaporative emission control technology can be applied to control refueling emissions in LDTs. To ensure that the enhanced evaporative control system canister and purge system can be applied to ORVR controls, EPA is applying the same refueling emission test procedure approach to LDTs as is being applied to LDVs. The only significant design difference will be the need for some form of a fillneck seal. However, with the anticipated liquid seal approach this requires at most a minor fillneck modification and does not involve new hardware.

While there are vehicle-to-vehicle differences in fuel system designs, these affect both the evaporative and refueling emission rates for a given vehicle/fuel system design. To EPA's knowledge there is nothing unique about the design or function of LDT fuel systems relative to LDVs which would suggest that the test procedure approach being applied to LDVs would not be equally effective for LDTs in accomplishing the goal of allowing the widespread use of integrated enhanced evaporative/refueling emission control systems. Although uncertainty has been expressed, no commenter provided data or even a substantiated argument to support the view that the test procedure modifications would not be equally effective in facilitating LDT use of integrated enhanced evaporative/refueling control systems. In fact, testing conducted by the Coordinating Research Council (CRC–APRAC Project VE–6) (IV–D–565) and EPA (II–A–06) indicate no significant difference between LDV and LDT uncontrolled refueling emission rates. As is the case for LDVs, the refueling test procedure approach described above should allow the widespread use of integrated refueling/evaporative control systems for LDTs. Thus, since there is no problem with applying enhanced evaporative control systems to LDTs, there should be no problem with integrated evaporative/refueling control systems.

The benefits of applying the ORVR requirements to LDTs exceed the costs of the requirement. Since EPA believes, and the manufacturers' comments indicate, that most vehicles will use an integrated evaporative/refueling control system, the incremental costs of LDT ORVR controls are relatively small. As detailed in the RIA, EPA's cost is comprised of added hardware (mostly an improved vent/rollover valve and larger diameter vapor line) and short term development costs (for emissions and safety certification, facility modification hardware/tooling modifications, and systems engineering) minus the fuel recovery credit. The size of the fuel recovery credit depends on the amount of vapor captured. This in turn depends on the fuel used, the emissions rate (g/gal), and the presence or absence of Stage II vapor recovery. Taking all of these factors into account, and assuming Stage II controls in most of the ozone NAAs, the cost estimate for LDTs/HDVs are shown below in Table 1.

TABLE 1.—ESTIMATED PER-VEHICLE COSTS OF ORVR SYSTEMS IN LDTS

Vehicle group	Hardware ($/vehicle)	Develop ($/vehicle)	Operating cost (NPV)	Short term net cost	Long term net cost
LDT	$4.79	$2.65	−$3.70	$3.74	$1.09

For vehicles operating in nonattainment areas (NAAs), the recovery credits are smaller and the short and long term net costs increase by about $3 per vehicle over those in the table above.

As was discussed above, LDTs represent over 33 percent of the nation's gasoline consumption. With the test procedure and control system approach mentioned above, EPA expects that the in-use control efficiency of LDT ORVR systems will exceed 95 percent. Incremental to Stage II controls, LDT ORVR controls would provide a nationwide average annual emission reduction of 115,000 tons between 1998 and 2020. Reductions in NAAs with

Stage II controls are large as well. With no Stage II phase-out, the average annual emission reduction in the NAAs is 31,000 tons. If Stage II is phased out when ORVR is in widespread use (2010), the average annual emission reduction in the NAAs attributable to LDT controls increases to 68,000 tons. These incremental reductions in NAAs are large relative to the other control options available.

As is discussed below, reductions in refueling emissions have value in all areas of the country. However, the main focus of the ORVR requirement is to provide ozone NAAs additional reductions to assist them in complying or maintaining compliance with the ozone standard. Thus, the important areas to consider are those which are not now in compliance with the ozone standard. At present there are 54 marginal or worse ozone NA areas, which represent about 54.9 percent of the nationwide highway gasoline consumption. Of these 54 areas, about 43 now have, or are expected to have, Stage II vapor recovery systems in place. Since ORVR controls are required on all LDVs, and Stage II vapor recovery is (or will be) in place in most moderate or worse ozone NAAs, the key comparison to be made is (1) retaining Stage II controls in the moderate or worse ozone NAAs solely for the purpose of controlling LDT/HDV refueling emissions, versus (2) requiring ORVR controls for LDTs and possibly HDVs, assuming the Stage II control that is or will be in place. This comparison provides a worst case perspective on the LDT/HDV cost effectiveness, since benefits outside NAAs are ignored and planned Stage II is assumed to continue after the ORVR requirement is promulgated.

As is described in the RIA, EPA has conducted the analysis for both the Stage II retention and ORVR options. The cost effectiveness of retaining Stage II solely for the purpose of controlling LDT/HDV refueling emissions is about $3400 per ton. The cost effectiveness of the LDT ORVR controls incremental to the Stage II now in place is about $200 per ton if Stage II is phased out when ORVR control is in widespread use (2010) and only about $700 per ton if Stage II is never phased out. Under either scenario the cost effectiveness of the ORVR option is attractive. Thus, even with the Stage II controls, it is more cost effective to require ORVR controls on LDTs than to retain Stage II solely for controlling LDT/HDV refueling emissions.

In addition to the VOC emission reduction benefits cited above, LDT ORVR controls have other benefits. These benefits have not been considered in the calculations above, but would further enhance the attractiveness of LDT ORVR. LDT ORVR controls would result in an average annual fuel savings equivalent to about 31 million gallons of gasoline per year between the period 1998 and 2020 assuming no Stage II phase-out, and about 43 million gallons per year if Stage II is phased out. In addition, there will be health benefits as a result of reductions in air toxic emissions. Best estimates are the avoidance of 2–3 cancer incidences per year as a result of lower refueling benzene emissions. Additional cancer avoidances are possible depending on the assumption regarding the toxicological impact of the remainder of the constituents of the gasoline vapor. Reductions in potential non-cancer health effects and welfare benefits such as reduced crop and material damage due to ozone would occur as well.

In summary, EPA has decided to implement ORVR controls for LDTs for several reasons: Their contribution to the VOC inventory is significant and there is a need for additional VOC reductions to address air quality concerns, the control is technologically feasible and inexpensive, there are additional valuable benefits, and, as discussed in the RIA, the cost effectiveness is very attractive, especially when compared to other programs being implemented and under consideration. The analysis shows that the cost effectiveness of implementing ORVR controls for LDTs is superior to retaining Stage II controls for the same purpose. The overall benefit to cost ratio for LDT ORVR is about 1.5. If the application of ORVR controls to LDVs and LDTs allows phaseout of Stage II controls in the future, the cost savings attributable to Stage II operations/maintenance which would no longer occur would make the average annual costs of ORVR controls negative (an average annual savings of over $40 million). Based on the cost effectiveness analysis and benefit-cost ratio, one could also justify implementing LDT ORVR controls incremental to Stage II controls. However, the long-term retention of Stage II would seem problematic since it would be needed only for heavy-duty vehicles.

3. Heavy Duty Vehicles

In the NPRM, EPA proposed to require ORVR controls for all HDVs. However, as discussed below, this requirement is not being finalized in this rulemaking.

Information available to EPA indicates that an HDV ORVR system would be conceptually similar to those applied LDVs and LDTs and the initial costs should be relatively small. However, motor vehicle manufacturers have argued that the design and production of ORVR systems for HDVs would be considerably more difficult than for LDVs and LDTs. Commenters have maintained that the technological step from light-duty technology is greatest with regard to HDVs which have the largest fuel tanks and different fuel/vapor system component designs and configurations than many smaller LDTs. Comments regarding incomplete HDVs expressed concern that secondary manufacturers would improperly modify or incorrectly complete the vehicle fuel system (which is usually not fully installed for incomplete HDVs) and perhaps affect the proper function of the manufacturer-provided ORVR system. Concern was also expressed that secondary manufacturers might not have the expertise to correctly install the ORVR systems in all cases. In each case the primary manufacturer may have legal liability for potential problems. It is also worth noting that many HDVs are also produced by the primary manufacturer as an incomplete HDVs, perhaps compounding the concern.

EPA recognizes the manufacturers' strong concerns about ORVR implementation issues that are unique to HDVs, and agrees that in many cases the application of ORVR controls to HDVs would be more difficult than for LDTs. Oftentimes the fuel and vapor control systems are differently configured than those on LDTs and the fuel tanks are larger and of different design. The large number of commercial applications for HDVs leads to a larger number of unique body/chassis designs (e.g., 12 passenger vans, crew cabs, long bed pick-ups, dual wheel axle trucks) and thus a larger number of different fuel system configurations. Another significant difference is that the engine in the HDV would be certified separate from the ORVR system and thus there are additional challenges in matching the canister purge provided by the engine with the needs of each ORVR system. The manufacturers' comments discussed above lay out the special concerns for incomplete HDVs, including potential legal liabilities for the primary manufacturer. Finally, it should be noted that unlike LDVs and LDTs EPA is not aware of any prototype ORVR-equipped HDVs.

Given these concerns, the effort needed to implement LDV and LDT ORVR systems, the relatively small number of gasoline-fueled HDVs, and the fact that the application of ORVR standards to HDVs is discretionary, EPA

is not finalizing the portion of the NPRM which applies to HDVs.

Even without implementing HDV ORVR requirements at this time, the ORVR program still provides significant benefits. When viewed as a percentage of sales, ORVR still applies to 91 percent of all gasoline-fueled trucks and 97 percent of all gasoline-fueled vehicles. Similarly, control is still achieved over 86 percent of all gasoline-fueled truck refueling emissions and 94 percent of all gasoline vehicle refueling emissions. Thus, EPA's final decision that ORVR requirements are not required for these vehicles does not significantly reduce the effectiveness of the ORVR program.

4. Applicability to California Vehicles

As discussed further in the summary and analysis of comments, today's final rule implements a federal standard applicable to all vehicles sold in the United States. Based on the language in section 202(a)(6) of the Act, EPA considers refueling emissions control to be an evaporative standard. Although California has motor vehicle standards in place for model year 1998 and beyond, including evaporative emission standards, to date EPA has issued no section 209(b) waivers which consider a federal ORVR refueling program when evaluating the protectiveness, in the aggregate, of those standards. However, EPA interprets section 209(b)(3) to provide that once a section 209(b) waiver is granted, compliance with the state program is deemed compliance with the federal program standards. (See 42 FR 3193, January 17, 1977). To the extent that a new federal standard is established subsequent to a waiver, such standard will be considered in a waiver reconsideration or future waiver request consideration. EPA is making no finding at this time how stringency, in the ORVR context, may be considered in a waiver proceeding, should one occur. (It should be noted that EPA in this notice is restating its consistent interpretation for the convenience of rulemaking participants, and does not intend to reopen for reconsideration the issue of the effect of existing section 209(b) waivers on post-waiver regulations.)

The California Air Resources Board (CARB) staff has held one workshop to discuss the proper application of refueling control (November 2, 1993). CARB is considering three courses of action: adopting the federal ORVR rule, adopting a California-specific ORVR rule, test, or standard, or maintaining that California's current motor vehicle program, taken in the aggregate, is at least as stringent as the federal program notwithstanding the lack of ORVR controls. If California submits a waiver request for its evaporative emission control program applicable to model year 1998 or thereafter, which does not include federal ORVR requirements, EPA will decide at that time whether California's motor vehicle program is at least as protective as the federal program.

5. Fuels Covered

In the September 1991 and May 1993 notices, EPA specifically solicited comments on applying the ORVR requirements to highway motor vehicles powered by fuels other than gasoline. Consistent with EPA policy on fuel neutrality and establishing a consistent set of requirements for all fuels, today's rule requires that LDVs and LDTs operating on any fuels be capable of meeting the refueling emission standard described below. It applies to vehicles certified under both 40 CFR part 86 and 40 CFR part 88. Although many commenters stated that the refueling standard should not apply to vehicles operating on diesel fuels, the section 202(a)(6) requirement by its terms applies to all LDVs regardless of the type of fuel used. (In contrast, section 202(k) requires evaporative emission controls only for "gasoline-fueled motor vehicles".) However, EPA has attempted to tailor the refueling emission certification requirements to the fuel used.

Manufacturers of vehicles capable of operating on gasoline, alcohol, or gasoline/alcohol blends must show that these vehicles comply when refueled with such fuels through testing as described later in this preamble. This requirement applies to dedicated neat alcohol fuel vehicles and vehicles using alcohol blends. Bi-fuel or dual-fuel vehicles must meet the requirements on both fuels. Flexible-fueled vehicles must meet the requirements on all fuel combinations. At the present time the only alcohol fuel affected is methanol.

However, a waiver of emission testing requirements is available for those vehicles/fuels which are considered to be inherently low in refueling emissions. EPA believes that a general engineering evaluation approach is acceptable for diesel vehicles and diesel fuels for several reasons. Diesel fuel today has a Reid Vapor Pressure (RVP) of less than one pound per square inch (psi) (7 kPa) and diesel engines today do not raise the temperature of fuel in their tanks substantially more than do gasoline engines (less than 130 °F under most conditions). For these reasons, the vapor space over the fuel in diesel tanks has a very low concentration of fuel vapor compared to that in gasoline tanks and thus displacement refueling emissions are low. EPA thus expects diesel fuel vehicles to meet the refueling emission standard without a control system.

Under this approach, the vehicle manufacturer's certification application must include a statement that there is nothing about the vehicle, its fuel system, or fuel that is counter to EPA's assessment as discussed above, and the manufacturer's certification that the vehicle meets the refueling emission standard (even without a control system).

EPA retains the opportunity to test vehicles to ensure that they comply with the emission standard during certification confirmatory testing, Selective Enforcement Audits, and in-use testing. EPA also retains the right to retract the engineering evaluation option for diesel vehicles if the RVP of in-use diesel fuel increases or is expected to increase beyond 1 psi (7 kPa) or a significant increase in fuel tank temperatures is expected.

Since exhaust and evaporative emission requirements now exist for all new methanol-fueled (neat and blend) vehicles, these shall be required to comply with the ORVR standards under the same phase-in schedule as gasoline-fueled vehicles. EPA expects that these vehicles will use a technology similar to that used to comply with the evaporative emission requirement.

The refueling control requirement will be applied to other dedicated, dual-fuel, bi-fuel, and flexible-fuel vehicles using other fuels (e.g., dedicated and hybrid electric vehicles, ethanol and ethanol blends, compressed and liquid natural gas, liquified petroleum gas) as regulations covering these fuels are implemented in the future. Lead time, safety, and other factors will be considered in the course of these actions. Full testing and engineering evaluation certification options will be considered.

B. Implementation

1. Leadtime, Effective Model Year and Phase-in Requirements

Section 202(a)(6) of the Act specifies a four model year lead time before ORVR requirements are to become effective for LDVs ("vehicles manufactured beginning in the fourth model year after the model year in which the standards are promulgated"). After this four-year lead time, a three-year phase-in period begins, during which 40 percent, 80 percent, and 100 percent, respectively, of each manufacturer's sales of new LDVs will need to meet the ORVR requirements.

Today's action is occurring early in the 1994 model year. Thus, ORVR requirements for LDVs will become effective with the 1998 model year. At least 40 percent of each manufacturer's LDV sales will need to meet ORVR requirements in model year 1998, 80 percent for model year 1999, and 100 percent for model years 2000 and later.

Since the application of ORVR requirements to LDTs is under the general authority in section 202(a)(1), the specific lead time and phase-in requirements of section 202(a)(6) do not automatically apply. Rather, the standard "shall take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance" (Section 202(a)(2)).

As discussed elsewhere in this preamble, EPA believes that the nature of ORVR technology for LDTs will be very similar to that for LDVs and that the cost of controls, incremental to the cost of enhanced evaporative emission controls, is minimal. EPA also does not believe that ORVR controls for LDTs present different safety issues than canisters on LDVs where there is now general consensus that there are no unreasonable risks. We therefore believe that the lead time required for developing these systems could be similar regardless of vehicle class.

While several commenters requested a delay in the LDT ORVR requirement, commenters did not indicate that it was not technically feasible to develop ORVR controls for LDTs during this timeframe. However, comments from the vehicle manufacturers did express a concern that resource and facility constraints would make simultaneous development of ORVR systems for LDVs and all trucks problematic. They have also indicated that design, development and some in-use experience with ORVR systems on passenger cars would be helpful in the design of LDT systems.

EPA has concluded that the resource and facility concerns expressed by the manufacturers and the desirability for in-use experience with ORVR systems can be balanced against the need for emission reductions by beginning the phase-in of ORVR requirements for LDTs after the program for LDVs has been fully implemented. In the mid-to-late 1990's gasoline-powered vehicle manufacturers will need to respond to new evaporative emission requirements, cold CO exhaust emission standards, and California and Clean Fuel Fleet exhaust emission standards among others. Most of these requirements apply to all three vehicle classes and entail several hundred vehicle/engine families. Under the statutory requirement the manufacturers will need to comply with LDV ORVR requirements in the same timeframe. And while complying with the enhanced evaporative and ORVR requirements simultaneously using an integrated control system reduces the burden relative to separate approaches for LDTs, a delay for LDTs is not unreasonable given the already existing requirements. This trade-off is also acceptable in the short-term since Stage II refueling controls are or will be in place in many ozone NAAs. However, for the reasons discussed above, EPA believes that ORVR controls are the preferred long term approach for control of refueling emissions from LDTs.

Therefore, the requirements promulgated today for LDTs will be implemented in two stages. The first stage will cover LDTs with a GVWR of 6,000 or less (LLDT), the second will cover LDTs with a GVWR of 6,001 to 8,500 lbs GVWR (HLDT). LLDTs represent about 70 percent of LDT sales. HLDTs represent the remaining 30 percent. For LLDTs, the ORVR requirement will begin implementation in the 2001 model year and will phase in over three model years according to the same percentages as LDVs. For HLDTs, the ORVR requirement will begin implementation in the 2004 model year and will phase in over three model years according to the same percentages as LDVs (40/80/100). This schedule will permit the development and application of cost-effective, economically achievable technology, as required by section 202(a)(2) and will still allow consideration of the Stage II phaseout provisions of section 202(a)(6) of the CAA in the long term.

Provisions of 40 CFR 86.085–1(b) permit manufacturers to certify HDVs with a GVWR of 8,501–10,000 lbs GVWR as LDTs. This option will remain in effect for refueling controls. HDVs certified under this option would be treated as HLDTs for purposes leadtime, phase-in and sales compliance determination.

EPA does not view the provisions of section 202(a)(3) as applying to refueling controls, as that provision was probably intended to apply only to exhaust emission standards, as did its predecessor provision. However, even if it did apply, this section would provide for at least four years of leadtime. Since EPA is allowing this much leadtime for HLDTs anyway, designating section 202(a)(2) or 202(a)(3) as authority for HDV leadtime has no practical significance here.

2. Small Volume Manufacturers

Today's rule includes a short-term provision for small volume light-duty vehicle manufacturers. Several small volume manufacturers commented that, as a practical matter, they cannot phase in their compliance due to their small size and limited product lines. Small volume manufacturers also claimed that they sometimes rely on control technology developed by larger manufacturers to develop their compliance strategies, and this would not be possible if they must comply at essentially the 100 percent of sales level before the larger manufacturers. R&D cost concerns were cited as obstacles as well.

EPA believes that these comments state valid concerns. As is described in three recent **Federal Register** notices, EPA has allowed small volume manufacturers to delay compliance to the last model year of the phase-in: in the Tier 1 exhaust emission standard rule (June 5, 1991, 56 FR 25724), the cold CO exhaust emissions rule (July 17, 1992, 57 FR 31888), and the enhanced evaporative emission standards rule (March 24, 1993, 58 FR 16003), and has decided to allow the same accommodation for the ORVR requirement for light-duty vehicles. This provision is included, not only for the reasons raised by the manufacturers, but also because it would be inconsistent to face ORVR compliance before evaporative emission compliance when the comments indicate that most manufacturers plan to use integrated refueling/evaporative control systems and these are desirable for both cost and safety reasons. In addition, requiring phased compliance for these manufacturers effectively denies them the opportunity Congress intended to phase in the control technology. (Cf. *State of Ohio* v. *EPA*, 997 F. 2d 1520, 1535 (D.C. Cir. 1993) (*de minimis* exception to seemingly literal statutory language can be allowed where failure to allow the exception frustrates a Congressional goal or leads to absurd results)). Thus, small volume manufacturers of light-duty vehicles, as defined in 40 CFR part 86, may delay compliance to model year 2000 (i.e., the third model year of the phase-in), but must comply with 100 percent of sales in that and subsequent model years. Because of the additional leadtime EPA is affording to LDTs, the Agency is not implementing this small-volume manufacturer provision for these vehicles.

3. Inclusion of Inherently Low Refueling Emission Vehicles

As was discussed in the May 1993 notice, vehicles meeting the refueling emission standard because they are inherently low in refueling vapor emissions (those certified without a control system using the engineering evaluation option), and thus are waived from testing, cannot be counted in either the vehicles complying or base sales figures in determining compliance with the sales requirements of the statute. Compliance for these vehicles is to be calculated separately.

C. Refueling Emission Test Procedures and Standard

This final rule includes test procedures for the measurement of refueling emissions and a corresponding emissions standard by which to judge the adequacy of ORVR control system designs. The test procedures accommodate integrated system designs, which control both refueling and evaporative emissions with a common vapor storage unit, as well as non-integrated system designs, which do not share vapor storage units.

The test procedures for these two types of control systems, although different in some ways (explained below), involve the same basic steps: Load the storage canister with hydrocarbon vapor, drive the vehicle to provide opportunity for canister purge, and refuel the vehicle while measuring emissions (see Figures 1 and 2). The first two steps together are referred to as the preconditioning phase and are discussed in detail further on in this section.

BILLING CODE 6560-50-P

Figure 1

ORVR Test for Integrated Systems

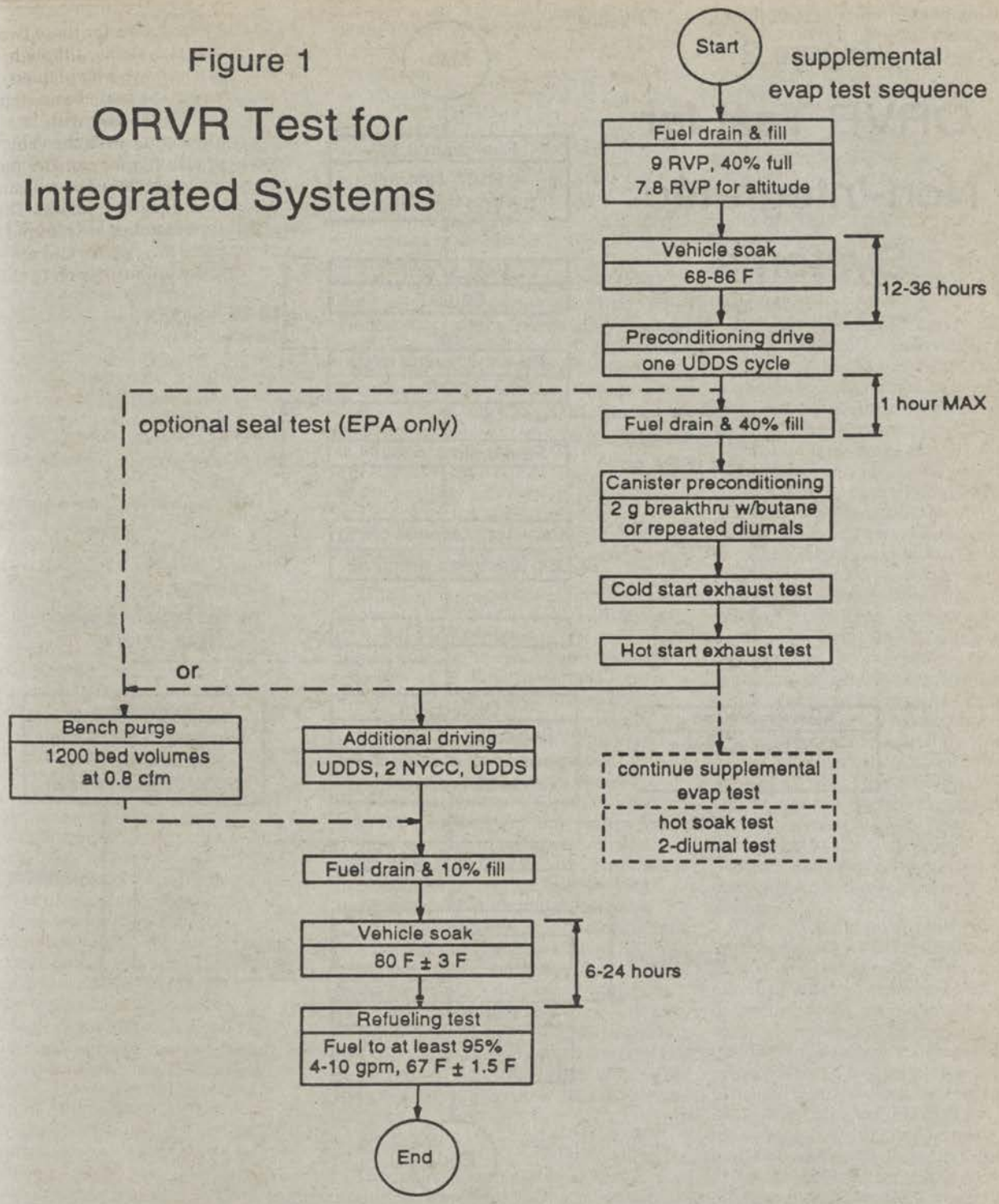
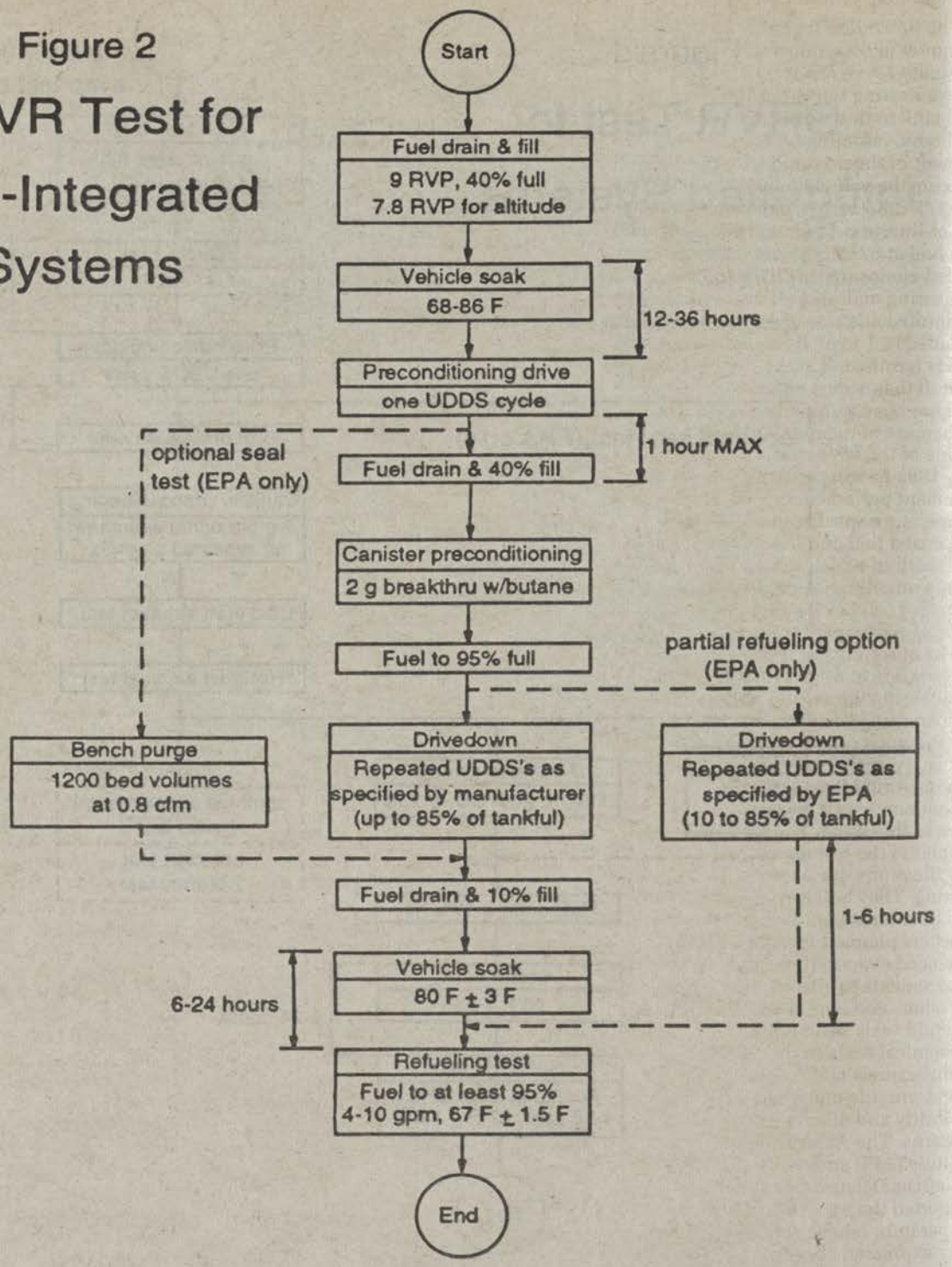


Figure 2

ORVR Test for Non-Integrated Systems



BILLING CODE 6560-P-C

1. Refueling Emissions Test

The procedure for the refueling step is common to both integrated and non-integrated systems. It involves disconnecting the vapor line from the fuel tank to the canister, draining the fuel tank, refueling with test fuel to 10 percent of the nominal tank capacity, soaking the vehicle for 6 to 24 hours at 80±3 °F (26.7±1.7 °C), reconnecting the vapor line, and fueling the vehicle with test fuel at 67±1.5 °F (19.4±0.8 °C) in a sealed enclosure (SHED) while measuring emissions. Fueling is performed at a rate of 4 to 10 gallons per minute (15.1 to 37.9 liters per minute) and is terminated at the first automatic shutoff that occurs after a quantity of fuel has been pumped equal to at least 85 percent of the nominal tank capacity.

One of the key issues raised in the July 1993 hearing and the subsequent comment period concerned the test temperature specifications for the dispensed fuel and the residual in-tank fuel, both of which have a major impact on the refueling vapor generation and therefore on ORVR system designs. Hearing participants discussed the merits of setting the test dispensed fuel temperature at 67 °F (19.4 °C) while maintaining the residual in-tank fuel temperature specification of 80 °F (26.7 °C). Previous proposals had included a dispensed fuel temperature specification of 81–84 °F (27.2–28.9 °C).

Comments were received on both sides of this issue. The manufacturers supported the test temperature specifications discussed at the July 1993 hearing. They believed these specifications would enable the canisters planned for meeting the enhanced evaporative emission requirements to also capture refueling emissions and would facilitate the use of liquid seals as an option to mechanical seals in the fillneck. Manufacturers commented that this would provide much needed design flexibility and alleviate their safety concerns. The American Petroleum Institute (API) and the Natural Resources Defense Council (NRDC) supported the 81°–84 °F dispensed temperature range proposed earlier. They expressed concern that 67 °F is not representative of actual dispensed fuel temperatures on high ozone days and therefore might lead to a situation where the test procedure does not adequately represent in-use conditions with the result that refueling emissions are controlled inadequately in use.

EPA's goal in establishing test parameters is to ensure that the combination of test conditions results in designs that will achieve a very high level of control in use. Therefore, the representativeness of any one test parameter, such as dispensed fuel temperature, is of less concern than the net effect of the total test. For example, in-use RVPs in many parts of the nation during the summer months are lower than that specified in the test. What is important is the combined effects of the key parameters during an in-use refueling event. EPA's analysis of in-use effectiveness described in the Regulatory Impact Analysis and Summary and Analysis of Comments indicates that these test conditions will yield designs that achieve in-use control in excess of 95 percent during the ozone season in the NAAs (even assuming the accuracy of data showing that one region of the country has dispensed fuel temperatures within or exceeding the 81°–84 °F range, a potentially questionable assumption, as explained in the next paragraph). Based on this analysis and the manufacturers' comments, EPA has concluded that the test specifications being finalized in this action are appropriate.

The dispensed gasoline temperature parameter discussed in the NPRM was derived using limited survey information on in-use refueling events. The 81°–84 °F dispensed temperature value in the NPRM was driven by refueling events in the Southeastern U.S. These dispensed fuel temperature values are seven or more degrees higher than any other region of the country. There is no obvious technical reason why the Southeastern U.S. values were so much higher than those found in other regions of the country. Thus, there is some possibility that they may be unrepresentative, in which case the 67 °F temperature used in the refueling test is even more representative. (EPA is not completely disavowing the Southeastern U.S dispensed fuel data, since it is the only data available to EPA at this time. The Summary and Analysis of Comments contains an analysis of the sensitivity of the in-use effectiveness of the ORVR requirement to this dispensed temperature value.)

2. Integrated System Preconditioning

The nature of integrated systems allows for a corresponding integration of ORVR and evaporative emission preconditioning procedures. This integration is desirable because of potential test resource savings. A major revision of the evaporative emission test procedure was completed recently and will be implemented beginning in the 1996 model year (58 FR 16002, March 24, 1993).

EPA proposed three integrated system preconditioning options for the refueling test in the May 1993 **Federal Register** notice. Option A places the refueling test after the exhaust emissions portion of the supplemental evaporative emissions test procedure. Option B places the refueling test after the running loss portion of the evaporative emissions test sequence. As a logical extension to this option, EPA also proposed Option B1, which adds more driving to Option A in order to allow for more purging of the canister, similar to Option B, while avoiding the complexities of the Option B running loss procedure.

EPA has selected Option B1, based on the above-described advantages and the support for this choice expressed by commenters. This procedure follows the supplemental evaporative emission test preconditioning procedure, involving an initial fuel tank drain and fill with certification test fuel to 40 percent full, a 12 to 36 hour soak at 68° to 86 °F (20° to 30 °C), a preconditioning drive over one Urban Dynamometer Driving Schedule (UDDS) cycle, another fuel tank drain and fill to 40 percent, a canister preconditioning step detailed below, and then the exhaust emissions test. At this point the refueling test departs from the evaporative test sequence. Instead, additional driving is conducted to provide more opportunity for canister purge. This driving consists of a UDDS cycle followed by two New York City Cycles (NYCC) and then by another UDDS. This driving schedule corresponds to the driving specified for the evaporative running loss test, though not at the same high temperatures. After the driving, the above-described refueling procedure is conducted.

The canister is preconditioned by loading it with a 50/50 mixture of butane and nitrogen, at a rate of 40 grams of butane per hour, until 2 grams of hydrocarbons are emitted from the canister (referred to as the 2-gram breakthrough point). Alternatively, the canister can be loaded to this point with gasoline vapors by conducting repeated diurnal heat builds. All detailed aspects of the supplemental evaporative emission test procedure, up through the exhaust emission test, apply to integrated ORVR system testing as well (58 FR 16002, March 24, 1993). The three test sequences (full 3-diurnal evaporative, supplemental evaporative, and refueling) may be performed in any order and exhaust emissions measurements from any of the three may be considered valid. If either evaporative emission sequence has been conducted before the refueling test, the fuel tank drain and fill and vehicle soak that precede the one UDDS

preconditioning drive in the refueling test sequence may be skipped.

3. Non-Integrated System Preconditioning

Non-integrated ORVR systems store only refueling vapors and therefore warrant a preconditioning drivedown of 85 percent of the fuel tank capacity before being subjected to the 85 percent refueling event. This driving consists of repeated UDDS cycles, either on a track or on a dynamometer, until a volume of fuel equal to 85 percent of the fuel tank nominal capacity has been consumed. During the actual refueling test, the vehicle will be filled to at least 95 percent of tank capacity, as is the case for the integrated system. If manufacturers exercise the option to do less driving in certification testing, EPA may perform subsequent confirmatory and in-use testing using the same reduced driving schedule.

At its discretion, EPA may test non-integrated systems with a partial refueling test procedure. This procedure helps to ensure control in those in-use refueling events in which less than a tankful of fuel is pumped. Because the non-integrated system test allows a nearly complete drivedown of the fuel tank capacity, thus enabling purge design strategies that inappropriately minimize purge during the exhaust emissions test, EPA considers the partial refueling test necessary. It also allows EPA to assess the basic question of whether the system has the capacity to handle a partial fill, a common refueling event in use.

In this partial fill test, following the loading of the canister with butane and fueling of the vehicle to 95 percent of the fuel tank capacity, the vehicle will be driven some integer number of UDDS cycles such that some amount of fuel between 10 and 85 percent of the fuel tank capacity is consumed. After a one to six hour soak, the vehicle will be subjected to the refueling emissions measurement test with no intervening drain and fill. The fuel pumped in the test will be a metered amount, corresponding to the amount consumed in the drive. This amount will be based on the vehicle's fuel economy, as determined at certification.

4. Seal Test

Also at its discretion, EPA may perform a seal test of integrated and non-integrated designs, aimed at verifying the integrity of fillpipe seals and vapor lines. This test eliminates consideration of potential canister emissions by thoroughly bench purging the canister prior to the refueling event. The canister preconditioning and preparatory driving are therefore likewise eliminated, although EPA may perform the test procedure up through the exhaust emission test (in order to obtain this measurement) and then conduct the bench purge and refueling test. Failure of the seal test would be considered equivalent to failing the full refueling emissions test and the same standard would apply to both.

5. Cap Removal Emissions

In the May 1993 Notice, EPA requested comment on including a test to measure and control the "puff loss" emissions from a pressurized fuel tank when the fuel cap is removed for refueling.

In addition to refueling emissions, vehicles can have emissions when the fuel cap is removed from a pressurized fuel tank before the refueling event. Although these emissions potentially warrant control, EPA does not view them as "refueling" emissions for purposes of section 202(a)(6), since they precede a refueling and are more akin to evaporative emissions. EPA in fact proposed, but did not finalize, such a cap-off test in the evaporative emissions NPRM (55 FR 1914, January 19, 1990) rather than in the ORVR NPRM. Thus Congress would not have been considering such emissions when it enacted the 95 percent minimum control standard in section 202(a)(6) in the 1990 CAAAs.

Manufacturers commented that the puff loss test would provide no additional control over that achieved by the refueling test and the evaporative emissions rule requirement that tanks pressurized to over 10" (25 cm) H_2O be vented to the canister upon cap removal. EPA disagrees with this assessment. The refueling test does not measure emissions from cap removal directly after vehicle operation. The evaporative emissions requirement allows for the venting of tank pressures under 10" H_2O to the atmosphere. These emissions can be appreciable. General Motors (GM) calculated that the puff loss from venting a 10 percent full, 20 gallon (76 liter) tank at 10" H_2O would be about 3 grams. EPA agrees with this estimate but disagrees with the contention that this is minor, given that this same vehicle would only be allowed to emit a little over 3 grams during the refueling test.

GM also argued that the execution of a cap-off test involving a warm-up drive followed immediately by a cap-off step in a SHED would be complex and formidable. EPA agrees with GM's contentions that hot soak emissions could confuse the puff loss measurement and that the time required to move a vehicle from a dynamometer cell to a SHED and remove the cap would be overly long compared to the actual in-use event, which typically involves less than a minute from key-off to cap-off. These two concerns would affect the measured emissions in opposite directions and would make it difficult to ascertain a puff loss emission corresponding to the in-use event.

EPA remains concerned about puff loss emissions, particularly considering that the new evaporative emission control requirements may prompt manufacturers to rely more heavily on pressurized tank designs in the future. However, EPA believes it necessary to defer action on this issue so that an effective test procedure can be developed, involving more complete public participation. Therefore, EPA is leaving this portion of the rulemaking open for now and intends to take up this issue as part of the planned further action on pressurized designs announced in the evaporative emissions control final rule (58 FR 16012). However, it should be noted that the enhanced evaporative emissions rule will require controls for systems whose pressure exceeds 10 inches H_2O, and thus control is already in place for these extreme situations.

6. Spitback Test

EPA believes, and manufacturers' comments indicate, that vehicles would not be expected to comply with the refueling emission standard if they emitted significant spitback emissions during the refueling test. Fuel spilled on the side of the vehicle or in the SHED when the fuel nozzle shuts off will evaporate and be included as part of the refueling emissions. In recognition of this effect, this final rule also waives the spitback testing requirement for vehicles being certified to meet the ORVR requirements. Similar to the provision for "inherently low refueling emission vehicles" discussed above, manufacturers can, at their option, certify as part of the certification application, that they agree with EPA's assessment regarding the effect of spitback emissions on the ability to pass the refueling emission standard and that their vehicle passes the spitback test standard. Of course, manufacturers may elect to comply with the spitback test in lieu of using this waiver option.

Compliance with the spitback standard is still required, and EPA is retaining the spitback test and standard promulgated in the enhanced evaporative emissions control rule (58 FR 16002, March 24, 1993). EPA may conduct or require manufacturers to conduct the spitback test to demonstrate

compliance should concerns over vehicle spitback arise.

7. Nozzle Geometry Standards

In the NPRM, EPA asked for comment on the need for fuel nozzle geometry standards as part of an ORVR program, and suggested that auto makers and nozzle manufacturers undertake a voluntary initiative to develop national consensus standards in this area. This initiative is being undertaken under the auspices of the Society of Automotive Engineers (SAE). An SAE technical committee, comprised of auto maker, fuel nozzle manufacturer, and other representatives, is considering revisions to SAE standard J285 "Gasoline Dispenser Nozzle Spouts".

It is important that nozzles used in the design and testing of ORVR-equipped vehicles be similar to those found in use. Should this committee reach consensus on fuel nozzle geometry specifications, EPA will use a nozzle meeting this standard in all refueling emissions compliance testing, if the nozzle manufacturers agree to adopt these specifications for future retail and commercial fuel nozzles and the auto manufacturers design their ORVR systems to accommodate a nozzle with this geometry. If no standard is developed for nozzle geometry or if the above agreements cannot be reached, EPA will use any commercially available nozzle in its testing.

8. Level of the Standard

This final rule adopts a refueling test standard of 0.20 grams of hydrocarbon emissions per gallon (g/gal) of fuel pumped (0.053 g/liter). This standard applies to all vehicle classes covered by this rule and covers the full useful life. Setting the standard at this level ensures that the standard that meets the statutory requirement to provide a minimum emission capture efficiency of 95 percent, as discussed below.

The August 1987 NPRM included a proposed refueling emission standard of 0.10 g/gal (0.026 g/liter) of fuel pumped, which at that time represented about a 98 percent emissions reduction from uncontrolled levels. Subsequently, the 1990 CAAA called for a refueling emission standard representing at least a 95 percent reduction over uncontrolled levels. EPA determined that this reduction corresponds to a standard of about 0.25 g/gal (0.066 g/liter) and requested comment in the May 1993 notice on the setting of a standard in the 0.10 to 0.25 g/gal range.

Manufacturers supported a standard of 0.20 g/gal, arguing that this standard would satisfy the CAA minimum requirement while providing for full useful life compliance and design flexibility. API and other commenters felt that a standard providing a 98 percent level of control is justified based on demonstrated and cost effective technology.

After analyzing the comments and the projected in-use emission impacts, EPA has selected a standard of 0.20 g/gal. This standard was chosen because it meets or exceeds the statutory minimum requirement and, since it is representative of most refueling situations reasonably likely to occur (Cf *Edison Electric Institute* v. *EPA*, 2F.3J 438, 446–47 (D.C. Cir. 1993)). At the same time, it meets the manufacturers' need for adequate design margin and flexibility. As is discussed in the Summary and Analysis of Comments, the nature of the canister-based control technology is such that setting the standard at a lower level would not be expected to achieve additional emission reductions in use. Systems will need to be designed for essentially zero emissions, with the standard providing an allowance for vehicle and test variability. It may also enhance the use of liquid fillneck seals which are projected to have lower costs, good in-use performance, and present no safety concerns.

D. Safety of ORVR Systems

1. Background

Section 202(a)(6) of the 1990 CAA Amendments (as well as its predecessor provision) requires EPA to consult with the Secretary of Transportation regarding the safety of vehicle-based (ORVR) systems for the control of vehicle refueling emissions. EPA began this consultation in the Spring of 1986, prior to the NPRM, and the consultation has continued throughout the various stages of this rulemaking. DoT was represented by NHTSA throughout this process. A record of this consultation and the various analyses conducted by EPA and NHTSA to assess the safety issue is available in the public docket and is discussed in the April 15, 1992 **Federal Register** notice regarding ORVR controls (57 FR 13220). Early in the consultation process, NHTSA raised concerns about the safety of ORVR canister systems, and throughout the various stages of the rulemaking, safety has been a central issue in the public comments and in the deliberations on the ORVR rulemaking. Unresolved concerns regarding the safety of ORVR canister systems (at least relative to Stage II systems) delayed promulgation of the NPRM prior to the 1990 CAAAs and, in April 1992, led EPA to decide not to require ORVR controls at that time. Given the concerns raised about vehicle safety, it is important to address the potential safety concerns as part of the implementation of the ORVR requirement.

2. Test Procedure/Safety

The safety comments regarding ORVR canister systems focused primarily on the concern that ORVR systems would increase fuel system complexity and that this would create vehicle safety risks. Many manufacturers' comments on the NPRM indicated that the test procedure, as proposed in 1987, would force the use of non-integrated (separate) systems for refueling and evaporative emissions control. They characterized these systems as making the fuel vapor control system more complex than current evaporative control systems, thus creating the potential for a safety risk.

As noted earlier, the DC Circuit held that the consultation requirement in section 202(a)(6) does not alter EPA's duty to issue ORVR requirements. After the decision was issued and after publication of EPA's May 27, 1993 **Federal Register** notice (58 FR 30731), EPA held technical discussions with representatives of AAMA regarding the ORVR test procedure (See items IV–E–101,102,105,106 in the public docket for this rulemaking). The purpose of these discussions was to identify potential changes to the ORVR test procedure which, if enacted, would facilitate the use of an integrated evaporative/refueling control system approach with a liquid seal in the fillneck. (As was discussed above, in March 1993, EPA published a final rule requiring enhanced evaporative controls on gasoline-powered LDVs, LDTs, and HDVs. The enhanced evaporative requirements will lead to an increase in the size of the canister used to capture evaporative emissions, an upgrade in the purge system capabilities, as well as other system changes and improvements.) An integrated system approach would allow manufacturers to make use of the upgraded evaporative control hardware (common carbon canister, purge system, vapor hoses, etc.) as part of their ORVR control strategy and thus address both system complexity and cost issues. This approach would be used in lieu of the non-integrated control system approaches which were characterized as being complex and potentially less safe.

ORVR test procedure changes which would ease the use of integrated evaporative/refueling control systems with liquid fillneck seal approaches were identified. EPA explained this option at the July 22, 1993 public

hearing and requested additional public comment.

Auto manufacturer comments supported this approach. For example, Chrysler Corporation's comments indicated:

"Chrysler believes that the proposed AAMA revisions to the test procedure and the 0.20 g/gal. standard will allow Chrysler to design safe, efficient ORVR systems."

Ford Motor Company's comments stated:

"Ford recommends that EPA adopt the test procedure changes and standards outlined by AAMA at the Hearing on July 22, 1993, and contained in the attached comments. These changes should allow for the design and development of a canister-based, integrated refueling and evaporative emissions system which is less complex than a nonintegrated system and which addresses the safety issues raised in previous rulemakings. These procedural changes along with others identified in the comments should allow EPA, in consultation with NHTSA, to find that integrated systems do not present an unreasonable risk to automotive safety."

General Motors expressed similar views:

"The ORVR test procedure changes described in these comments are critical to permitting manufacturers to develop ORVR systems for passenger cars that minimize or eliminate any adverse impact upon motor vehicle safety."

And, in summary, an October 13, 1993 AAMA letter to NHTSA stated that:

"We believe this procedure will allow the use of an integrated ORVR/evaporative emissions system including a common carbon canister. An integrated ORVR/evaporative emissions system will allow manufacturers to design and build safe, efficient ORVR systems."

Comments by other manufacturers also supported this position. Accordingly, this rule enacts the test procedure option identified above. It is supported by AAMA, the Association of International Automobile Manufacturers (AIAM), and the individual manufacturers and, according to their comments, minimizes their longstanding vehicle safety concerns.

3. DOT Consultation

In response to the changed circumstances since it's prior safety analysis, DoT/NHTSA undertook an independent assessment of vehicle safety concerns associated with ORVR systems. In November 1993, NHTSA completed a study entitled "An Assessment of Onboard Refueling Vapor Recovery System Safety". This document reexamined the conclusions raised in their July 1991 study, upon which EPA relied heavily on its April 1992 decision not to require ORVR controls.

In this recent study, NHTSA revisited the principal findings of its July 1991 report to consider the positive safety impacts of the test procedure changes and other changed circumstances. The NHTSA report, which is available in the public docket, reached the following general conclusion regarding ORVR safety:

"Basically, there were three principal areas of concern pointed out in the July 1991 report: the increased size of vapor canisters to hold the fuel vapors, the mechanical complexity of the ORVR system, and the ability of the ORVR system to safely manage and purge the increased volume of vapors.

As discussed above, technical developments, and test procedure and regulatory changes that have occurred since the July 1991 safety assessment, have had the net effect of reducing the safety concerns raised in the July 1991 report. The majority of vehicle manufacturers have stated that it is now possible to design safe ORVR systems that will function properly under all operating conditions. However, there still remains some small unquantifiable increase in safety risk due to the addition of the ORVR systems. This risk is unquantifiable since there are no data upon which to base a numerical estimate."

Thus, NHTSA views the changed circumstances, including the final test procedure and the use of integrated systems, as addressing many of their previous concerns. They also acknowledge that absent actual data they cannot determine the level of risk, and thus conclude that risks are unquantifiable. While the NHTSA report contained a brief assessment as to why trucks might be different than cars and stated that truck prototype systems and field tests for truck ORVR systems would be beneficial, no special safety risks were cited for using ORVR canisters to control LDT/HDV refueling emissions.

4. EPA Assessment

EPA is withdrawing its April, 1992 finding that ORVR canisters pose unreasonable safety risks. First, that determination was based on an improper comparison with Stage II controls. *NRDC* v. *Reilly*, 983 F. 2d at 271. Considered on their own, ORVR canisters do not appear to pose significant safety risks. Indeed, as the Agency noted in 1987, this appears to be particularly true for integrated evaporative/refueling control systems—which now appear to be the preferred control system.

Second, EPA is swayed because NHTSA has reviewed the safety of ORVR systems in light of recent developments and subsequently has withdrawn most of the adverse conclusions in the 1991 report. NHTSA also indicates (1993 Report pp. 17–24) that some of its remaining concerns can be addressed by choosing proper designs for canister systems. As noted above, EPA has taken NHTSA's views strongly into account throughout the course of this rulemaking, and accordingly is influenced by NHTSA's more positive outlook on ORVR canister safety.

The record further indicates that installation of ORVR canisters can have some positive impacts on safety. See EPA's "Summary and Analysis of Comments on the Potential Safety Implications of ORVR Systems" (IV–H–04). Safety benefits include removal of the external fuel vapor vent line from the fillneck of these vehicles, the expected move of the canister from the engine compartment to the rear of the vehicle, the resultant shortening of the vapor vent line, and the capture of fuel vapor previously vented at the service station during refueling. All of these actions directionally reduce the risk of vehicle fires in crash and non-crash situations.

In sum, given that the manufacturers indicate that integrated evaporative/refueling control systems minimize their safety concerns, NHTSA's significant reduction in concerns, EPA's longstanding view of the safety of integrated refueling/evaporative control systems and the safety benefits of ORVR controls, EPA has decided to withdraw its April 15, 1992 finding (57 FR 13230–13231). Specifically, EPA concludes that onboard canister controls do not pose an unreasonable risk to public safety. ORVR canister systems are not inherently unsafe.

Several commenters expressed concern about applying the ORVR requirement to trucks and incomplete vehicles (i.e., those produced by secondary manufacturers). However, for the most part, EPA does not believe the technical circumstances here to be substantially different than for LDVs. All trucks, including those produced by secondary manufacturers, are subject to the enhanced evaporative emission requirements and will have to upgrade their control systems in response to these new requirements. Also, the ORVR test procedure for these vehicles, as for LDVs, would facilitate the use of integrated evaporative/ refueling control systems. Potential safety concerns of vehicles completed by secondary manufacturers should not be substantially different for integrated enhanced evaporative/refueling control systems than they are for enhanced evaporative control systems alone. This is especially the case for those incomplete vehicles delivered to the secondary manufacturer with a complete fuel system as are most

incomplete LDTs. Also, the potential safety benefits of ORVR systems would accrue to trucks and secondary manufacturer vehicles as well as to LDVs. Thus, EPA believes the safety concerns, if any, to be similar to those for LDVs. In fact, while the manufacturers opposed extending the ORVR requirement to trucks on several grounds, none indicated that safe truck ORVR systems were not possible.

In any event, EPA's decision not to finalize ORVR requirements for HDVs (both complete and incomplete HDVs) at this time and to delay LDT implementation for three years or more should minimize any remaining safety concerns about ORVR systems for trucks (IV–H–23).

5. Safety Reviews

Nonetheless, EPA is very sensitive to the uncertainties expressed by NHTSA, and plans a program to implement its authority to ensure safe systems. Sections 202(a)(4) and 206(a)(3)(A), (B) of the CAA give EPA broad authority to address the safety of emission control systems. Section 202(a)(4) reads:

> Effective with respect to vehicles and engines manufactured after model year 1978, no emission control device, system, or element of design shall be used in a new motor vehicle or new motor vehicle engine for purposes of complying with standards prescribed under this subsection if such device, system, or element of design will cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function.

and section 206(a)(3)(A), (B) reads:

> (A) A certificate of conformity may be issued under this section only if the Administrator determines that the manufacturer (or in the case of a vehicle or engine for import, any person) has established to the satisfaction of the Administrator that any emission control device, system, or element of design installed on, or incorporated in, such vehicle or engine conforms to applicable requirements of section 202(a)(4).
>
> (B) The Administrator may conduct such tests and may require the manufacturer (or any such person) to conduct such tests and provide such information as is necessary to carry out subparagraph (A) of this paragraph. * * *

This authority has been implemented for more than ten years. The Code of Federal Regulations § 86.084–5(b) requires that any system installed on a new motor vehicle to enable such a vehicle to conform to standards shall not in its operation, function, or malfunction result in any unsafe condition endangering the motor vehicle, its occupants, or persons or property in close proximity to the vehicle. Furthermore, § 86.091–23(d) requires that manufacturers certify that the vehicles for which emission certification is requested conform to the requirements of § 86.084–5(b). The manufacturer must also agree to provide descriptions of the tests conducted, the results of such tests, and other information upon which that determination is based. Presently this safety certification is submitted in the application for certification which manufacturers must submit for every vehicle model they plan to produce for commerce in the United States. EPA intends to use this authority and the approach described above to implement the ORVR requirement. See also *NRDC* v. *Reilly*, 983 F.2d at 267 (ultimate issue of safety is to be addressed at certification).

The ultimate responsibility for ORVR system safety (both design and performance in use) rests with the manufacturers. As part of the application for certification, manufacturers will be required to make the declarations prescribed in § 86.091–23 (d). During review of the certification application, EPA will study the design of the vehicle's ORVR system, its on-vehicle configuration and operation, and will consult directly with NHTSA on these applications. Special consideration will be given to the potential concerns raised in the course of the rulemaking process such as component locations, materials used in the components, and connections between components. For canister-based systems, items of special interest will include canister location and shell construction, canister/vapor hose access for I/M testing, vapor hose routing and wall thickness, integrity of connections, and proximity of potential ignition sources. In addition, manufacturers will want to consider concerns raised in past NHTSA safety assessments. The November 1993 NHTSA report makes it clear that proper design is critical in system safety performance.

As was mentioned above, EPA could ask for any or all of the information supporting the manufacturer's safety assessment and EPA will consider all information presented by the manufacturer in this assessment whether it is based on testing, engineering analysis, or some other source. As is present practice, EPA expects that manufacturers will conduct engineering risk assessments and component, system, and vehicle tests to assess the safety of various ORVR system designs and on-vehicle configurations and make any modifications or devise and implement the engineering solutions needed to address potential problems.

ORVR-equipped vehicles would have to meet the applicable FMVSSs, including FMVSS 301 related to Fuel System Integrity. As noted above, NHTSA is considering amending the latter to address ORVR system safety. However, section 206(a)(3)(B) of the CAA provides EPA with broad latitude to require manufacturers to conduct tests or provide other information as may be needed to determine if an ORVR system meets the vehicle safety requirements prescribed in section 202(a)(4).

In the May 27, 1993 **Federal Register** notice, EPA asked for comment on whether any specific tests or other information should be required up front as part of the certification process and, if so, what information and in what form would be most appropriate. No commenter provided input on this point and, given the resolution of the safety issue, EPA has decided not to require any specific information at this time.

In the same notice, EPA also asked comment from auto manufacturers and other interested parties on the desirability of developing a process, after promulgation of the final rule, through which there could be a dialogue with EPA and NHTSA on design questions related to the in-use safety of ORVR systems. Manufacturers' comments indicated that resolution of the safety issue as part of the rule was most important, and they expressed little interest in establishing a dialogue at this time. EPA remains willing to work with the auto manufacturers in this area at any time in the future.

Although ultimate safety determinations must await the certification process, EPA wishes to repeat that it knows of nothing that would preclude the certification of properly designed ORVR canister systems on LDVs and LDTs. EPA stresses that it has never determined for purposes of certification under section 206 that any specific ORVR system (including ORVR canisters) would present an unreasonable risk to public safety within the meaning of section 202(a)(4), 58 FR 30740–30741. Consequently, the potential existence of means other than canisters to control refueling emissions should not preclude certification of properly-designed canister-based control systems.

6. Alternative Control Technologies

As part of the technical analysis supporting the NPRM, EPA indicated that control technologies such as collapsible fuel bladders and cloth impregnated with activated carbon absorbers were potential alternatives to carbon canisters. As part of the

technology assessment for this final rule, EPA reviewed the record of the rule to see what options had been put forth and to assess what progress had been made in applying these technologies to vehicle fuel systems. The collective determination from the review was that, in some cases, parties have pursued development of these technologies for other applications, such as aircraft fuel systems and chemical protection suits, but that less overall progress has been made in applying these technologies to automotive applications. In some cases no progress was made, and the technical feasibility of these designs therefore remains problematic. In one case commercial development was dependent on industry or government support. While EPA cannot arbitrarily preclude the use of any control system design approach, EPA concludes that such alternatives are not generally likely to be available for production application in the time frame when manufacturers must begin to install ORVR systems on their vehicles. The potential existence of these alternative control approaches does not preclude certification of properly designed canister-based ORVR controls.

E. Certification Provisions

1. General

Today's action modifies the certification process by adding the requirement for demonstrating compliance with refueling emission standards according to the prescribed phase-in schedule. This action is expected to have no direct impact on manufacturers' fuel economy programs. The following paragraphs summarize EPA's certification and fuel economy requirements with regard to ORVR controls.

The regulations promulgated in this action provide new definitions for refueling families and refueling emission control systems. For LDVs and LDTs, manufacturers will normally perform a refueling test on one emission-data vehicle per refueling emission control system and submit this test data (low altitude data) to EPA for possible confirmatory testing. Data submitted to EPA should include the exhaust emissions data from the exhaust emissions test which is contained in the refueling test sequence. The data should demonstrate compliance with all applicable emission standards. Manufacturers may submit high altitude test data to EPA for possible confirmatory testing, or provide a statement in the application for certification that vehicles will comply with applicable emission standards at high altitude. Note that this action requires manufacturers to perform exhaust and evaporative emission tests using pre-loaded canisters. Also note that vehicles inherently low in refueling emissions can be certified using an engineering evaluation approved by the Administrator in lieu of testing.

After the testing has been completed, manufacturers typically submit to EPA an application for certification, containing information about the vehicles intended for production, emission test data used to support certification, statements of compliance with emission standards and device safety, and other information required by EPA. This action will require manufacturers to provide refueling information in their application for certification. To determine compliance with applicable emission standards, this action requires the refueling emission test data to be adjusted by an additive deterioration factor, developed by the manufacturer using good engineering judgement to assure that vehicles will comply in actual use for the useful life of the vehicle/engine. Should EPA have any concerns about the safety of the ORVR refueling system used by the manufacturer, certification may be delayed or denied, under section 202(a)(4) and 206(a)(3) of the CAA. This should not happen, however, with properly designed systems.

2. Fees

EPA-incurred costs associated with the certification program can be recovered in the Motor Vehicle and Engine Compliance Program (MVECP) fee program (see 40 CFR part 86, subpart J). Today's action is likely to increase the amount of the MVECP fee which is collected during the certification process since the Agency's burden is expected to increase. As discussed in the Fee Updating Procedure section of the Fees final rule, (57 FR 30049, July 7, 1992), EPA will periodically review its fees. During that fee updating process, the Agency intends to assess the additional burden incurred due to this action, and if, as a result of the review, EPA determines that there has been a significant change in the MVECP costs, a proposal to revise the fee schedule will be published in the **Federal Register**. Thus, manufacturers will be provided with sufficient notice and comment period prior to any changes in the amount of the fee collected.

3. Fuel Economy

This action does not have any direct impact on fuel economy labeling, Corporate Average Fuel Economy (CAFE), or gas guzzler data submission requirements. Because the changes to the test procedure promulgated in this action may affect fuel economy measurements,[1] EPA will not require use of the new procedure for fuel economy testing. Therefore, to generate city fuel economy values, manufacturers may use the previously established Federal Test Procedure or may optionally use the pre-loaded canister test procedures established in this action (which are essentially the same test procedures established in the enhanced evaporative emission final rule, ref. 58 FR 16002, March 24, 1993). EPA will normally use the same procedure for confirmatory testing as used by the manufacturer.

F. Onboard Diagnostics Requirements

Today's action extends the existing provisions for onboard diagnostic (OBD) systems to ORVR equipment. (The final rule for the existing program was published February 19, 1993, 58 FR 9468). ORVR systems are very similar to evaporative systems and this action requires that the OBD performance requirements which currently apply to evaporative systems apply on LDVs and LDTs also to ORVR systems, both integrated and non-integrated.

As with the current OBD program for evaporative-only systems, OBD monitoring of the ORVR system is not mandatory. However, the same approach to in-use testing will be used. That is, any in-use vehicle with evaporative emissions of 30 g/test or higher measured over the first 24 hours of the three-day diurnal from the revised evaporative test procedure will be flagged for further evaluation. That evaluation will consist of making any necessary repairs to ensure system integrity, and then making a 0.04 inch (1 mm) orifice anywhere within the system. To demonstrate compliance, operating the vehicle in this condition over the full FTP must cause the malfunction indicator light (MIL) to illuminate. A failure of the OBD system to signal a problem could contribute to a decision to initiate a recall action. While a system operating in such a manner (i.e., without the MIL going on) may not detect a malfunction related solely to refueling events, EPA

[1] The fuel economy measurements may be affected because vehicles will now be tested with pre-loaded evaporative/onboard canisters. Purging these canisters during the city and highway tests could affect the air/fuel ratio of the engine which, in turn, could affect the measured fuel economy values for the test vehicle. EPA expects the effect to be minimal, although it is possible that measured fuel economy values could change for some vehicles.

nevertheless believes that such a system will be sufficient if it detects general problems with vapor and purge system integrity.

For integrated ORVR systems, manufacturers can use the same OBD systems they use to monitor evaporative systems. For non-integrated systems, both the evaporative and refueling sides of the system will need to be monitored. It should be possible for the same technology to be used for both monitoring tasks in most cases. For example, a strategy that uses engine vacuum to draw a certain minimum level of vacuum or uses a small pump to generate a positive pressure in the entire vapor system could include a non-integrated ORVR canister in the monitoring as well. For both integrated and non-integrated systems, EPA believes this approach will result in an adequate level of certainty that key potential malfunctions in ORVR systems will be identified and repaired. Since a 0.04 inch orifice would emit only about 3 grams of hydrocarbon vapor in a normal refueling event, this approach will assure a high level of in-use control.

G. Enforcement and In-Use Performance

1. Liability Periods

In accordance with the CAAA of 1990, ORVR controls for new LDVs must have useful lives of 10 years or 100,000 miles (160,000 km) or the equivalent, with recall testing allowed up to 7 years or 75,000 miles (120,000 km) or the equivalent, whichever occurs first (CAA section 202(d)(1); 42 U.S.C. 7521(d)(1)). LDTs with loaded vehicle weight up to 3,750 pounds (1,700 kg) have the same useful life requirement as LDVs. All other LDTs have a useful life requirement of 11 years or 120,000 miles (190,000 km) or the equivalent, whichever occurs first. Pursuant to section 207(i), expected designs for ORVR controls are not "specified major emission control components," because they cost less than $200. Therefore, unless more expensive components are utilized, manufacturers need only warrant them for 2 years or 24,000 miles (39,000 km) or the equivalent, whichever occurs first. If, at some time in the future, the Administrator should determine that the ORVR controls are "specified major emission control components," manufacturers must warrant them for 8 years or 80,000 miles (130,000 km) or the equivalent, whichever occurs first (CAA section 207(i)(2); 42 U.S.C. 7541(i)(2)).

2. Selective Enforcement Audit Testing

Pursuant to CAA section 206(b), the Administrator is authorized to test new motor vehicles in order to determine whether vehicles being manufactured do in fact conform to the regulations with respect to which a certificate of conformity was issued. Therefore, LDVs and LDTs that are certified to meet the refueling emission standard are subject to this standard in a Selective Enforcement Audit (SEA).

In the 1987 NPRM, EPA discussed two testing issues which resulted from performing the refueling test on newly built motor vehicles. The first issue regarded the possible influence of new vehicle background evaporative emissions (i.e., hydrocarbon emissions from such things as the fresh paint on a new vehicle which has not fully cured) on refueling emission measurements. Historically, EPA has not conducted SEA testing for evaporative emissions due to the relatively large non-fuel background emissions emitted from newly built vehicles. However, EPA expected that background emissions would not significantly affect refueling emission measurements because the actual time for background evaporative losses to occur would be very short (refueling emission measurements have a duration of less than five minutes). Also, refueling measurements would be taken at an ambient temperature of approximately 80° F, so fuel and non-fuel evaporative emissions would not be increased by heating of the tank, engine, or other subsystems, as would occur during the usual evaporative emissions test. However, to address any concerns over the effects of background emissions, EPA proposed an additional SEA testing procedure where background emissions would be measured and then subtracted from the refueling emissions measurement. This additional procedure would be used if manufacturers provided evidence that newly built vehicle background emissions would significantly exceed in-use vehicle background emissions, which were intended to be included in the refueling standard.

Because manufacturers' comments raised concerns about conducting the refueling test without measuring for background emissions, and about the extra time needed for the measurement, this final rule will include the new vehicle background emissions measurement proposed in the 1987 NPRM as an optional procedure. However, this decision must be made before SEA testing is conducted. It will apply to all vehicles tested. EPA realizes that when this background procedure is performed, in-use background emissions, which are included in the refueling standard, will also be subtracted from the refueling measurement. At this time, EPA has no way of separating new vehicle background emissions from in-use background emissions. For purposes of SEA testing only, both may therefore be subtracted off. Background emissions from the refueling measurements during in-use testing will not be subtracted since the standard includes measurement of such emissions and there is no concern regarding the higher background emissions from new vehicles. Additionally, upon approval by EPA, a manufacturer may develop and use its own background emissions measurement procedure for use during SEA testing. Revisions to 40 CFR part 86, subpart G, § 86.608 (for LDVs) and to subpart K, § 86.1008 (for LDTs) incorporate this additional procedure.

The second issue pertained to the unstabilized condition of the vapor storage canister(s) prior to SEA testing. In the NPRM, EPA proposed that the canisters of SEA vehicles be stabilized through a bench procedure, prior to refueling emissions testing, to help account for any large differences that may exist between an unused canister and a broken-in (aged) canister.

Most manufacturers commented that artificially aging canisters prior to emissions testing using either the procedure in the 1987 proposal or the evaporative emissions rulemaking is inconsistent with SEA testing and that performing the aging process would significantly add to the time needed to complete testing. This would make it difficult to conduct the correct number of tests per twenty-four hour period as proposed by § 86.608(g) for LDVs and § 86.1008(g)(3) for LDTs. Additionally, several manufacturers indicated that if their vehicles were to undergo the entire refueling test procedure (with all of the necessary preconditioning drive-downs), the vehicles may accumulate too many miles to be sold as new.

EPA agrees that the proposed bench-aging procedure, as well as the updated procedure, adds significant time to SEA testing and, therefore, this final rule does not include an artificial aging procedure. EPA would have preferred to include an aged canister in the SEA test requirement, but at this point sees no practical way to incorporate the aged canister requirement and also address the manufacturers' concerns. Manufacturers are required to perform the complete refueling test with new canisters for both integrated and non-integrated designs. However, if

manufacturers still have concerns about conducting the required number of tests per twenty-four hour period or accumulating too much mileage, they may, upon EPA approval, perform the seal test described in Section C above, for either integrated or non-integrated designs, during an SEA. The seal test is aimed at verifying the integrity of fillpipe seals and vapor lines and eliminates consideration of potential canister emissions by thoroughly bench purging the canister prior to the refueling event. The canister preconditioning and preparatory driving are also eliminated, allowing manufacturers to complete testing without the additional mileage accumulation associated with the full test. Finally, the same 0.20 g/gal standard would apply and failure of the seal test would be considered equivalent to failing the full refueling emissions test.

During an SEA, manufacturers will test selected SEA vehicles until a pass or fail decision has been reached for both the exhaust emission test and the refueling test. The 0.20 g/gal refueling standard is subject to 40 percent Acceptable Quality Level, which is the same criteria used for exhaust emissions.

3. Nonconformance Penalties (NCPs)

In the regulations governing NCPs (40 CFR 86.1103–87), EPA specifies the criteria which must be met before an NCP will be made available for a new emission standard applicable to any subclass of heavy-duty vehicles (i.e., vehicles with a GVWR in excess of 6000 lbs, including the LDTs with a GVWR between 6,001 and 8,500 lbs. which are covered in this regulation (HLDTs)). As described in those regulations, an NCP may be established for a new emission standard if substantial work will be required to meet the new standard and a technological laggard is likely to exist. Substantial work means the application of technology not previously used in a vehicle class or subclass or the significant modification of existing technology or design parameters.

While ORVR systems have not been used to control refueling emissions on HLDTs and HDVs, EPA does not believe that an ORVR requirement constitutes substantial work as defined in the NCP regulations nor does EPA believe that a technological laggard will exist in the vehicle groups. The ORVR system is expected to be a minor extension of existing evaporative emission control technology rather than the application of new technology or the significant modification of existing technology or design. EPA expects manufacturers would use activated carbon for storage of refueling vapors and air stripping for regeneration, just as are now used in evaporative emission control systems on LDTs and heavy-duty gasoline vehicles. The purge systems will essentially be the same as those used for evaporative controls.

While there may be some subjective disagreement on whether "substantial work" will be involved in meeting the standard, EPA believes all the manufacturers of HLDTs will be able to comply with the standard and that no technological laggard will exist. EPA recognizes that effort will be required to equip the HLDTs with ORVR systems, but the control technology required is well defined and available to all affected manufacturers. Furthermore, this regulation provides a generous leadtime and control is phased in over a three-model-year period. Both of these factors will provide relief to any manufacturer who is having difficulty. In addition, the adopted test procedures address the manufacturers' technical concerns and should negate the need for an NCP for any manufacturer.

The regulations also permit consideration of NCPs for other emission standards, for which NCPs are not already provided, if the standards become more difficult to meet as a result of a new standard. However, as the test procedure is structured, EPA does not believe that manufacturers will encounter significant additional difficulty in maintaining compliance with exhaust or evaporative emission standards as a result of the ORVR requirement.

In sum, "substantial work" will not be required and no technological laggards are expected. Therefore, EPA will not make NCPs available for refueling exhaust or evaporative emission standards.

4. In-Use Performance

As in the case of other evaporative emissions, the control of refueling emissions is highly dependent on vehicle operating and environmental factors such as vehicle speed and ambient temperature. EPA recognizes, therefore, that simply passing a test procedure cannot always ensure vehicle designs that achieve good control in use.

EPA expects that manufacturers will design vehicles that pass the test and perform well in use. However, in order to best achieve the statutory goal of a high degree of control efficiency, the Agency will, if necessary, make full use of existing regulations against defeat devices. Thus, EPA may deny certification upon determination that a particular refueling emission control system design constitutes a defeat device (40 CFR 86.094–16).[2] EPA could also invoke the defeat device regulations in the course or on the basis of the results of selective enforcement audit (SEA) and recall testing.

The following discussion, while not necessarily all-inclusive, provides examples of potential defeat devices related to compliance with refueling emission standards. EPA's main concern is that some purge strategies used to pass emission tests may be ineffective over a wide range of in-use driving patterns. For integrated systems, this concern will be addressed in the Agency's evaluation of evaporative system purge strategies during the certification process, as discussed in the evaporative emissions final rule (58 FR at 16007). The Agency will extend this evaluation to non-integrated refueling system purge strategies as well.

This evaluation is intended to identify vehicle designs that, though capable of passing emission tests, may not function effectively in use. These would include non-integrated system designs that purge well during the prolonged warm-vehicle driving allowed in the refueling test drivedown, but not in the driving patterns involving frequent cold starts often encountered in use.

EPA also will consider to be defeat devices those designs that purge at substantially higher rates during high-speed operation than during low-speed operation, such that they primarily depend on the high-speed purge to pass emission tests. Even if such designs do pass the test, they may produce high refueling emissions if they purge substantially less during typical non-freeway urban driving than during the refueling test drivedown. Also, designs that shut purge off at any time for other than safety reasons would be closely examined by EPA for possible classification as defeat devices.

III. Public Participation

ORVR controls have been under consideration by EPA since the CAAAs of 1977. The public process, which first began in 1978, has proceeded through various stages over the past 15 years.

In response to the provisions of section 202(a)(6) of the 1977 CAAAs, EPA initiated a public process in 1978 to receive comments on the feasibility and desirability of implementing ORVR controls. In 1980, EPA published a technical report which tentatively concluded that ORVR controls were feasible for LDVs. However, no action

[2] "Prohibition of Use of Emission Control Defeat Devices," MSPC Advisory Circular No. 24, December 11, 1972.

was taken at the time due to concerns over economic difficulties in the auto industry.

EPA reinstituted its assessment of ORVR controls in 1983 as part of a broad assessment of the strategies available to control emissions in the gasoline marketing industry. As part of this study, in August 1984, EPA published an extensive analysis of the options available to control refueling emissions including ORVR controls. Supporting documentation for this analysis are in public docket A–84–07, along with the public comments received on the "Gasoline Marketing Study".

After receiving comments on the study, EPA prepared an in-depth analysis of the comments, developed further work on several key issues related to ORVR controls, and conducted enhanced assessments of the options under consideration. This resulted in a draft Regulatory Impact Analysis, Response to Public Comments, and related analysis and documentation related to ORVR controls. This information is also in public docket A–84–07. A public meeting regarding the ORVR test procedure was also held during this time frame.

The results of EPA's study of emission control options for the gasoline marketing industry culminated in an August 1987 proposal to require ORVR controls on gasoline-powered LDVs, LDTs, and HDVs. A public hearing was held in October 1987 and the comment period closed in February 1988. Information supporting the NPRM and comments on the proposal are in public docket A–87–11. However, due initially to safety concerns raised by some commenters and later to pending revisions to the CAA, EPA deferred action on finalizing the ORVR rule.

The 1990 CAAAs contained provisions requiring an integrated program of LDV ORVR and Stage II controls. In response to the ORVR provisions, on September 3, 1991 (56 FR 43682), EPA published a **Federal Register** notice seeking further comment on the NPRM and the safety issues related to ORVR controls including a safety assessment prepared by the DoT. A public hearing was held to receive comment on these issues on September 26, 27, 1991. The comment period closed in late October 1991. These comments and related materials are in public docket A–87–11. On April 15, 1992, EPA published a **Federal Register** notice (57 FR 13220) announcing its decision not to proceed with implementing ORVR controls at that time, based on safety concerns raised by DoT.

Subsequently, a panel of the DC Circuit overturned EPA's 1992 action. EPA then published another **Federal Register** notice (May 27, 1993, 58 FR 30731) raising issues for public comment and allowing approximately 90 days for comment. Another public hearing seeking comment on the NPRM and other changed circumstances was also held. This hearing was held on July 22, 1993 and comments closed 30 days later. These comments are in public docket A–87–11 as are EPA materials in support of the notice.

During the years in which ORVR has been under consideration, there have been at least five formal opportunities for oral and/or written public comment. In addition, numerous other public interactions have occurred on this matter and have been documented and placed in the docket for public review.

Over the fifteen years of the ORVR public process, EPA has received hundreds of written comments regarding this requirement. However, many of the past comments have essentially been addressed by changed circumstances or other developments. Major issues such as fuel volatility and improved vehicle evaporative emission controls have now been decided by regulation, and the control of refueling emissions using Stage II equipment was addressed by the 1990 CAAAs. Also, many previous comments in areas such as ORVR costs and test procedures were factored into subsequent analyses and notices, making only the most recent set of comments applicable.

The public docket contains a Summary and Analysis of Comments document which addresses still-relevant issues raised by the commenters. It generally does not address past comments on issues which have been resolved by related statutory or regulatory action or through subsequent published analyses or **Federal Register** notices. Also, it does not address comments which were received at one point but later negated by subsequent comments due to further developments and changed circumstances. The Summary and Analysis of Comments focuses primarily on comments received in response to the June 1993 **Federal Register** notice and unresolved comments from both the August 1987 NPRM and September 1991 **Federal Register** notices.

IV. Regulatory Impact Analysis

As part of the assessment and decision making process regarding ORVR controls, EPA has prepared an in-depth Regulatory Impact Analysis (RIA). This RIA is available in the public docket. The RIA assesses the environmental impact, costs, and cost effectiveness of ORVR controls, as well as other associated benefits, for the combined LDV and LDT program described above for a number of scenarios. It also includes a sensitivity analysis for several key parameters. It should be noted that the RIA was completed prior to EPA's decision to delay the requirements for LDTs and to exclude HDVs. These controls were included in the analysis and were assumed to begin in 1998. EPA expects that inclusion of these items in the analysis has no significant effect on the results and does not affect the conclusions which are based on the analysis. The major findings of the RIA for LDV and LDT ORVR controls are presented below.

Before discussing these key findings, it is important to note that EPA analysis has assumed that ORVR controls will apply nationwide to all vehicle classes. However, the scenarios analyzed focus not only on the overall nationwide control program, but also on the control in the ozone NAAs. Furthermore, since Stage II controls are in place or expected in most of the ozone NAAs, the incremental impacts of ORVR controls relative to Stage II are assessed as well.

A. Environmental Impact

While refueling emissions control has value whenever it occurs, it is most critical during the ozone season. The five month ozone season refueling emission inventory is about 200,000 tons per year; when annualized, this value increases to approximately 475,000 tons per year. Refueling emissions vary directly with fuel use and fuel RVP/temperatures. Approximately 52 percent of refueling emissions occur in AAs and 48 percent occur in NAAs. Of this 48 percent, about 33 percent currently are, or are expected to be, subject to Stage II control equipment. The percentage of gasoline consumption in the NAAs and covered by Stage II is slightly higher (55 and 44 percent respectively) than the contribution to the refueling emission inventory, primarily due to RVP controls.

The emission reductions achieved by ORVR controls depend on the in-use efficiency of the control system and the area in which the control is applied. Based on the stringency of the test procedure the full life useful life certification requirement, and the salutary effect of Inspection/Maintenance (I/M) programs and onboard diagnostics, EPA expects very high in-use efficiency from ORVR

systems. In the ozone NAAs, where RVP control and basic and enhanced I/M are prevalent, EPA expects in-use efficiency of over 95 percent, with a somewhat lower value in attainment areas due to lack of RVP control and I/M. In the ozone NAAs, EPA expects in-use efficiency of approximately 97 percent. The in-use efficiency in attainment areas (which would lack RVP control and enhanced I/M) is somewhat less, and in some cases is predicted to be less than 95 percent. The Agency notes, however, that this prediction is skewed because data for the southeast U.S. indicate that average dispensed fuel temperature in that region is seven fahrenheit degrees higher than anywhere else in the country. EPA is basing its predictions on this information because it is the only available data. However, the Agency knows of no reason why dispensed fuel temperatures should be so much higher in this region. If the same range of dispensed fuel temperatures were used for the southeast region as for the southwest U.S., the in-use efficiency of properly operating systems in all areas would be predicted to average 95 percent.

The benefits vary over time and with the scenario analyzed. Benefits vary over time because of the phase-in of the ORVR requirement and the need for fleet turnover to occur before full implementation of ORVR-equipped vehicles occurs. The key variable with regard to scenarios is the presence and possible phase-out of Stage II controls. ORVR benefits in NAAs include control over service stations in NAAs without Stage II, control at service stations which now receive waivers, and control over vapors missed by Stage II equipment.

For the rulemaking as a whole, neglecting the presence of Stage II controls, LDV/LDT ORVR would achieve average annual emission reductions of over 420,000 tons per year. With Stage II phaseout when ORVR and Stage II would cover the same percent of fuel in use, the average annual emission reduction is about 378,000 tons. Even if Stage II controls are retained, an incremental benefit of 285,000 tons occurs nationwide. Of these reductions, approximately 20 percent occur in NA areas, with the overall percentage in NAAs increasing substantially if Stage II is phased out.

B. Costs of Control

ORVR costs of control are comprised of control system hardware costs plus short term (five year) costs for research, development, and testing (R,D,& T) minus fuel vapor recovery credits. Costs were derived incremental to the effects of enhanced evaporative emissions and RVP control, with the assumption that most vehicles would use integrated evaporative/refueling control systems with liquid seals in the fillneck. The retail price equivalent (RPE) for hardware and R,D,& T costs range from $6–8 for LDVs and LDTs.

Even these small costs are somewhat offset by ORVR fuel recovery credits. The level of the ORVR recovery credit depends on whether Stage II equipment is used when refueling. For the nationwide case, which involves Stage II and non-Stage II areas, the NPV of the recovery credit ranges from $2–$4 per-vehicle for LDVs and LDTs. Accounting for these recovery credits, both short and long term net costs are under $5 for LDVs and LDTs.

EPA assessed the net costs of LDV and LDT ORVR controls for three scenarios. The first (baseline) scenario neglected the presence of Stage II controls, the second accounted for Stage II controls with phaseout in 2010, and the third included Stage II with no phaseout. In each case, the ORVR hardware and R,D,& T costs are the same, but the recovery credit varies. In the first case the average annual cost is about −$6 million over the period 1998–2020. With Stage II present and phasing out in 2010, the average annual costs is $2 million. With no phase out average annual costs increase to $27 million over the period 1998 to 2020. The 1998 NPV costs (discounted at 7 percent to 1998) for the same three scenarios are $102 million, $264 million, and $435 million, respectively. In the cases where costs are negative, it is because the value of the recovery credits exceeds the hardware and R, D, & T costs.

C. Cost Effectiveness

Using the net present value of the costs and emission reduction benefits, EPA has calculated the cost effectiveness of LDV/LDT ORVR controls for the three scenarios mentioned above. For the first case where Stage II controls are neglected, the cost effectiveness is about $35 per ton. In the second case where Stage II control is considered, but phased out in 2010, the cost effectiveness is about $100 per ton. In the final case where Stage II is not phased out, the cost effectiveness is about $210 per ton.

When all costs are included in the calculations but only NAA emission reductions are credited, the cost effectiveness values change. For the first case discussed above, cost effectiveness value is $70 per ton. In the second and third scenarios, the cost effectiveness would increase to about $250 and $775 per ton, respectively.

D. Other Benefits

In addition to the VOC emission reduction benefits cited above, LDV/LDT ORVR controls have other benefits. ORVR controls would result in an average energy savings equivalent to 78 million gallons of gasoline per year between the period 1998 and 2020 assuming no Stage II phaseout and about 108 million gallons per year if Stage II is phased out. In addition, there will be health benefits as a result of reductions in air toxic emissions. Best estimates are the avoidance of about 5–6 cancer incidences per year as a result of lower refueling benzene emissions. Additional cancer avoidances are possible depending on the assumption regarding the toxicological impact of the remainder of the constituents of the gasoline vapor. Reductions in potential non-cancer health effects and welfare benefits such as reduced crop and material damage due to ozone would occur as well.

E. Benefit-Cost Ratio

Comparing the average annual cost and emission reduction benefits shown in the tables presented in the RIA, if even a minimal dollar value of $500 per ton is ascribed to the health and environmental benefits, the dollar benefits of LDV/LDT ORVR controls exceed the costs. The benefit to cost ratio for NA areas ranges from 1.3 for the scenario where Stage II is retained to 32 if Stage II is phased out. If Stage II operating costs which are no longer incurred after Stage II phaseout are considered, there is an annual average monetary savings of about $40 million since the costs of operating the Stage II control technology are eliminated.

V. Consultation With DOT

As required by section 202(a)(6) of the Clean Air Act, EPA has consulted at length with the Department of Transportation before promulgating this rule. Interagency review documents are contained in section IV–H of this rulemaking's docket. In addition, the docket contains a November 1993 DOT/NHTSA report entitled "An Assessment of Onboard Refueling Vapor Recovery System Safety" provided to EPA by DOT/NHTSA as part of the consultation process.

VI. Judicial Review

Under section 307(b)(1) of the Clean Air Act, EPA hereby finds that these regulations are of national applicability. Accordingly, judicial review of this action is available only by filing a

petition for review in the United States Court of Appeals for the District of Columbia Circuit within 60 days of publication. Under section 307(b)(2) of the Act, the requirements which are the subject of today's notice may not be challenged later in judicial proceedings brought by EPA to enforce these requirements.

VII. Statutory Authority

The statutory authority for this proposal is provided by sections 202(a)(1) and (2), 202(a)(6), 206, and 301(a) of the CAA, 42 U.S.C. 7521(a)(1) and (2), 7521(a)(6), 7525, and 7601(a).

VIII. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or he principles set forth in the Executive Order.

These final regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the Order the Administrator has assessed the potential costs and benefits of this regulatory action.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because this rule has an effect on the long-term implications of stationary and mobile source controls and requires interagency consultations. The average annual cost is about $27 million over the period 1998 to 2020, assuming no Stage II phaseout. If Stage II is phased out, recovery credits for ORVR systems increase to the point that average annual costs are only about $2 million (ignoring the savings in Stage II maintenance). As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

IX. Compliance With the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–602, requires that Federal agencies examine the impacts of their regulations on small entities. Under 5 U.S.C. 604(a), whenever an agency is required to publish a rulemaking, it must prepare and make available for public comment a regulatory flexibility analysis (RFA). Such an analysis is not required if the head of an agency certifies that a rule will not have a significant economic impact on a substantial number of small entities, pursuant to 5 U.S.C. 605(b).

The requirements for ORVR systems in this regulation apply to motor vehicle manufacturers. Small LDV manufacturers have been granted a delayed phase-in of the ORVR requirement and LDT manufacturers have a longer leadtime than originally proposed. Therefore, I certify that this rule will not have a significant adverse impact on a substantial number of small entities.

X. Information Collection Requirements

Paperwork Reduction Act

The information collection requirements in this rule will be submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR #783.32) and a copy may be obtained from Sandy Farmer, Information Policy Branch; EPA, 401 M Street, SW., Washington, DC 20460 or by calling 202–260–2740. These requirements are not effective until OMB approves them and a technical amendment to that effect is published in the **Federal Register**.

This collection of information has an estimated annual reporting and recordkeeping burden averaging 334 hours per response. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch; EPA; 401 M Street, SW (Mail Code 2136); Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects

40 CFR Part 86

Administrative practice and procedures, Confidential business information, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

40 CFR Part 88

Motor vehicle pollution, Reporting and recordkeeping requirements.

40 CFR Part 600

Administrative practice and procedure, Electric power, Fuel economy, Labeling, Reporting and recordkeeping requirements.

Dated: January 24, 1994.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, parts 86, 88, and 600 of title 40 of the Code of Federal Regulations are amended as follows:

PART 86—CONTROL OF AIR POLLUTION FROM NEW AND IN-USE MOTOR VEHICLES AND NEW AND IN-USE MOTOR VEHICLE ENGINES: CERTIFICATION AND TEST PROCEDURES

1. The authority citation for part 86 continues to read as follows:

Authority: Secs. 202, 203, 205, 207, 208, 215, 216, and 301(a), Clean Air Act, as amended (42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7549, 7550, 7552, and 7601(a)).

Subpart A—[Amended]

2. A new § 86.001–2 is added to subpart A to read as follows:

§ 86.001–2 Definitions.

The definitions of § 86.098–2 continue to apply to 1998 and later model year vehicles. The definitions listed in this section apply beginning with the 2001 model year.

Useful life means:

(1) For light-duty vehicles, and for light light-duty trucks not subject to the Tier 0 standards of § 86.094–9(a), intermediate useful life and/or full useful life. Intermediate useful life is a period of use of 5 years or 50,000 miles, whichever occurs first. Full useful life is a period of use of 10 years or 100,000 miles, whichever occurs first, except as otherwise noted in § 86.094–9. The useful life of evaporative and/or refueling emission control systems on the portion of these vehicles subject to the evaporative emission test requirements of § 86.130–96, and/or the refueling emission test requirements of § 86.151–2001, is defined as a period of

use of 10 years or 100,000 miles, whichever occurs first.

(2) For light light-duty trucks subject to the Tier 0 standards of § 86.094–9(a), and for heavy light-duty truck engine families, intermediate and/or full useful life. Intermediate useful life is a period of use of 5 years or 50,000 miles, whichever occurs first. Full useful life is a period of use of 11 years or 120,000 miles, whichever occurs first. The useful life of evaporative emission and/or refueling control systems on the portion of these vehicles subject to the evaporative emission test requirements of § 86.130–96, and/or the refueling emission test requirements of § 86.151–2001, is also defined as a period of 11 years or 120,000 miles, whichever occurs first.

(3) For an Otto-cycle heavy-duty engine family:

(i) For hydrocarbon and carbon monoxide standards, a period of use of 8 years or 110,000 miles, whichever first occurs.

(ii) For the oxides of nitrogen standard, a period of use of 10 years or 110,000 miles, whichever first occurs.

(iii) For the portion of evaporative emission control systems subject to the evaporative emission test requirements of § 86.1230–96, a period of use of 10 years or 110,000 miles, whichever occurs first.

(4) For a diesel heavy-duty engine family:

(i) For light heavy-duty diesel engines, for hydrocarbon, carbon monoxide, and particulate standards, a period of use of 8 years or 110,000 miles, whichever first occurs.

(ii) For light heavy-duty diesel engines, for the oxides of nitrogen standard, a period of use of 10 years or 110,000 miles, whichever first occurs.

(iii) For medium heavy-duty diesel engines, for hydrocarbon, carbon monoxide, and particulate standards, a period of use of 8 years or 185,000 miles, whichever first occurs.

(iv) For medium heavy-duty diesel engines, for the oxides of nitrogen standard, a period of use of 10 years or 185,000 miles, whichever first occurs.

(v) For heavy heavy-duty diesel engines, for hydrocarbon, carbon monoxide, and particulate standards, a period of use of 8 years or 290,000 miles, whichever first occurs, except as provided in paragraph (4)(vii) of this definition.

(vi) For heavy heavy-duty diesel engines, for the oxides of nitrogen standard, a period of use of 10 years or 290,000 miles, whichever first occurs.

(vii) For heavy heavy-duty diesel engines used in urban buses, for the particulate standard, a period of use of 10 years or 290,000 miles, whichever first occurs.

3. A new § 86.001–9 is added to subpart A to read as follows:

§ 86.001–9 Emission standards for 2001 and later model year light-duty trucks.

Section 86.001–9 includes text that specifies requirements that differ from § 86.096–9 or § 86.097–9. Where a paragraph in § 86.096–9 or § 86.097–9 is identical and applicable to § 86.001–9, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.096–9." or "[Reserved]. For guidance see § 86.097–9.".

(a) [Reserved]. For guidance see § 86.097–9.

(b) introductory text through (b)(5) [Reserved]. For guidance see § 86.096–9.

(b)(6) Vehicles certified to the refueling standards set forth in paragraph (d) of this section are not required to demonstrate compliance with the Fuel Dispensing Spitback standards contained in § 86.096–9 (b)(1)(iii) and (b)(2)(iii): *Provided*, that they meet the requirements of § 86.001–28(f).

(c) [Reserved]. For guidance see § 86.097–9.

(d) Refueling emissions from 2001 and later model year gasoline-fueled and methanol-fueled Otto-cycle- and petroleum-fueled and methanol-fueled diesel-cycle-light duty trucks of 6,000 pounds or less GVW shall not exceed the following standards. The standards apply equally to certification and in-use vehicles.

(1) *Standards*—(i) *Hydrocarbons (for gasoline-fueled Otto-cycle and petroleum-fueled diesel-cycle vehicles).* 0.20 gram per gallon (0.053 gram per liter) of fuel dispensed.

(ii) *Organic Material Hydrocarbon Equivalent (for methanol-fueled vehicles).* 0.20 gram per gallon (0.053 gram per liter) of fuel dispensed.

(2)(i) The standards set forth in paragraphs (d)(1)(i) and (ii) of this section refer to a sample of refueling emissions collected under the conditions as set forth in subpart B of this part and measured in accordance with those procedures.

(ii) For vehicles powered by petroleum-fueled diesel-cycle engines, the provisions set forth in paragraph (d)(1)(i) of this section may be waived: *Provided*, that the manufacturer complies with the provisions of § 86.001–28(f) of this subpart.

(3) A minimum of the percentage shown in Table A01–09 of a manufacturer's sales of the applicable model year's gasoline- and methanol-fueled Otto-cycle and petroleum-fueled and methanol-fueled diesel-cycle light-duty trucks of 6,000 pounds or less GVW shall be tested under the procedures in subpart B of this part indicated for 2001 and later model years, and shall not exceed the standards described in paragraph (d)(1) of this section. Vehicles certified in accordance with paragraph (d)(2)(ii) of this section, as determined by the provisions of § 86.001–28(g), shall not be counted in the calculation of the percentage of compliance.

TABLE A01–09.—IMPLEMENTATION SCHEDULE FOR LIGHT-DUTY TRUCK REFUELING EMISSION TESTING

Model year	Sales percentage
2001	40
2002	80
2003 and subsequent	100

(e) through (f) [Reserved]

(g) through (k) [Reserved]. For guidance see § 86.097–9.

4. A new § 86.001–21 is added to subpart A to read as follows:

§ 86.001–21 Application for certification.

Section 86.001–21 includes text that specifies requirements that differ from § 86.094–21 or § 86.096–21. Where a paragraph in § 86.094–21 or § 86.096–21 is identical and applicable to § 86.001–21, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.094–21." or "[Reserved]. For guidance see § 86.096–21.".

(a) through (b)(3) [Reserved]. For guidance see § 86.094–21.

(b)(4)(i) For light-duty vehicles and light-duty trucks, a description of the test procedures to be used to establish the evaporative emission and/or refueling emission deterioration factors, as appropriate, required to be determined and supplied in § 86.001–23(b)(2).

(b)(4)(ii) through (b)(5)(iv) [Reserved]. For guidance see § 86.094–21.

(b)(5)(v) For light-duty vehicles and applicable light-duty trucks with non-integrated refueling emission control systems, the number of continuous UDDS cycles, determined from the fuel economy on the UDDS applicable to the test vehicle of that evaporative/refueling emission family-emission control system combination, required to use a volume of fuel equal to 85% of fuel tank volume.

(b)(6) through (8) [Reserved]. For guidance see § 86.094–21.

(b)(9) For each light-duty vehicle, light-duty truck, evaporative/refueling emission family or heavy-duty vehicle

evaporative emission family, a description of any unique procedures required to perform evaporative and/or refueling emission tests, as applicable, (including canister working capacity, canister bed volume, and fuel temperature profile for the running loss test) for all vehicles in that evaporative and/or evaporative/refueling emission family, and a description of the method used to develop those unique procedures.

(10) For each light-duty vehicle or applicable light-duty truck evaporative/refueling emission family, or each heavy-duty vehicle evaporative emission family:

(i) Canister working capacity, according to the procedures specified in § 86.132–96(h)(1)(iv);

(ii) Canister bed volume; and

(iii) Fuel temperature profile for the running loss test, according to the procedures specified in § 86.129–94(d).

(c) through (i) [Reserved]. For guidance see § 86.094–21.

(j) and (k) [Reserved]. For guidance see § 86.096–21.

5. A new § 86.001–22 is added to subpart A to read as follows:

§ 86.001–22 Approval of application for certification; test fleet selections; determinations of parameters subject to adjustment for certification and Selective Enforcement Audit, adequacy of limits, and physically adjustable ranges.

Section 86.001–22 includes text that specifies requirements that differ from § 86.094–22. Where a paragraph in § 86.094–22 is identical and applicable to § 86.001–22, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.094–22.".

(a) through (c) [Reserved]. For guidance see § 86.094–22.

(d) *Approval of test procedures.* (1) The Administrator does not approve the test procedures for establishing the evaporative or refueling emission deterioration factors for light-duty vehicles and light-duty trucks. The manufacturer shall submit the procedures as required in § 86.098–21(b)(4)(i) prior to the Administrator's selection of the test fleet under § 86.098–24(b)(1), and if such procedures will involve testing of durability data vehicles selected by the Administrator or elected by the manufacturer under § 86.098–24(c)(1), prior to initiation of such testing.

(d)(2) through (g) [Reserved]. For guidance see § 86.094–22.

6. A new § 86.001–23 is added to subpart A to read as follows:

§ 86.001–23 Required data.

Section 86.001–23 includes text that specifies requirements that differ from § 86.095–23 or § 86.098–23. Where a paragraph in § 86.095–23 or § 86.098–23 is identical and applicable to § 86.001–23, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.095–23." or "[Reserved]. For guidance see § 86.098–23.".

(a) through (b)(1) [Reserved]. For guidance see § 86.095–23.

(b)(2) For light-duty vehicles and light-duty trucks, the manufacturer shall submit evaporative emission and/or refueling emission deterioration factors for each evaporative/refueling emission family-emission control system combination and all test data that are derived from testing described under § 86.001–21(b)(4)(i) designed and conducted in accordance with good engineering practice to assure that the vehicles covered by a certificate issued under § 86.001–30 will meet the evaporative and/or refueling emission standards in § 86.099–8 or § 86.001–9, as appropriate, for the useful life of the vehicle.

(b)(3) through (b)(4)(ii) [Reserved]. For guidance see § 86.095–23.

(b)(4)(iii) [Reserved]. For guidance see § 86.098–23.

(c) through (e)(1) [Reserved]. For guidance see § 86.095–23.

(e)(2) For evaporative and refueling emission durability, or light-duty truck or heavy-duty engine exhaust emission durability, a statement of compliance with paragraph (b)(2) of this section or § 86.095–23 (b)(1)(ii), (b)(3) or (b)(4) (i) and (ii) or § 86.098–23 (b)(4)(iii), as applicable.

(3) For certification of vehicles with non-integrated refueling systems, a statement that the drivedown used to purge the refueling canister was the same as described in the manufacturers' application for certification. Furthermore, a description of the procedures used to determine the number of equivalent UDDS miles required to purge the refueling canisters, as determined by the provisions of § 86.098–21(b)(5)(v) and subpart B. Furthermore, a written statement to the Administrator that all data, analyses, test procedures, evaluations and other documents, on which the above statement is based, are available to the Administrator upon request.

(f) through (l) [Reserved]. For guidance see § 86.095–23.

(m) [Reserved]. For guidance see § 86.098.23.

7. A new § 86.001–24 is added to subpart A to read as follows:

§ 86.001–24 Test vehicles and engines.

Section 86.001–24 includes text that specifies requirements that differ from § 86.096–24 or § 86.098–24. Where a paragraph in § 86.096–24 or § 86.098–24 is identical and applicable to § 86.001–24, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.096–24." or "[Reserved]. For guidance see § 86.098–24.".

(a) introductory text through (a)(4) [Reserved]. For guidance see § 86.096–24.

(a)(5) through (a)(7) [Reserved]. For guidance see § 86.098–24.

(a)(8) through (b)(1)(vi) [Reserved]. For guidance see § 86.096–24.

(b)(1)(vii)(A) through (b)(1)(viii)(A) [Reserved]. For guidance see § 86.098–24.

(b)(viii)(B) through (e) [Reserved]. For guidance see § 86.096–24.

(f) *Carryover and carryacross of durability and emission data.* In lieu of testing an emission-data or durability vehicle (or engine) selected under § 86.096–24 (b) or (c), and submitting data therefor, a manufacturer may, with the prior written approval of the Administrator, submit exhaust emission data, evaporative emission data and/or refueling emission data, as applicable, on a similar vehicle (or engine) for which certification has been obtained or for which all applicable data required under § 86.098–23 has previously been submitted.

(g) through (h) [Reserved]. For guidance see § 86.096–24.

8. A new § 86.001–25 is added to subpart A to read as follows:

§ 86.001–25 Maintenance.

Section 86.001–25 includes text that specifies requirements that differ from § 86.094–25 or § 86.098–25. Where a paragraph in § 86.094–25 or § 86.098–25 is identical and applicable to § 86.001–25, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.094–25." or "[Reserved]. For guidance see § 86.098–25.".

(a)(1) [Reserved]. For guidance see § 86.094–25.

(a)(2) Maintenance performed on vehicles, engines, subsystems, or components used to determine exhaust, evaporative or refueling emission deterioration factors, as appropriate, is classified as either emission-related or non-emission-related and each of these can be classified as either scheduled or unscheduled. Further, some emission-related maintenance is also classified as critical emission-related maintenance.

(b) Introductory text through (b)(3)(vi)(D) [Reserved]. For guidance see § 86.094–25.

(b)(3)(vi)(E) through (b)(3)(vi)(J) [Reserved]. For guidance see § 86.098–25.

(b)(3)(vii) through (b)(6)(i)(E) [Reserved]. For guidance see § 86.094–25.

(b)(6)(i)(F) Evaporative and refueling emission control system components (excluding canister air filter).

(b)(6)(i)(G) through (H) [Reserved]. For guidance see § 86.094–25.

9. A new § 86.001–26 is added to subpart A to read as follows:

§ 86.001–26 Mileage and service accumulation; emission measurements.

Section 86.001–26 includes text that specifies requirements that differ from § 86.094–26, § 86.095–26, § 86.096–26 or § 86.098–26. Where a paragraph in § 86.094–26, § 86.095–26, § 86.096–26 or § 86.098–26 is identical and applicable to § 86.001–26, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.094–26." or "[Reserved]. For guidance see § 86.095–26."or "[Reserved]. For guidance see § 86.096–26." or "[Reserved]. For guidance see § 86.098–26.".

(a)(1) and (2) [Reserved]. For guidance see § 86.094–26.

(a)(3) introductory text through (a)(3)(i)(A) [Reserved]. For guidance see § 86.098–26.

(a)(3)(i)(B) through (a)(3)(ii)(B) [Reserved]. For guidance see § 86.094–26.

(a)(3)(ii)(C) [Reserved]. For guidance see § 86.098–26.

(a)(3)(ii)(D) through (b)(2)(iii) [Reserved]. For guidance see § 86.094–26.

(b)(2)(iv) Service or mileage accumulation which may be part of the test procedures used by the manufacturer to establish evaporative and/or refueling emission deterioration factors.

(b)(3) through (b)(4)(i)(B) [Reserved]. For guidance see § 86.094–26.

(b)(4)(i)(C) Exhaust, evaporative and/or refueling emission tests for emission-data vehicle(s) selected for testing under § 86.096–24(b)(1) (ii), (iii) or (iv)(A) or § 86.098–24 (b)(1)(vii) shall be conducted at the mileage (2,000 mile minimum) at which the engine-system combination is stabilized for emission testing or at 6,436 kilometer (4,000 mile) test point under low-altitude conditions.

(b)(4)(i)(D) through (b)(4)(ii)(B) [Reserved]. For guidance see § 86.095–26.

(b)(4)(ii)(C) Exhaust, evaporative and/or refueling emission tests for emission data vehicle(s) selected for testing under § 86.094–24(b)(1) (ii), (iii), and (iv) shall be conducted at the mileage (2,000 mile minimum) at which the engine-system combination is stabilized for emission testing or at the 6,436 kilometer (4,000 mile) test point under low-altitude conditions.

(b)(4)(ii)(D) [Reserved]. For guidance see § 86.095–26.

(b)(4)(iii) [Reserved]

(b)(iv) through (c)(3) [Reserved]. For guidance see § 86.094–26.

(c)(4) [Reserved]. For guidance see § 86.096–26.

(d) [Reserved]. For guidance see § 86.094–26.

10. A new § 86.001–28 is added to subpart A to read as follows:

§ 86.001–28 Compliance with emission standards.

Section 86.001–28 includes text that specifies requirements that differ from §§ 86.094–28 and 86.098–28. Where a paragraph in § 86.094–28 or § 86.098–28 is identical and applicable to § 86.001–28, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.094–28." or "[Reserved]. For guidance see § 86.098–28.".

(a)(1) [Reserved]. For guidance see § 86.094–28.

(a)(2) [Reserved]. For guidance see § 86.098–28.

(a)(3) [Reserved]. For guidance see § 86.094–28.

(a)(4) introductory text through (a)(4)(i) introductory text [Reserved]. For guidance see § 86.098–28.

(a)(4)(i)(A) and (a)(4)(i)(B) [Reserved]. For guidance see § 86.094–28.

(a)(4)(i) (C) through (D) [Reserved]. For guidance see § 86.098–28.

(a)(4)(ii)(A) [Reserved]. For guidance see § 86.094–28.

(a)(4)(ii) (B) through (C) [Reserved]. For guidance see § 86.098–28.

(a)(4)(iii) [Reserved]. For guidance see § 86.098–28.

(a)(4)(iv) [Reserved]. For guidance see § 86.094–28.

(a)(4)(v) [Reserved]. For guidance see § 86.098–28.

(a) (5) and (6) [Reserved]. For guidance see § 86.094–28.

(a)(7) introductory text through (a)(7)(i) [Reserved]. For guidance see § 86.098–28.

(a)(7)(ii) [Reserved]. For guidance see § 86.094–28.

(b)(1) Paragraph (b) of this section applies to light-duty trucks.

(2) Each exhaust, evaporative and refueling emission standard (and family emission limits, as appropriate) of § 86.001–9 applies to the emissions of vehicles for the appropriate useful life as defined in §§ 86.098–2 and 86.001–9.

(b)(3) through (b)(6) [Reserved]. For guidance see § 86.094–28.

(b)(7)(i) Paragraph (b)(7) of this section describes the procedure for determining compliance of a new vehicle with evaporative emission standards. The procedure described here shall be used for all vehicles in applicable model years.

(ii) The manufacturer shall determine, based on testing described in § 86.001–21(b)(4)(i)(A), and supply an evaporative emission deterioration factor for each evaporative/refueling emission family-emission control system combination. The factor shall be calculated by subtracting the emission level at the selected test point from the emission level at the useful life point.

(iii) The official evaporative emission test results for each evaporative/refueling emission-data vehicle at the selected test point shall be adjusted by the addition of the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than zero, it shall be zero for the purposes of this paragraph.

(iv) The emission value to compare with the standards shall be the adjusted emission value of paragraph (b)(7)(iii) of this section rounded to two significant figures in accordance with ASTM E 29–67 (reapproved 1980) (as referenced in § 86.094–28(a)(4)(i)(B)(*2*)(*ii*))for each evaporative emission-data vehicle.

(8)(i) Paragraph (b)(8) of this section describes the procedure for determining compliance of a new vehicle with refueling emission standards. The procedure described here shall be used for all applicable vehicles in the applicable model years.

(ii) The manufacturer shall determine, based on testing described in § 86.098–21(b)(4)(i)(B), and supply a refueling emission deterioration factor for each evaporative/refueling emission family-emission control system combination. The factor shall be calculated by subtracting the emission level at the selected test point from the emission level at the useful life point.

(iii) The official refueling emission test results for each evaporative/refueling emission-data vehicle at the selected test point shall be adjusted by the addition of the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than zero, it shall be zero for the purposes of this paragraph.

(iv) The emission value to compare with the standards shall be the adjusted emission value of paragraph (b)(8)(iii) of this section rounded to two significant figures in accordance with ASTM E 29–

67 (reapproved 1980) (as referenced in § 86.094–28(a)(4)(i)(B)(*2*)(*ii*)) for each evaporative emission-data vehicle.

(9) Every test vehicle of an engine family must comply with all applicable standards (and family emission limits, as appropriate), as determined in paragraphs (b)(4)(iv), (b)(7)(iv) and (b)(8)(iv) of this section, before any vehicle in that family will be certified.

(c) through (d) [Reserved]. For guidance see § 86.094–28.

(e) [Reserved]

(f) *Fuel dispensing spitback testing waiver.* (1) Vehicles certified to the refueling emission standards set forth in §§ 86.098–8, 86.099–8 and 86.001–9 are not required to demonstrate compliance with the fuel dispensing spitback standards contained in these sections: *Provided,* that—

(i) The manufacturer certifies that the vehicle inherently meets the Dispensing Spitback Standard as part of compliance with the refueling emission standard.

(ii) This certification is provided in writing and applies to the full useful life of the vehicle.

(2) EPA retains the authority to require testing to enforce compliance and to prevent non-compliance with the Fuel Dispensing Spitback Standard.

(g) *Inherently low refueling emission testing waiver.* (1) Vehicles using fuels/fuel systems inherently low in refueling emissions are not required to conduct testing to demonstrate compliance with the refueling emission standards set forth in §§ 86.098–8, 86.099–8 or 86.001–9: *Provided,* that—

(i) This provision is only available for petroleum diesel fuel. It is only available if the Reid Vapor Pressure of in-use diesel fuel is equal to or less than 1 psi (7 Kpa) and for diesel vehicles whose fuel tank temperatures do not exceed 130 °F (54 °C); and

(ii) To certify using this provision the manufacturer must attest to the following evaluation: "Due to the low vapor pressure of diesel fuel and the vehicle tank temperatures, hydrocarbon vapor concentrations are low and the vehicle meets the 0.20 grams/gallon refueling emission standard without a control system."

(2) The certification required in paragraph (g)(1)(ii) of this section must be provided in writing and must apply for the full useful life of the vehicle.

(3) EPA reserves the authority to require testing to enforce compliance and to prevent noncompliance with the refueling emission standard.

(4) Vehicles certified to the refueling emission standard under this provision shall not be counted in the sales percentage compliance determinations for the 2001, 2002 and subsequent model years.

11. A new § 86.001–30 is added to subpart A to read as follows:

§ 86.001–30 Certification.

Section 86.001–30 includes text that specifies requirements that differ from § 86.094–30, § 86.095–30 or § 86.098–30. Where a paragraph in § 86.094–30, § 86.095–30 or § 86.098–30 is identical and applicable to § 86.001–30, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.094–30." or "[Reserved]. For guidance see § 86.095–30." or "[Reserved]. For guidance see § 86.098–30.".

(a)(1) and (a)(2) [Reserved]. For guidance see § 86.094–30.

(a)(3)(i) [Reserved]. For guidance see § 86.098–30.

(a)(3)(ii) through (a)(4)(ii) [Reserved]. For guidance see § 86.095–30.

(a)(4)(iii) introductory text through (a)(4)(iii)(C) [Reserved]. For guidance see § 86.094–30.

(a)(4)(iv) introductory text [Reserved]. For guidance see § 86.095–30.

(a)(4)(iv)(A) through (a)(12) [Reserved]. For guidance see § 86.094–30.

(a)(13) [Reserved]. For guidance see § 86.095–30.

(a)(14) [Reserved]. For guidance see § 86.094–30.

(a) (15) through (18) [Reserved]. For guidance see § 86.096–30.

(a)(19) [Reserved]. For guidance see § 86.098–30.

(a)(20) For all light-duty trucks certified to refueling emission standards under § 86.001–9, the provisions of paragraphs (a)(20) (i) through (iii) this section apply.

(i) All certificates issued are conditional upon the manufacturer complying with all provisions of § 86.001–9 both during and after model year production.

(ii) Failure to meet the required implementation schedule sales percentages as specified in § 86.001–9 will be considered to be a failure to satisfy the conditions upon which the certificate(s) was issued and the individual vehicles sold in violation of the implementation schedule shall not be covered by the certificate.

(iii) The manufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied.

(b)(1) introductory text through (b)(1)(i) [Reserved]. For guidance see § 86.094–30.

(b)(1)(ii)(A) [Reserved]. For guidance see § 86.094–30.

(b)(1)(ii)(B) The emission data vehicle(s) selected under § 86.001–24(b)(vii) (A) and (B) shall represent all vehicles of the same evaporative/refueling control system within the evaporative/refueling family.

(b)(1)(ii)(C) [Reserved]. For guidance see § 86.094–30.

(b)(1)(ii)(D) The emission-data vehicle(s) selected under § 86.098–24(b)(1)(viii) shall represent all vehicles of the same evaporative/refueling control system within the evaporative/refueling emission family, as applicable.

(b)(1) (iii) and (iv) [Reserved]. For guidance see § 86.094–30.

(b)(2) [Reserved]. For guidance see § 86.098–30.

(b)(3) through (b)(4)(i) [Reserved]. For guidance see § 86.094–30.

(b)(4)(ii) introductory text [Reserved]. For guidance see § 86.098–30.

(b)(4)(ii)(A) [Reserved]. For guidance see § 86.094–30.

(b)(4)(ii)(B) through (iv) [Reserved]. For guidance see § 86.098–30.

(b)(5) through (e) [Reserved]. For guidance see § 86.094–30.

(f) introductory text through (f)(3) [Reserved]. For guidance see § 86.095–30.

(f)(4) [Reserved]. For guidance see § 86.098–30.

12. A new § 86.001–35 is added to subpart A to read as follows:

§ 86.001–35 Labeling.

Section 86.001–35 includes text that specifies requirements that differ from § 86.095–35, § 86.096–35 and § 86.098–35. Where a paragraph in § 86.095–35, § 86.096–35 or § 86.098–35 is identical and applicable to § 86.001–35, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.095–35." or [Reserved]. For guidance see § 86.096–35. or "[Reserved]. For guidance see § 86.098–28.".

(a) introductory text through (a)(1)(iii)(B) [Reserved]. For guidance see § 86.095–35.

(a)(1)(iii)(C) [Reserved]. For guidance see § 86.098–35.

(a)(1)(iii)(D) through (L) [Reserved]. For guidance see § 86.095–35.

(a)(1)(iii)(M) [Reserved]. For guidance see § 86.098–35.

(a)(1)(iii)(N) [Reserved]. For guidance see § 86.096–35.

(a)(2) heading through (a)(2)(iii)(B) [Reserved]. For guidance see § 86.095–35.

(a)(2)(iii)(C) Engine displacement (in cubic inches or liters), engine family identification and evaporative/refueling family identification.

(a)(2)(iii)(D) through (a)(2)(iii)(E) [Reserved]. For guidance see § 86.095–35.

(a)(2)(iii)(F) [Reserved]

(a)(2)(iii)(G) through (a)(2)(iii)(K) [Reserved]. For guidance see § 86.095–35.

(a)(2)(iii)(L) [Reserved].

(a)(2)(iii)(M) through (a)(2)(iii)(N) [Reserved]. For guidance see § 86.095–35.

(a)(2)(iii) (O) through (P) [Reserved]. For guidance see § 86.096–35.

(a)(3) heading through (a)(4)(iii)(F) [Reserved]. For guidance see § 86.095–35.

(a)(4)(ii)(G) [Reserved]. For guidance see § 86.096–35.

(b) through (i) [Reserved]. For guidance see § 86.095–35.

13. A new § 86.004–9 is added to subpart A to read as follows:

§ 86.004–9 Emission standards for 2004 and later model year light-duty trucks.

Section 86.004–9 includes text that specifies requirements that differ from § 86.096–9 or § 86.097–9. Where a paragraph in § 86.096–9 or § 86.097–9 is identical and applicable to § 86.004–9, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.096–9." or "[Reserved]. For guidance see § 86.097–9.".

(a) [Reserved]. For guidance see § 86.097–9.

(b) introductory text through (b)(5) [Reserved]. For guidance see § 86.096–9.

(b)(6) Vehicles certified to the refueling standards set forth in paragraph (d) of this section are not required to demonstrate compliance with the Fuel Dispensing Spitback standards contained in § 86.096–9 (b)(1)(iii) and (b)(2)(iii): *Provided*, that they meet the requirements of § 86.001–28(f).

(c) [Reserved]. For guidance see § 86.097–9.

(d) Refueling emissions from 2004 and later model year gasoline-fueled and methanol-fueled Otto-cycle and petroleum-fueled and methanol-fueled diesel-cycle light duty trucks shall not exceed the following standards. The standards apply equally to certification and in-use vehicles.

(1) *Standards*—(i) *Hydrocarbons (for gasoline-fueled Otto-cycle and petroleum-fueled diesel-cycle vehicles).* 0.20 gram per gallon (0.053 gram per liter) of fuel dispensed.

(ii) *Organic Material Hydrocarbon Equivalent (for methanol-fueled vehicles).* 0.20 gram per gallon (0.053 gram per liter) of fuel dispensed.

(2)(i) The standards set forth in paragraphs (d)(1) (i) and (ii) of this section refer to a sample of refueling emissions collected under the conditions as set forth in subpart B of this part and measured in accordance with those procedures.

(ii) For vehicles powered by petroleum-fueled diesel-cycle engines, the provisions set forth in paragraph (d)(1)(i) of this section may be waived: *Provided*, that the manufacturer complies with the provisions of § 86.001–28(f) of this subpart.

(iii) Heavy-duty vehicles certified as light-duty trucks under the provisions of § 86.085–1 shall comply with the provisions of paragraphs (d)(1) (i) and (ii) of this section.

(3)(i) All light-duty trucks of a GVWR equal to 6,000 pounds or less (100%) must meet the refueling emission standard.

(ii) A minimum of the percentage shown in Table A04–09 of a manufacturer's sales of the applicable model year's gasoline- and methanol-fueled Otto-cycle and petroleum-fueled and methanol-fueled diesel-cycle light-duty trucks of 6,001 to 8,500 pounds GVW shall be tested under the procedures in subpart B of this part indicated for 2004 and later model years, and shall not exceed the standards described in paragraph (d)(1) of this section. Vehicles certified in accordance with paragraph (d)(2)(ii) of this section, as determined by the provisions of § 86.001–28(g), shall not be counted in the calculation of the percentage of compliance.

TABLE A04–09.—IMPLEMENTATION SCHEDULE FOR LIGHT-DUTY TRUCK REFUELING EMISSION TESTING

Model year	Sales percentage
2004	40
2005	80
2006 and subsequent	100

(e) through (f) [Reserved]

(g) through (k) [Reserved]. For guidance see § 86.097–9.

14. A new § 86.004–28 is added to subpart A to read as follows:

§ 86.004–28 Compliance with emission standards.

Section 86.004–28 includes text that specifies requirements that differ from §§ 86.094–28 and 86.098–28. Where a paragraph in § 86.094–28 or § 86.098–28 is identical and applicable to § 86.001–28, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.094–28." or "[Reserved]. For guidance see § 86.098–28.".

(a)(1) [Reserved]. For guidance see § 86.094–28.

(a)(2) [Reserved]. For guidance see § 86.098–28.

(a)(3) [Reserved]. For guidance see § 86.094–28.

(a)(4) introductory text through (a)(4(i) introductory text [Reserved]. For guidance see § 86.098–28.

(a)(4)(i)(A) and (a)(4)(i)(B) [Reserved]. For guidance see § 86.094–28.

(a) (5) and (6) [Reserved]. For guidance see § 86.094–28.

(a)(7) introductory text through (a)(7)(i) [Reserved]. For guidance see § 86.098–28.

(a)(7)(ii) [Reserved]. For guidance see § 86.094–28.

(b)(1) Paragraph (b) of this section applies to light-duty trucks.

(2) Each exhaust, evaporative and refueling emission standard (and family emission limits, as appropriate) of § 86.004–9 applies to the emissions of vehicles for the appropriate useful life as defined in §§ 86.098–2 and 86.001–9.

(b)(3) through (b)(6) [Reserved]. For guidance see § 86.094–28.

(b)(7)(i) Paragraph (b)(7) of this section describes the procedure for determining compliance of a new vehicle with evaporative emission standards. The procedure described here shall be used for all vehicles in applicable model years.

(ii) The manufacturer shall determine, based on testing described in § 86.001–21(b)(4)(i)(A), and supply an evaporative emission deterioration factor for each evaporative/refueling emission family-emission control system combination. The factor shall be calculated by subtracting the emission level at the selected test point from the emission level at the useful life point.

(iii) The official evaporative emission test results for each evaporative/refueling emission-data vehicle at the selected test point shall be adjusted by the addition of the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than zero, it shall be zero for the purposes of this paragraph.

(iv) The emission value to compare with the standards shall be the adjusted emission value of paragraph (b)(7)(iii) of this section rounded to two significant figures in accordance with ASTM E 29–67 (reapproved 1980) (as referenced in § 86.094–28(a)(4)(i)(B)(*2*)(*ii*)) for each evaporative emission-data vehicle.

(8)(i) Paragraph (b)(8) of this section describes the procedure for determining compliance of a new vehicle with refueling emission standards. The procedure described here shall be used

for all applicable vehicles in the applicable model years.

(ii) The manufacturer shall determine, based on testing described in § 86.098–21(b)(4)(i)(B), and supply a refueling emission deterioration factor for each evaporative/refueling emission family-emission control system combination. The factor shall be calculated by subtracting the emission level at the selected test point from the emission level at the useful life point.

(iii) The official refueling emission test results for each evaporative/refueling emission-data vehicle at the selected test point shall be adjusted by the addition of the appropriate deterioration factor. However, if the deterioration factor supplied by the manufacturer is less than zero, it shall be zero for the purposes of this paragraph.

(iv) The emission value to compare with the standards shall be the adjusted emission value of paragraph (b)(8)(iii) of this section rounded to two significant figures in accordance with ASTM E 29–67 (reapproved 1980) (as referenced in § 86.094–28 (a)(4)(i)(B)(*2*)(*ii*)) for each evaporative emission-data vehicle.

(9) Every test vehicle of an engine family must comply with all applicable standards (and family emission limits, as appropriate), as determined in § 86.094–28(b)(4)(iv) and paragraphs (b)(7)(iv) and (b)(8)(iv) of this section, before any vehicle in that family will be certified.

(c) through (d) [Reserved]. For guidance see § 86.094–28.

(e) [Reserved]

(f) *Fuel dispensing spitback testing waiver.* (1) Vehicles certified to the refueling emission standards set forth in §§ 86.099–8, 86.001–9 and 86.004–9 are not required to demonstrate compliance with the fuel dispensing spitback standards contained in these sections: *Provided*, that—

(i) The manufacturer certifies that the vehicle inherently meets the Dispensing Spitback Standard as part of compliance with the refueling emission standard; and

(ii) This certification is provided in writing and applies to the full useful life of the vehicle.

(2) EPA retains the authority to require testing to enforce compliance and to prevent non-compliance with the Fuel Dispensing Spitback Standard.

(g) *Inherently low refueling emission testing waiver.* (1) Vehicles using fuels/fuel systems inherently low in refueling emissions are not required to conduct testing to demonstrate compliance with the refueling emission standards set forth in §§ 86.099–8, 86.001–9 or 86.004–9: *Provided*, that—

(i) This provision is only available for petroleum diesel fuel. It is only available if the Reid Vapor Pressure of in-use diesel fuel is equal to or less than 1 psi (7 kPa) and for diesel vehicles whose fuel tank temperatures do not exceed 13 °F (54 °C), and

(ii) To certify using this provision the manufacturer must attest to the following evaluation: "Due to the low vapor pressure of diesel fuel and the vehicle tank temperatures, hydrocarbon vapor concentrations are low and the vehicle meets the 0.20 grams/gallon refueling emission standard without a control system."

(2) The certification required in paragraph (g)(1)(ii) of this section must be provided in writing and must apply for the full useful life of the vehicle.

(3) EPA reserves the authority to require testing to enforce compliance and to prevent noncompliance with the refueling emission standard.

(4) Vehicles certified to the refueling emission standard under this provision shall not be counted in the sales percentage compliance determinations for the 2004, 2005 and subsequent model years.

15. A new § 86.004–30 is added to subpart A to read as follows:

§ 86.004–30 Certification.

Section 86.004–30 includes text that specifies requirements that differ from §§ 86.094–30, 86.095–30, 86.096–30, 86.098–30 or 86.001–30. Where a paragraph in § 86.094–30, § 86.095–30, § 86.096–30, § 86.098–30 or § 86.001–30 is identical and applicable to § 86.004–30, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.094–30." or "[Reserved]. For guidance see § 86.095–30." or "[Reserved]. For guidance see § 86.096–30." or "[Reserved]. For guidance see § 86.098–30." or "[Reserved]. For guidance see § 86.001–30.".

(a)(1) and (a)(2) [Reserved]. For guidance see § 86.094–30.

(a)(3)(i) [Reserved]. For guidance see § 86.098–30.

(a)(3)(ii) through (a)(4)(ii) [Reserved]. For guidance see § 86.095–30.

(a)(4)(iii) introductory text through (a)(4)(iii)(C) [Reserved]. For guidance see § 86.094–30.

(a)(4)(iv) introductory text [Reserved]. For guidance see § 86.095–30.

(a)(4)(iv)(A) through (a)(12) [Reserved]. For guidance see § 86.094–30.

(a)(13) [Reserved]. For guidance see § 86.095–30.

(a)(14) [Reserved]. For guidance see § 86.094–30.

(a) (15) through (18) [Reserved]. For guidance see § 86.096–30.

(a)(19) [Reserved]. For guidance see § 86.098–30.

(a)(20) [Reserved]. For guidance see § 86.001–30.

(a)(21) For all light-duty trucks certified to refueling emission standards under § 86.004–9, the provisions of paragraphs (a)(21) (i) through (iii) of this section apply.

(i) All certificates issued are conditional upon the manufacturer complying with all provisions of § 86.004–9 both during and after model year production.

(ii) Failure to meet the required implementation schedule sales percentages as specified in § 86.004–9 will be considered to be a failure to satisfy the conditions upon which the certificate(s) was issued and the individual vehicles sold in violation of the implementation schedule shall not be covered by the certificate.

(iii) The manufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied.

(b)(1) introductory text through (b)(1)(ii)(A) [Reserved]. For guidance see § 86.094–30.

(b)(1)(ii)(B) The emission data vehicle(s) selected under § 86.001–24(b)(vii) (A) and (B) shall represent all vehicles of the same evaporative/refueling control system within the evaporative/refueling family.

(b)(1)(ii)(C) [Reserved]. For guidance see § 86.094–30.

(b)(1)(ii)(D) The emission-data vehicle(s) selected under § 86.098–24(b)(1)(viii) shall represent all vehicles of the same evaporative/refueling control system within the evaporative/refueling emission family, as applicable.

(b)(1)(iii) and (b)(1)(iv) [Reserved]. For guidance see § 86.094–30.

(b)(2) [Reserved]. For guidance see § 86.098–30.

(b)(3) through (b)(4)(i) [Reserved]. For guidance see § 86.094–30.

(b)(4)(ii) introductory text [Reserved]. For guidance see § 86.098–30.

(b)(4)(ii)(A) [Reserved]. For guidance see § 86.094–30.

(b)(4)(ii)(B) through (b)(4)(iv) [Reserved]. For guidance see § 86.098–30.

(b)(5) through (e) [Reserved]. For guidance see § 86.094–30.

(f) introductory text through (f)(3) [Reserved]. For guidance see § 86.095–30.

(f)(4) [Reserved]. For guidance see § 86.098–30.

16. Section 86.098–2 of subpart A is revised to read as follows:

§ 86.098–2 Definitions.

The definitions of § 86.096–2 continue to apply to 1996 and later model year vehicles. The definitions listed in this section apply beginning with the 1998 model year.

Dispensed fuel temperature means the temperature (deg.F or deg.C may be used) of the fuel being dispensed into the tank of the test vehicle during a refueling test.

Evaporative/refueling emission control system means a unique combination within an evaporative/refueling family of canister adsorptive material, purge system configuration, purge strategy, and other parameters determined by the Administrator to affect evaporative and refueling emission control system durability or deterioration factors.

Evaporative/refueling emission family means the basic classification unit of a manufacturers' product line used for the purpose of evaporative and refueling emissions test fleet selection and determined in accordance with § 86.098–24.

Integrated refueling emission control system means a system where vapors resulting from refueling are stored in a common vapor storage unit(s) with other evaporative emissions of the vehicle and are purged through a common purge system.

Non-integrated refueling emission control system means a system where fuel vapors from refueling are stored in a vapor storage unit assigned solely to the function of storing refueling vapors.

Refueling emissions means evaporative emissions that emanate from a motor vehicle fuel tank(s) during a refueling operation.

Refueling emissions canister(s) means any vapor storage unit(s) that is exposed to the vapors generated during refueling.

Resting losses means evaporative emissions that may occur continuously, that are not diurnal emissions, hot soak emissions, refueling emissions, running losses, or spitback emissions.

Useful life means:

(1) For light-duty vehicles, and for light light-duty trucks not subject to the Tier 0 standards of § 86.094–9(a), intermediate useful life and/or full useful life. Intermediate useful life is a period of use of 5 years or 50,000 miles, whichever occurs first. Full useful life is a period of use of 10 years or 100,000 miles, whichever occurs first, except as otherwise noted in § 86.094–9. The useful life of evaporative and/or refueling emission control systems on the portion of these vehicles subject to the evaporative emission test requirements of § 86.130–96, and/or the refueling emission test requirements of § 86.151–98, is defined as a period of use of 10 years or 100,000 miles, whichever occurs first.

(2) For light light-duty trucks subject to the Tier 0 standards of § 86.094–9(a), and for heavy light-duty truck engine families, intermediate and/or full useful life. Intermediate useful life is a period of use of 5 years or 50,000 miles, whichever occurs first. Full useful life is a period of use of 11 years or 120,000 miles, whichever occurs first. The useful life of evaporative emission control systems on the portion of these vehicles subject to the evaporative emission test requirements of § 86.130–96 is also defined as a period of 11 years or 120,000 miles, whichever occurs first.

(3) For an Otto-cycle heavy-duty engine family:

(i) For hydrocarbon and carbon monoxide standards, a period of use of 8 years or 110,000 miles, whichever first occurs.

(ii) For the oxides of nitrogen standard, a period of use of 10 years or 110,000 miles, whichever first occurs.

(iii) For the portion of evaporative emission control systems subject to the evaporative emission test requirements of § 86.1230–96, a period of use of 10 years or 110,000 miles, whichever occurs first.

(4) For a diesel heavy-duty engine family:

(i) For light heavy-duty diesel engines, for hydrocarbon, carbon monoxide, and particulate standards, a period of use of 8 years or 110,000 miles, whichever first occurs.

(ii) For light heavy-duty diesel engines, for the oxides of nitrogen standard, a period of use of 10 years or 110,000 miles, whichever first occurs.

(iii) For medium heavy-duty diesel engines, for hydrocarbon, carbon monoxide, and particulate standards, a period of use of 8 years or 185,000 miles, whichever first occurs.

(iv) For medium heavy-duty diesel engines, for the oxides of nitrogen standard, a period of use of 10 years or 185,000 miles, whichever first occurs.

(v) For heavy heavy-duty diesel engines, for hydrocarbon, carbon monoxide, and particulate standards, a period of use of 8 years or 290,000 miles, whichever first occurs, except as provided in paragraph (3)(vii) of this definition.

(vi) For heavy heavy-duty diesel engines, for the oxides of nitrogen standard, a period of use of 10 years or 290,000 miles, whichever first occurs.

(vii) For heavy heavy-duty diesel engines used in urban buses, for the particulate standard, a period of use of 10 years or 290,000 miles, whichever first occurs.

17. A new § 86.098–3 is added to subpart A to read as follows:

§ 86.098–3 Abbreviations.

(a) The abbreviations in § 86.094–3 continue to apply to 1996 and later model year vehicles. The abbreviations in this section apply beginning with the 1998 model year.

(b) The abbreviations in this section apply to this subpart, and also to subparts B, E, F, G, K, M, N, and P of this part, and have the following meanings:

T_D—dispensed fuel temperature

18. A new § 86.098–7 is added to subpart A to read as follows:

§ 86.098–7 Maintenance of records; submittal of information; right of entry.

Section 86.098–7 includes text that specifies requirements that differ from those specified in §§ 86.091–7, 86.094–7 and 86.096–7. Where a paragraph in § 86.091–7, § 86.094–7 or § 86.096–7 is identical and applicable to § 86.098–7, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.091–7." or "[Reserved]. For guidance see § 86.094–7." or "[Reserved]. For guidance see § 86.096–7.".

(a) Introductory text through (a)(2) [Reserved]. For guidance see § 86.091–7.

(a)(3) [Reserved]. For guidance see § 86.094–7.

(b) through (c)(2) [Reserved]. For guidance see § 86.091–7.

(c)(3) [Reserved]. For guidance see § 86.094–7.

(c)(4) through (d)(1)(v) [Reserved]. For guidance see § 86.091–7.

(d)(1)(vi) through (d)(2)(iv) [Reserved]. For guidance see § 86.094–7.

(d)(3) through (g) [Reserved]. For guidance see § 86.091–7.

(h)(6) *Voiding a certificate.* (i) EPA may void ab initio a certificate for a vehicle certified to Tier 0 certification standards or to the respective evaporative and/or refueling test procedure and accompanying evaporative and/or refueling standards as set forth or otherwise referenced in §§ 86.098–8, 86.098–9, or 86.098–10 for which the manufacturer fails to retain the records required in this section or to provide such information to the Administrator upon request.

(h)(6)(ii) to (h)(7)(vi) [Reserved]. For guidance see § 86.096–7.

(h)(6)(vii) EPA evaporative/refueling family.

19. A new § 86.098–8 is added to subpart A, to read as follows:

§ 86.098–8 Emission standards for 1998 and later model year light-duty vehicles.

Section 86.098–8 includes text that specifies requirements that differ from § 86.096–8. Where a paragraph in § 86.096–8 is identical and applicable to § 86.098–8, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.096–8."

(a) through (b)(5) [Reserved]. For guidance see § 86.096–8.

(b)(6) Vehicles certified to the refueling standards set forth in paragraph (d) of this section are not required to demonstrate compliance with the fuel dispensing spitback standards contained in § 86.096–8 (b)(1)(iii) and (b)(2)(iii): *Provided*, that they meet the requirements of § 86.098–28(f).

(c) [Reserved]. For guidance see § 86.096–8.

(d) Refueling emissions from 1998 and later model year gasoline-fueled and methanol-fueled Otto-cycle and petroleum-fueled and methanol-fueled diesel-cycle light-duty vehicles shall not exceed the following standards. The standards apply equally to certification and in-use vehicles.

(1) *Standards*—(i) *Hydrocarbons (for gasoline-fueled Otto-cycle and petroleum-fueled diesel-cycle vehicles).* 0.20 gram per gallon (0.053 gram per liter) of fuel dispensed.

(ii) *Organic material hydrocarbon equivalent (for methanol-fueled vehicles).* 0.20 gram per gallon (0.053 gram per liter) of fuel dispensed.

(2)(i) The standards set forth in paragraphs (d)(1) (i) and (ii) of this section refer to a sample of refueling emissions collected under the conditions set forth in subpart B of this part and measured in accordance with those procedures.

(ii) For vehicles powered by petroleum-fueled diesel-cycle engines, the provisions set forth in paragraph (d)(1) of this section may be waived: *Provided*, that the manufacturer complies with the provisions of § 86.098–28(g).

(3)(i) A minimum of the percentage shown in Table A98–08 of a manufacturer's sales of the applicable model year's gasoline- and methanol-fueled Otto-cycle and petroleum-fueled and methanol-fueled diesel-cycle light-duty vehicles shall be tested under the procedures in subpart B of this part indicated for 1998 and later model years, and shall not exceed the standards described in paragraph (d)(1) of this section. Vehicles certified in accordance with paragraph (d)(2)(ii) of this section, as determined by the provisions of § 86.098–28(g), shall not be counted in the calculation of the percentage of compliance.

TABLE A98–08.—IMPLEMENTATION SCHEDULE FOR LIGHT-DUTY VEHICLE REFUELING EMISSION TESTING

Model year	Sales percentage
1998	40
1999	80
2000 and subsequent	100

(ii) Small volume manufacturers, as defined in § 86.094–14(b) (1) and (2), are exempt from the implementation schedule of Table A98–08 of this section for model years 1998 and 1999. For small volume manufacturers, the standards of paragraph (d) of this section, and the associated test procedures, shall not apply until model year 2000, when 100 percent compliance with the standards of this section is required. This exemption does not apply to small volume engine families as defined in § 86.094–14(b)(5).

(e) through (f) [Reserved]

(g) through (k) [Reserved]. For guidance see § 86.096–8.

20. A new § 86.098–14 is added to subpart A to read as follows:

§ 86.098–14 Small-volume manufacturers certification procedures.

Section 86.098–14 includes text that specifies requirements that differ from §§ 86.094–14 or 86.095–14. Where a paragraph in § 86.094–14 or § 86.095–14 is identical and applicable to § 86.098–14, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.094–14." or "[Reserved]. For guidance see § 86.095–14.".

(a) through (c)(7)(i)(C)(*3*) [Reserved]. For guidance see § 86.094–14.

(c)(7)(i)(C)(*4*) For light-duty vehicle, light-duty truck, and heavy-duty vehicle evaporative and/or refueling emissions (as applicable) and for light-duty truck, and heavy-duty engine exhaust emissions, deterioration factors shall be determined in accordance with § 86.098–24.

(c)(7)(ii) through (c)(11)(ii)(B) introductory text [Reserved]. For guidance see § 86.094–14.

(c)(11)(ii)(B)(*1*) Engine evaporative/refueling family names and vehicle (or engine) configurations.

(c)(11)(ii)(B)(*2*) through (c)(11)(ii)(B)(*15*) [Reserved]. For guidance see § 86.094–14.

(c)(11)(ii)(B)(*16*) through (c)(11)(ii)(B)(*18*) [Reserved]. For guidance see § 86.095–14.

(c)(11)(ii)(B)(*19*) For each light-duty vehicle, light-duty truck, or heavy-duty vehicle evaporative/refueling emission family, a description of any unique procedures required to perform evaporative and/or refueling emission tests (as applicable) (including canister working capacity, canister bed volume, and fuel temperature profile for the running loss test) for all vehicles in that evaporative/refueling emission family, and a description of the method used to develop those unique procedures.

(*20*) For each light-duty vehicle, light-duty truck, or heavy-duty vehicle evaporative/refueling emission family:

(*i*) Canister working capacity, according to the procedures specified in § 86.132–96(h)(1)(iv);

(*ii*) Canister bed volume; and

(*iii*) Fuel temperature profile for the running loss test, according to the procedures specified in § 86.129–94(d).

(c)(11)(ii)(C) through (c)(11)(ii)(D)(*5*) [Reserved]. For guidance see § 86.095–14.

(c)(11)(ii)(D)(*6*) [Reserved].

(c)(11)(ii)(D)(*7*) through (c)(15) [Reserved]. For guidance see § 86.094–14.

21. A new § 86.098–17 is added to subpart A to read as follows:

§ 86.098–17 Emission control diagnostic system for 1998 and later light-duty vehicles and light-duty trucks.

Section 86.098–17 includes text that specifies requirements that differ from § 86.094–17. Where a paragraph in § 86.094–17 is identical and applicable to § 86.098–17, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.094–17."

(a) introductory text through (a)(3) [Reserved]. For guidance see § 86.094–17.

(a)(4) Any other deterioration or malfunction within the powertrain which occurs in actual use and which results in an exhaust emission increase of greater than 0.2 g/mi HC, 1.7 g/mi CO, or 0.5 g/mi NO_X, or any vapor leak in the evaporative and/or refueling system which results in an evaporative emissions increase of greater than 30.0 g/test measured over the first 24 hours of the diurnal portion of the revised evaporative emissions test procedure, in accordance with test procedures set forth in subpart B of this part, for vehicles certified to that test procedure.

(b)(1) The electronic evaporative and/or refueling emission purge control, if equipped, and all emission-related powertrain components connected to a computer shall, at a minimum, be monitored for circuit continuity. All components required by these regulations to be monitored shall be evaluated periodically, but no less

frequently than once per Urban Dynamometer Driving Schedule as defined in 40 CFR part 86, appendix I, paragraph (a), or similar trip.

(b)(2) through (j) [Reserved]. For guidance see § 86.094–17.

22. A new § 86.098–21 is added to subpart A to read as follows:

§ 86.098–21 Application for certification.

Section 86.098–21 includes text that specifies requirements that differ from § 86.094–21 or § 86.096–21. Where a paragraph in § 86.094–21 or § 86.096–21 is identical and applicable to § 86.098–21, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.094–21." or "[Reserved]. For guidance see § 86.096–21.".

(a) through (b)(3) [Reserved]. For guidance see § 86.094–21.

(b)(4)(i) For light-duty vehicles and light-duty trucks, a description of the test procedures to be used to establish the evaporative emission and/or refueling emission deterioration factors (as applicable) required to be determined and supplied in § 86.098–23(b)(2).

(b)(4)(ii) through (iv) [Reserved]. For guidance see § 86.094–21.

(b)(5)(v) For light-duty vehicles with non-integrated refueling emission control systems, the number of continuous UDDS cycles, determined from the fuel economy on the UDDS applicable to the test vehicle of that evaporative/refueling emission family-emission control system combination, required to use a volume of fuel equal to 85% of fuel tank volume.

(b)(6) through (8) [Reserved]. For guidance see § 86.094–21.

(b)(9) For each light-duty vehicle, light-duty truck, or heavy-duty vehicle evaporative/refueling emission family, a description of any unique procedures required to perform evaporative and/or refueling emission tests (as applicable) (including canister working capacity, canister bed volume, and fuel temperature profile for the running loss test) for all vehicles in that evaporative/refueling emission family, and a description of the method used to develop those unique procedures.

(10) For each light-duty vehicle, light-duty truck, or heavy-duty vehicle evaporative/refueling emission family:

(i) Canister working capacity, according to the procedures specified in § 86.132–96(h)(1)(iv);

(ii) Canister bed volume; and

(iii) Fuel temperature profile for the running loss test, according to the procedures specified in § 86.129–94(d).

(c) and (d) [Reserved]. For guidance see § 86.094–21.

(e) For vehicles equipped with gasoline-fueled or methanol-fueled heavy-duty engines, the manufacturer shall specify a maximum nominal fuel tank capacity for each evaporative/refueling emission family-emission control system combination.

(f) through (i) [Reserved]. For guidance see § 86.094–21.

(j) and (k) [Reserved]. For guidance see § 86.096–21.

23. A new § 86.098–22 is added to subpart A to read as follows:

§ 86.098–22 Approval of application for certification; test fleet selections; determinations of parameters subject to adjustment for certification and Selective Enforcement Audit, adequacy of limits, and physically adjustable ranges.

Section 86.098–22 includes text that specifies requirements that differ from § 86.094–22. Where a paragraph in § 86.094–22 is identical and applicable to § 86.098–22, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.094–22."

(a) through (c) [Reserved]. For guidance see § 86.094–22.

(d) Approval of test procedures. (1) The Administrator does not approve the test procedures for establishing the evaporative and/or refueling emission deterioration factors for light-duty vehicles and light-duty trucks. The manufacturer shall submit the procedures as required in § 86.098–21(b)(4)(i) prior to the Administrator's selection of the test fleet under § 86.098–24(b) (1), and if such procedures will involve testing of durability data vehicles selected by the Administrator or elected by the manufacturer under § 86.098–24(c)(1), prior to initiation of such testing.

(d)(2) through (g) [Reserved]. For guidance see § 86.094–22.

24. Section 86.098–23 of subpart A is amended by revising the introductory text and paragraphs (a) through (l) to read as follows:

§ 86.098–23 Required data.

Section 86.098–23 includes text that specifies requirements that differ from § 86.095–23. Where a paragraph in § 86.095–23 is identical and applicable to § 86.098–23, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.095–23."

(a) through (b)(1)(ii) [Reserved]. For guidance see § 86.095–23.

(b)(2) For light-duty vehicles and light-duty trucks, the manufacturer shall submit evaporative emission and/or refueling emission deterioration factors for each evaporative/refueling emission family-emission control system combination and all test data that are derived from testing described under § 86.098–21(b)(4)(i) designed and conducted in accordance with good engineering practice to assure that the vehicles covered by a certificate issued under § 86.098–30 will meet the evaporative and/or refueling emission standards in § 86.098–8 or § 86.098–9, as appropriate, for the useful life of the vehicle.

(b)(3) through (b)(4)(ii) [Reserved]. For guidance see § 86.095–23.

(b)(4)(iii) For petroleum-fueled diesel-cycle vehicles certifying under the waiver provisions of § 86.098–28, the certifications and representations specified in § 86.098–28.

(c) through (e)(1) [Reserved]. For guidance see § 86.095–23.

(e)(2) For evaporative and refueling emission durability, or light-duty truck or heavy-duty engine exhaust emission durability, a statement of compliance with paragraph (b)(2) or (b)(4)(iii) of this section or § 86.095–23 (b)(1)(ii), (b)(3) (b)(4)(i) or (b)(4)(ii), as applicable.

(3) For certification of vehicles with non-integrated refueling systems, a statement that the drivedown used to purge the refueling canister was the same as described in the manufacturers' application for certification. Furthermore, a description of the procedures used to determine the number of equivalent UDDS miles required to purge the refueling canisters, as determined by the provisions of § 86.098–21(b)(5)(v) and subpart B of this part. Furthermore, a written statement to the Administrator that all data, analyses, test procedures, evaluations and other documents, on which the above statement is based, are available to the Administrator upon request.

(f) through (l) [Reserved]. For guidance see § 86.095–23.

* * * * *

25. A new § 86.098–24 is added to subpart A to read as follows:

§ 86.098–24 Test vehicles and engines.

Section 86.098–24 includes text that specifies requirements that differ from § 86.096–24. Where a paragraph in § 86.096–24 is identical and applicable to § 86.098–24, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.096–24."

(a) introductory text through (a)(4) [Reserved]. For guidance see § 86.096–24.

(a)(5) The gasoline-fueled and methanol-fueled light-duty vehicles and light-duty trucks covered by an application for certification will be divided into groupings which are

expected to have similar evaporative and/or refueling emission characteristics (as applicable) throughout their useful life. Each group of vehicles with similar evaporative and/or refueling emission characteristics shall be defined as a separate evaporative/refueling emission family.

(a)(6) For gasoline-fueled or methanol-fueled light-duty vehicles and light-duty trucks to be classed in the same evaporative/refueling emission family, vehicles must be similar with respect to the items listed in paragraphs (a)(6) (i) through (xii) of this section.

(i) Type of vapor storage device (e.g., canister, air cleaner, crankcase).

(ii) Basic canister design.

(A) Working capacity—grams adsorption within a 10g. range.

(B) System configuration—number of canisters and method of connection (i.e., series, parallel).

(C) Canister geometry, construction and materials.

(iii) Fuel system.

(iv) Type of refueling emission control system—non-integrated or integrated with the evaporative control system. Further, if the system is non-integrated, whether or not any other evaporative emissions, e.g. diurnal or hot soak emissions, are captured in the same storage device as the refueling emissions.

(v) Fillpipe seal mechanism—mechanical, liquid trap, other.

(vi) Fill limiter system.

(vii) Vapor control system or method of controlling vapor flow through the vapor line to the canister.

(viii) Vapor/liquid separator usage.

(ix) Purge system (valve, purge strategy and calibrations).

(x) Vapor hose diameter and material.

(xi) Canister location (front, rear, mid-vehicle).

(xii) Onboard diagnostic hardware and calibrations.

(a)(7) Where vehicles are of a type which cannot be divided into evaporative/refueling emission families based on the criteria listed above (such as non-canister control system approaches), the Administrator will establish families for those vehicles based upon the features most related to their evaporative and/or refueling emission characteristics.

(a)(8) through (b)(1)(vi) [Reserved]. For guidance see § 86.096–24.

(b)(1)(vii)(A) Vehicles of each evaporative/refueling emission family will be divided into evaporative/refueling emission control systems.

(B) The Administrator will select the vehicle expected to exhibit the highest evaporative and/or refueling emissions, from within each evaporative/refueling family to be certified, from among the vehicles represented by the exhaust emission-data selections for the engine family, unless evaporative and/or refueling testing has already been completed on the vehicle expected to exhibit the highest evaporative and/or refueling emissions for the evaporative/refueling family as part of another engine family's testing.

(C) If the vehicles selected in accordance with paragraph (b)(1)(vii)(B) of this section do not represent each evaporative/refueling emission control system then the Administrator will select the highest expected evaporative/refueling emission vehicle from within the unrepresented evaporative/refueling system.

(viii) For high-altitude evaporative and/or refueling emission compliance for each evaporative/refueling emission family, the manufacturer shall follow one of the following procedures:

(A) The manufacturer will select for testing under high-altitude conditions the one nonexempt vehicle previously selected under paragraph (b)(1)(vii)(B) or (b)(1)(vii)(C) of this section which is expected to have the highest level of evaporative and/or refueling emissions when operated at high altitude; or

(B) [Reserved]. For guidance see § 86.096–24.

(b)(ix) through (e)(2) [Reserved]. For guidance see § 86.096–24.

(f) *Carryover and carryacross of durability and emission data.* In lieu of testing an emission-data or durability vehicle (or engine) selected under paragraph (b)(1) (vii) through (viii) of this section and § 86.096–24 (b)(1) (i) through (vii) and (b)(2) through (c), and submitting data therefor, a manufacturer may, with the prior written approval of the Administrator, submit exhaust emission data, evaporative emission data and/or refueling emission data, as applicable on a similar vehicle (or engine) for which certification has been obtained or for which all applicable data required under § 86.098–23 has previously been submitted.

(g) through (h) [Reserved]. For guidance see § 86.096–24.

26. A new § 86.098–25 is added to subpart A to read as follows:

§ 86.098–25 Maintenance.

Section 86.098–25 includes text that specifies requirements that differ from § 86.094–25. Where a paragraph in § 86.094–25 is identical and applicable to § 86.098–25, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.094–25."

(a)(1) [Reserved]. For guidance see § 86.094–25.

(a)(2) Maintenance performed on vehicles, engines, subsystems, or components used to determine exhaust, evaporative or refueling emission deterioration factors is classified as either emission- related or non-emission-related and each of these can be classified as either scheduled or unscheduled. Further, some emission-related maintenance is also classified as critical emission-related maintenance.

(b) Introductory text through (b)(3)(vi)(D) [Reserved]. For guidance see § 86.094–25.

(b)(3)(vi)(E) Evaporative and/or refueling emission canister(s).

(F) Turbochargers.

(G) Carburetors.

(H) Superchargers.

(I) EGR System including all related filters and control valves.

(J) Mechanical fillpipe seals.

(b)(3)(vii) through (b)(6)(i)(E) [Reserved]. For guidance see § 86.094–25.

(b)(6)(i)(F) Evaporative and refueling emission control system components (excluding canister air filter).

(b)(6)(i)(G) through (h) [Reserved]. For guidance see § 86.094–25.

27. A new § 86.098–26 is added to subpart A to read as follows:

§ 86.098–26 Mileage and service accumulation; emission measurements.

Section 86.098–26 includes text that specifies requirements that differ from § 86.094–26, § 86.095–26 or § 86.096–26. Where a paragraph in § 86.094–26, § 86.095–26 or § 86.096–26 is identical and applicable to § 86.098–26, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.094–26." or "[Reserved]. For guidance see § 86.095–26." or "[Reserved]. For guidance see § 86.096–26.".

(a)(1) and (2) [Reserved]. For guidance see § 86.094–26.

(a)(3) *Emission data vehicles.* Unless otherwise provided for in § 86.098–23(a), emission-data vehicles shall be operated and tested as described in paragraphs (a)(3)(i) and (ii)(C) of this section and § 86.094–26 (a)(3)(ii)(A), (B) and (D).

(i) *Otto-cycle.* (A) The manufacturer shall determine, for each engine family, the mileage at which the engine-system combination is stabilized for emission-data testing. The manufacturer shall maintain, and provide to the Administrator if requested, a record of the rationale used in making this determination. The manufacturer may elect to accumulate 4,000 miles on each

test vehicle within an engine family without making a determination. The manufacturer must accumulate a minimum of 2,000 miles (3,219 kilometers) on each test vehicle within an engine family. All test vehicle mileage must be accurately determined, recorded, and reported to the Administrator. Any vehicle used to represent emission-data vehicle selections under § 86.098–24(b)(1) shall be equipped with an engine and emission control system that has accumulated the mileage the manufacturer chose to accumulate on the test vehicle. Fuel economy data generated from certification vehicles selected in accordance with § 86.098–24(b)(1) with engine-system combinations that have accumulated more than 10,000 kilometers (6,200 miles) shall be factored in accordance with 40 CFR 600.006–87(c). Complete exhaust, evaporative and refueling (if required) emission tests shall be conducted for each emission-data vehicle selection under § 86.098–24(b)(1). The Administrator may determine under § 86.094–24(f) that no testing is required.

(B) [Reserved]. For guidance see § 86.094–26.

(C) Exhaust, evaporative and refueling emissions tests for emission-data vehicle(s) selected for testing under § 86.096–24(b)(1) (i), (ii), (iii) or (iv) or § 86.098–24(b)(1)(vii)(B) shall be conducted at the mileage (2,000 mile minimum) at which the engine-system combination is stabilized for emission testing under low-altitude conditions.

(a)(3)(i)(B) through (a)(3)(ii)(B) [Reserved]. For guidance see § 86.094–26.

(a)(3)(ii)(C) Exhaust, evaporative and refueling emissions tests (as required) for emission-data vehicle(s) selected for testing under § 86.096–24(b)(1) (i), (ii), (iii), or (iv), or § 86.098–24 (b)(1)(vii)(B) shall be conducted at the mileage (2,000 mile minimum) at which the engine-system combination is stabilized for emission testing under low-altitude conditions.

(a)(3)(ii)(D) through (b)(4)(i)(C) [Reserved]. For guidance see § 86.094–26.

(b)(4)(i)(D) through (b)(4)(ii)(D) [Reserved]. For guidance see § 86.095–26.

(b)(4)(iii) [Reserved].

(b)(4)(iv) through (c)(3) [Reserved]. For guidance see § 86.094–26.

(c)(4) [Reserved]. For guidance see § 86.096–26.

(d) [Reserved]. For guidance see § 86.094–26.

28. A new § 86.098–28 is added to subpart A to read as follows:

§ 86.098–28 Compliance with emission standards.

Section 86.098–28 includes text that specifies requirements that differ from § 86.094–28. Where a paragraph in § 86.094–28 is identical and applicable to § 86.098–28, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.094–28."

(a)(1) Paragraph (a) of this section applies to light-duty vehicles.

(2) Each exhaust, evaporative and refueling emission standard (and family particulate emission limits, as appropriate) of § 86.098–8 applies to the emissions of vehicles for the appropriate useful life as defined in §§ 86.098–2 and 86.098–8.

(3) [Reserved]. For guidance see § 86.094–28.

(4) The procedure for determining compliance of a new motor vehicle with exhaust, evaporative and/or refueling emission standards (or family particulate emission limit, as appropriate) is as described in paragraphs (a)(4)(i) introductory text, (a)(4)(i)(C), (a)(4)(ii)(B) and (C), (a)(4)(iii), (a)(4)(v), (f) and (g) of this section and § 86.094–28 (a)(4)(i)(A) and (B), (a)(4)(ii)(A), (a)(4)(iv)) except where specified by paragraph (a)(7) of this section for the Production AMA Durability Program.

(i) Separate emission deterioration factors shall be determined from the exhaust emission results of the durability-data vehicle(s) for each engine-system combination. Separate evaporative and/or refueling emission deterioration factors shall be determined for each evaporative/refueling emission family-emission control system combination from the testing conducted by the manufacturer (gasoline-fueled and methanol-fueled vehicles only). Separate refueling emission deterioration factors shall be determined for each evaporative/refueling emission family-emission control system combination from the testing conducted by the manufacturer (petroleum-fueled diesel cycle vehicles not certified under the provisions of paragraph (g) of this section only).

(a)(4)(i)(A) and (a)(4)(i)(B) [Reserved]. For guidance see § 86.094–28.

(a)(4)(i)(C) *Evaporative deterioration factor determination.* An evaporative emissions deterioration factor (gasoline-fueled and methanol-fueled vehicles only) shall be determined from the testing conducted as described in Section 86.094–21(b)(4) (i) (A), and in accordance with paragraphs (a)(4)(i)(C) (*1*) and (*2*) of this section, for each evaporative/refueling emission family-emission control system combination to indicate the evaporative emission level at the applicable useful life relative to the evaporative emission level at 4,000 miles as follows:

(*1*) Factor = Evaporative emission level at the useful life mileage for that standard minus the evaporative emission level at 4,000 miles.

(*2*) The factor shall be established to a minimum of two places to the right of the decimal.

(D) A refueling emissions deterioration factor (gasoline-fueled, methanol-fueled and petroleum-fueled diesel-cycle vehicles not certified under the provisions of paragraph (g) of this section) shall be determined from testing conducted and described in § 86.098–21(b)(4)(i)(B) for each evaporative/refueling emission family-emission control system combinationto indicate the refueling emission level at the applicable usefule life relative to the refueling emission level at 4,000 miles as follows:

(*1*) Factor = Refueling emission level at the useful life mileage for that standard minus the refueling emission level at 4,000 miles.

(*2*) The factor shall be established to a minimum of two places to the right of the decimal.

(a)(4)(ii)(A) [Reserved]. For guidance see § 86.094–28.

(a)(4)(ii)(B) The official evaporative emission test results (gasoline-fueled and methanol-fueled vehicles only) for each evaporative emission-data vehicle at the selected test point shall be adjusted by addition of the appropriate deterioration factor: *Provided*, that if a deterioration factor as computed in paragraph (a)(4)(i)(C) of this section is less than zero, that deterioration factor shall be zero for the purposes of this paragraph.

(C) The official refueling emission test results (gasoline-fueled, methanol-fueled, and petroleum-fueled diesel cycle vehicles not certified under the provisions of paragraph (g) of this section) for each refueling emission-data vehicle at the selected test point shall be adjusted by addition of the appropriate deterioration factor: *Provided*, that if a deterioration factor as computed in paragraph (a)(4)(i)(D) of this section is less than zero, that deterioration factor shall be zero for purposes of this paragraph.

(iii) The emissions to compare with the standard (or the family particulate emission limit, as appropriate) shall be the adjusted emissions of paragraphs (a)(4)(ii) (B) and (C) of this section and § 86.094–28 (a)(4)(ii)(A) for each emission-data vehicle. Before any emission value is compared with the standard (or the family particulate

emission limit, as appropriate), it shall be rounded, in accordance with ASTM E 29–67, (reapproved 1980) (as referenced in § 86.094–28(a)(4)(i)(B)(*2*)(*ii*)), to two significant figures. The rounded emission values may not exceed the standard (or the family particulate emission limit, as appropriate).

(iv) [Reserved]. For guidance see § 86.094–28.

(v) Every test vehicle of an evaporative/refueling emission family must comply with the evaporative and/or refueling emission standards, as determined in paragraph (a)(4)(iii) of this section, before any vehicle in that family may be certified.

(a)(5) through (a)(6) [Reserved]. For guidance see § 86.094–28.

(a)(7) The procedure to determine the compliance of new motor vehicles in the Production AMA Durability Program described in § 86.094–13 is the same as described in paragraphs (a)(4)(iii) and (v) of this section and § 86.094–28 (a)(4)(iv). For the engine families that are included in the Production AMA Durability Program, the exhaust emission deterioration factors used to determine compliance shall be those that the Administrator has approved under § 86.094–13. The evaporative emission deterioration factor for each evaporative /refueling emission family shall be determined and applied according to paragraph (a)(4)(ii)(B) of this section. The refueling emission deterioration factor for each evaporative/refueling emission family shall be determined and applied according to paragraph (a)(4)(ii)(C) of this section. The procedures to determine the minimum exhaust emission deterioration factors required under § 86.094–13(d) are as described in paragraph (a)(7)(i) of this section and § 86.094–28 (a)(7)(ii).

(i) Separate deterioration factors shall be determined from the exhaust emission results of the durability data vehicles for each emission standard applicable under § 86.098–8, for each engine family group. The evaporative and/or refueling emission deterioration factors for each evaporative/refueling family will be determined and applied in accordance with paragraph (a)(4) of this section.

(a)(7)(ii) through (d) [Reserved]. For guidance see § 86.094–28.

(e) [Reserved]

(f) *Fuel dispensing spitback testing waiver.* (1) Vehicles certified to the refueling emission standards set forth in § 86.098–8 are not required to demonstrate compliance with the fuel dispensing spitback standard contained in that section: *Provided*, that—

(i) The manufacturer certifies that the vehicle inherently meets the Dispensing Spitback Standard as part of compliance with the refueling emission standard; and

(ii) This certification is provided in writing and applies to the full useful life of the vehicle.

(2) EPA retains the authority to require testing to enforce compliance and to prevent non-compliance with the Fuel Dispensing Spitback Standard.

(g) *Inherently low refueling emission testing waiver.* (1) Vehicles using fuels/fuel systems inherently low in refueling emissions are not required to conduct testing to demonstrate compliance with the refueling emission standards set forth in § 86.098–8: *Provided*, that—

(i) This provision is only available for petroleum diesel fuel. It is only available if the Reid Vapor Pressure of in-use diesel fuel is equal to or less than 1 psi (7 kPa) and for diesel vehicles whose fuel tank temperatures do not exceed 130 °F (54 °C); and

(ii) To certify using this provision the manufacturer must attest to the following evaluation: "Due to the low vapor pressure of diesel fuel and the vehicle tank temperatures, hydrocarbon vapor concentrations are low and the vehicle meets the 0.20 grams/gallon refueling emission standard without a control system."

(2) The certification required in paragraph (g)(1)(ii) of this section must be provided in writing and must apply for the full useful life of the vehicle.

(3) EPA reserves the authority to require testing to enforce compliance and to prevent noncompliance with the refueling emission standard.

(4) Vehicles certified to the refueling emission standard under this provision shall not be counted in the sales percentage compliance determinations for the 1988, 1989 and subsequent model years.

29. A new § 86.098–30 is added to subpart A to read as follows:

§ 86.098–30 Certification.

Section 86.098–30 includes text that specifies requirements that differ from § 86.094–30, § 86.095–30 or § 86.096–30. Where a paragraph in § 86.094–30, § 86.095–30 or § 86.096–30 is identical and applicable to § 86.098–30. This may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.094–30." or "[Reserved]. For guidance see § 86.095–30." or "[Reserved]. For guidance see § 86.096–30.".

(a)(1) and (a)(2) [Reserved]. For guidance see § 86.094–30.

(a)(3)(i) One such certificate will be issued for each engine family. For gasoline-fueled and methanol-fueled light-duty vehicles and light duty-trucks and petroleum-fueled diesel-cycle light-duty vehicles and light duty-trucks not certified under § 86.098–28(g), one such certificate will be issued for each engine family-evaporative/refueling emission family combination. Each certificate will certify compliance with no more than one set of in-use and certification standards (or family emission limits, as appropriate).

(a)(3)(ii) through (a)(4)(ii) [Reserved]. For guidance see § 86.095–30.

(a)(4)(iii) introductory text through (a)(4)(iii)(C) [Reserved]. For guidance see § 86.094–30.

(a)(4)(iv) introductory text [Reserved]. For guidance see § 86.095–30.

(a)(4)(iv)(A) through (a)(12) [Reserved]. For guidance see § 86.094–30.

(a)(13) [Reserved]. For guidance see § 86.095–30.

(a)(14) [Reserved]. For guidance see § 86.094–30.

(a)(15) through (18) [Reserved]. For guidance see § 86.096–30.

(a)(19) For all light-duty vehicles certified to refueling emission standards under § 86.098–8, the provisions of paragraphs (a)(19) (i) through (iii) of this section apply.

(i) All certificates issued are conditional upon the manufacturer complying with all provisions of § 86.098–8, both during and after model year production.

(ii) Failure to meet the required implementation schedule sales percentages as specified in § 86.094–8 be considered to be a failure to satisfy the conditions upon which the certificate(s) was issued and the vehicles sold in violation of the implementation schedule shall not be covered by the certificate.

(iii) The manufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied.

(b)(1) introductory text through (b)(1)(i)(B) [Reserved]. For guidance see § 86.094–30.

(b)(1)(i)(C) The emission-data vehicle(s) selected under § 86.098–24(b)(1)(vii) (A) and (B) shall represent all vehicles of the same evaporative/refueling control system within the evaporative /refueling family.

(b)(1)(ii) through (b)(1)(iv) [Reserved]. For guidance see § 86.094–30.

(b)(2) The Administrator will proceed as in paragraph (a) of this section with respect to the vehicles (or engines) belonging to an engine family or engine

family-evaporative/refueling emission family combination (as applicable), all of which comply with all applicable standards (or family emission limits, as appropriate).

(b)(3) through (b)(4)(i) [Reserved]. For guidance see § 86.094–30.

(b)(4)(ii) Remove the vehicle configuration (or evaporative/refueling vehicle configuration, as applicable) which failed, from his application:

(b)(4)(ii)(A) [Reserved]. For guidance see § 86.094–30.

(b)(4)(ii)(B) If the failed vehicle was tested for compliance with one or more of the exhaust, evaporative and refueling emission standards: The Administrator may select, in place of the failed vehicle, in accordance with the selection criteria employed in selecting the failed vehicle, a new emission data vehicle which will be tested for compliance with all of the applicable emission standards. If one vehicle cannot be selected in accordance with the selection criteria employed in selecting the failed vehicle, then two or more vehicles may be selected (e.g., one vehicle to satisfy the exhaust emission vehicle selection criteria and one vehicle to satisfy the evaporative and refueling emission vehicle selection criteria). The vehicle selected to satisfy the exhaust emission vehicle selection criteria will be tested for compliance with exhaust emission standards (or family emission limits, as appropriate) only. The vehicle selected to satisfy the evaporative and/or refueling emission vehicle selection criteria will be tested for compliance with exhaust, evaporative and/or refueling emission standards; or

(iii) Remove the vehicle configuration (or evaporative/refueling vehicle configuration, as applicable) which failed from the application and add a vehicle configuration(s) (or evaporative/refueling vehicle configuration(s), as applicable) not previously listed. The Administrator may require, if applicable, that the failed vehicle be modified to the new engine code (or evaporative/refueling emission code, as applicable) and demonstrate by testing that it meets applicable standards (or family emission limits, as appropriate) for which it was originally tested. In addition, the Administrator may select, in accordance with the vehicle selection criteria given in § 86.001–24(b), a new emission data vehicle or vehicles. The vehicles selected to satisfy the exhaust emission vehicle selection criteria will be tested for compliance with exhaust emission standards (or family emission limits, as appropriate) only. The vehicles selected to satisfy the evaporative emission vehicle selection criteria will be tested for compliance with all of the applicable emission standards (or family emission limits, as appropriate); or

(iv) Correct a component or system malfunction and show that with a correctly functioning system or component the failed vehicle meets applicable standards (or family emission limits, as appropriate) for which it was originally tested. The Administrator may require a new emission data vehicle, of identical vehicle configuration (or evaporative/refueling vehicle configuration, as applicable) to the failed vehicle, to be operated and tested for compliance with the applicable standards (or family emission limits, as appropriate) for which the failed vehicle was originally tested.

(b)(5) through (e) [Reserved]. For guidance see § 86.094–30.

(f) introductory text through (f)(3) [Reserved]. For guidance see § 86.095–30.

(f)(4) The electronic evaporative and/or refueling purge control device (if equipped) or any emission-related powertrain component connected to a computer is electrically disconnected.

30. A new § 86.098–35 is added to subpart A to read as follows:

§ 86.098–35 Labeling.

Section 86.098–35 includes text that specifies requirements that differ from §§ 86.095–35 and 86.096–35. Where a paragraph in § 86.095–35 or § 86.096–35 is identical and applicable to § 86.098–35, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.095–35." or "[Reserved]. For guidance see § 86.096–35.".

(a) introductory text through (a)(1)(iii)(B) [Reserved]. For guidance see § 86.095–35.

(a)(1)(iii)(C) Engine displacement (in cubic inches or liters), engine family identification and evaporative/refueling family identification.

(a)(1)(iii)(D) through (L) [Reserved]. For guidance see § 86.095–35.

(a)(1)(iii)(M) For model year 1998 light-duty vehicles, a clear indication of which test procedure was used to certify the evaporative/refueling family, e.g., "Evaporative /refueling Family xx (§ 86.130–96 procedures)" or "Evaporative /refueling Family xx (§ 86.130–78 procedures)."

(a)(1)(iii)(N) [Reserved]. For guidance see § 86.096–35.

(a)(2) heading through (a)(2)(iii)(K) [Reserved]. For guidance see § 86.095–35.

(a)(2)(iii)(L) [Reserved].

(a)(2)(iii)(M) through (a)(2)(iii)(N) [Reserved]. For guidance see § 86.095–35.

(a)(2)(iii)(O) through (a)(2)(iii)(P) [Reserved]. For guidance see § 86.096–35.

(a)(3) heading through (a)(4)(iii)(F) [Reserved]. For guidance see § 86.095–35.

(a)(4)(iii)(G) [Reserved]. For guidance see § 86.096–35.

(b) through (i) [Reserved]. For guidance see § 86.095–35.

31. Section 86.099–8 of subpart A is amended by adding paragraphs (b)(5) and (6), revising paragraph (c), adding paragraph (d), and revising paragraphs (e) through (k) to read as follows:

§ 86.099–8 Emission standards for 1999 and later model year light-duty vehicles.

* * * * *

(b) * * *

(5) [Reserved]. For guidance see § 86.096–8.

(b)(6) Vehicles certified to the refueling standards set forth in paragraph (d) of this section are not required to demonstrate compliance with the Fuel Dispensing Spitback standards contained in paragraphs (b)(1)(iii) and (b)(2)(iii) of this section: *Provided*, that they meet the requirements of § 86.098–28(f).

(c) [Reserved]. For guidance see § 86.096–8.

(d) Refueling emissions from 1999 and later model year gasoline-fueled and methanol-fueled Otto-cycle and petroleum-fueled and methanol-fueled diesel-cycle light duty vehicles shall not exceed the following standards. The standards apply equally to certification and in-use vehicles.

(1) *Standards*—(i) *Hydrocarbons (for gasoline-fueled Otto* gallon (0.053 gram per liter) of fuel dispensed.

(ii) *Organic Material Hydrocarbon Equivalent (for methanol-fueled vehicles).* 0.20 gram per gallon (0.053 gram per liter) of fuel dispensed.

(2)(i) The standards set forth in paragraphs (d)(1)(i) and (ii) of this section refer to a sample of refueling emissions collected under the conditions set forth in subpart B of this part and measured in accordance with those procedures.

(ii) For vehicles powered by petroleum-fueled diesel-cycle engines, the provisions set forth in paragraph (d)(1)(i) of this section may be waived: *Provided*, that the manufacturer complies with the provisions of § 86.098–28(f) of this subpart.

(3)(i) A minimum of the percentage shown in Table A99–08 of a manufacturer's sales of the applicable model year's gasoline- and methanol-fueled Otto-cycle and petroleum- and methanol-fueled diesel cycle light-duty vehicles shall be tested under the

procedures in subpart B of this part indicated for 1998 and later model years, and shall not exceed the standards described in paragraph (d)(1) of this section. Vehicles certified in accordance with paragraph (d)(2)(ii) of this section, as determined by the provisions of § 86.098–28(g), shall not be counted in the calculation of the percentage of compliance.

TABLE A99–08. IMPLEMENTATION SCHEDULE FOR LIGHT-DUTY VEHICLE REFUELING EMISSION TESTING

Model year	Sales percentage
1999	80
2000 and subsequent	100

(ii) Small volume manufacturers, as defined in § 86.094–14(b) (1) and (2), are exempt from the implementation schedule of Table A99–08 of this section for model year 1999. For small volume manufacturers, the standards of paragraph (d) of this section, and the associated test procedures, shall not apply until model year 2000, when 100 percent compliance with the standards of this section is required. This exemption does not apply to small volume engine families as defined in § 86.094–14(b)(5).

(e) through (f) [Reserved]

(g) through (k) [Reserved]. For guidance see § 86.096–8.

Subpart B—[Amended]

1. Section 86.101 of subpart B is amended by adding a new paragraph (a)(3) to read as follows:

§ 86.101 General applicability.

(a) * * *

(3) Sections 86.150–98 through 86.156–98 describe the refueling test procedures for light-duty vehicles and light-duty trucks and apply for 1998 and later model years.

* * * * *

2. Section 86.105 of subpart B is amended by revising paragraph (b) to read as follows:

§ 86.105 Introduction; structure of subpart.

* * * * *

(b) Three topics are addressed in this subpart. Sections 86.106–82 through 86.115–78 set forth specifications and equipment requirements; §§ 86.116–82 through 86.126–90 discuss calibration methods and frequency; test procedures and data requirements are listed (in approximate order of performance) in §§ 86.127–82 through 86.156–98.

3. A new § 86.107–98 is added to subpart B to read as follows:

§ 86.107–98 Sampling and analytical system.

Section 86.107–98 includes text that specifies requirements that differ from § 86.107–96. Where a paragraph in § 86.107–96 is identical and applicable to § 86.107–98, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.107–96." Where a corresponding paragraph of § 86.107–96 is not applicable, this is indicated by the statement "[Reserved]."

(a)(1) through (a)(3) [Reserved]. For guidance see § 86.107–96.

(a)(4) *Refueling emissions test.* The requirements detailed in § 86.107–90 (a)(1) shall apply. Alternatively, an enclosure meeting the specifications detailed in § 86.107–96 (a)(1), (2), or (3) may be used if approved in advance by the Administrator. In addition, the enclosure shall have one or more access ports leading to flexible, automatic sealing boots, in the wall(s) of the enclosure. The function of the access port(s) and boots shall be to allow fueling of the test vehicle from a fuel nozzle and hose located outside of the enclosure, with only the spout of the nozzle passing through the automatic sealing opening of the boot during fueling. There shall be no loss in the gas tightness of the enclosure at the opening of the boot either when the nozzle is inserted or when the nozzle is not inserted.

(b) through (d) [Reserved]. For guidance see § 86.107–96.

(e) *Temperature recording system.* (1) *For all emission testing.* A strip chart potentiometric recorder, an on-line computer system, or other suitable means shall be used to record enclosure ambient temperature during all evaporative emission test segments, as well as vehicle fuel tank temperature during the running loss test. The recording system shall record each temperature at least once every minute. The recording system shall be capable of resolving time to ±15s and capable of resolving temperature to ±0.75 °F (±0.42 °C). The recorder (data processor) shall have a time accuracy of ±15s and a precision of ±15s. Two ambient temperature sensors, connected to provide one average output, shall be located 3 feet above the floor at the approximate mid-length of each side wall of the enclosure and within 3 to 12 inches of each side wall. Manufacturers shall arrange that vehicles furnished for testing at Federal certification facilities be equipped with iron-constantan Type J thermocouples for measurement of fuel tank temperature. Vehicles shall be equipped with 2 temperature sensors installed to provide an average liquid fuel temperature. The temperature sensors shall be placed to measure the temperature at the mid-volume of the liquid fuel at a fill level of 40 percent of nominal tank capacity. In-tank temperature sensors are not required for the supplemental two-diurnal test sequence specified in § 86.130–96 or for the refueling test specified in § 86.151–98.

(2) *Refueling emission testing only.* In addition to the enclosure ambient temperature recording system described in paragraph (e)(1) of this section, strip chart recorder(s) or automatic data processor shall be used to record vehicle soak area ambient temperature and dispensed fuel temperature at the nozzle during the test. The temperature recorder(s) or data processor shall record each temperature at least once every 20 seconds (the soak area ambient temperature recorder may be a continuous recording system). The recording system shall be capable of resolving time to ±15s and be capable of resolving temperature to ±0.75 °F (0.42 °C).

(f) through (h)(3) [Reserved]. For guidance see § 86.107–96.

(h)(4) *Refueling emission test.* Blowers or fans must have a capacity of 0.8±0.2 cfm per cubic foot of the nominal enclosure volume. Circulated air shall not be aimed directly at the vehicle.

(5) *Spilled fuel mixing blower; refueling emission test.* An explosion-proof blower of 100–200 ft^3/min (2.8–5.7 m^3/min) capacity is required to enhance mixing of vapors from spilled fuel through the enclosure atmosphere during tests. The discharge from this blower shall be directed toward the region of the enclosure floor where fuel spillage during fueling may occur.

(i) [Reserved]. For guidance see § 86.107–96.

(j) *Refueling equipment.* The refueling equipment shall consist of a fuel delivery system with temperature control equipment, fuel flow safety switch, dispensing pump, hose, nozzle and a meter to measure the dispensed fuel volume. The dispensing nozzle shall be a commercial model, not equipped with vapor recovery hardware. A fuel recirculation system may be utilized to avoid trapping of unheated fuel in the hose. The fuel delivery system must be capable of delivering fuel at 67±1.5 °F (19.4±0.8 °C) and a constant flow rate between 4.2 and 9.8 gal/min (15.9 and 37.1 liter/min) with a tolerance of ±0.3 gal/min (±1.1 liter/min) during the refueling emissions measurement phase of the test. The accuracy of the meter for measuring the dispensed fuel volume shall be ±2 percent at the test flow rate.

4. Section 86.115–78 of subpart B is amended by revising paragraphs (b)(3)(ii) and (b)(5) to read as follows:

§ 86.115–78 EPA urban dynamometer driving schedules.

* * * * *

(b) * * *

(3) * * *

(ii) When conducted to meet the requirements of § 86.129–94 or § 86.153–98(d), up to three additional occurrences of speed variations greater than the tolerance are acceptable, provided they occur for less than 15 seconds on any occasion, and are clearly documented as to the time and speed at that point of the driving schedule.

* * * * *

(5) When conducted to meet the requirements of § 86.129–94, 86.132–96, 86.146–96, or 86.153–98(d), the speed tolerance shall be as specified above, except that the upper and lower limits shall be 4 mph (6.4 km/h).

* * * * *

5. Section 86.132–96 of subpart B is amended by revising paragraphs (h) introductory text, (j) introductory text, (j)(1)(i) and (j)(1)(viii) to read as follows:

§ 86.132–96 Vehicle preconditioning.

* * * * *

(h) During the soak period for the three-diurnal test sequence described in § 86.130–96, evaporative canisters, if the vehicle is so equipped, shall be preconditioned according to the following procedure. For vehicles with multiple canisters, each canister shall be preconditioned separately. In addition, for model year 1998 and later vehicles equipped with refueling canisters, these canisters shall be preconditioned for the three-diurnal test sequence according to the procedure in § 86.132–96 (j)(1). If a vehicle is designed to actively control evaporative or refueling emission without a canister, the manufacturer shall devise an appropriate preconditioning procedure subject to the approval of the Administrator.

* * * * *

(j) For the supplemental two-diurnal test sequence described in § 86.130–96, one of the following methods shall be used to precondition evaporative canisters during the soak period specified in paragraph (g) of this section. For vehicles with multiple canisters, each canister shall be preconditioned separately. In addition, for model year 1998 and later vehicles equipped with refueling canisters, these canisters shall be preconditioned for the supplemental two-diurnal test sequence according to the procedure in paragraph (j)(1) of this section. Canister emissions are measured to determine breakthrough. Breakthrough is here defined as the point at which the cumulative quantity of hydrocarbons emitted is equal to 2 grams.

(1) * * *

(i) Prepare the evaporative/refueling emission canister for the canister loading operation. The canister shall not be removed from the vehicle, unless access to the canister in its normal location is so restricted that purging and loading can only reasonably be accomplished by removing the canister from the vehicle. Special care shall be taken during this step to avoid damage to the components and the integrity of the fuel system.

* * * * *

(viii) Reconnect the evaporative/refueling emission canister and restore the vehicle to its normal operating condition.

* * * * *

6. A new § 86.150–98 is added to subpart B to read as follows:

§ 86.150–98 Overview; refueling test.

(a) The refueling emissions test procedure described in this and subsequent sections is used to determine the conformity of vehicles with the refueling emissions standards set forth in subpart A of this part for light-duty vehicles and light-duty trucks. The refueling emissions test procedure may be performed as an individual test or in combination with the evaporative and exhaust emissions test sequences of § 86.130–96.

(b) The refueling emissions test is designed to measure hydrocarbon emissions resulting from the generation or displacement of fuel tank vapor during vehicle refueling. The refueling emissions shall be measured by the enclosure technique.

(c) All emission control systems installed on or incorporated in a new motor vehicle shall be functioning during all procedures in this subpart except:

(1) In cases of component malfunction or failure; and

(2) during certain specified fuel drain and fill operations, at which times the refueling emission control canister is disconnected. Maintenance to correct component malfunction or failure shall be authorized in accordance with § 86.098–25.

7. A new section 86.151–98 is added to subpart B to read as follows:

§ 86.151–98 General requirements; refueling test.

(a) The refueling emissions procedure, shown in Figure B98–12, starts with the stabilizing of the vehicle and the loading of the refueling emissions canister(s) to breakthrough, and continues with the vehicle drive for purging of the canister, followed by the refueling emissions measurement. The test is conducted following §§ 86.152–98 through 86.154–98 in order.

(b) Ambient temperature levels encountered by the test vehicle throughout the test sequence shall not be less than 68 °F (20 °C) nor more than 86 °F (30 °C).

(c) The vehicle shall be approximately level during all phases of the test sequence to prevent abnormal fuel distribution.

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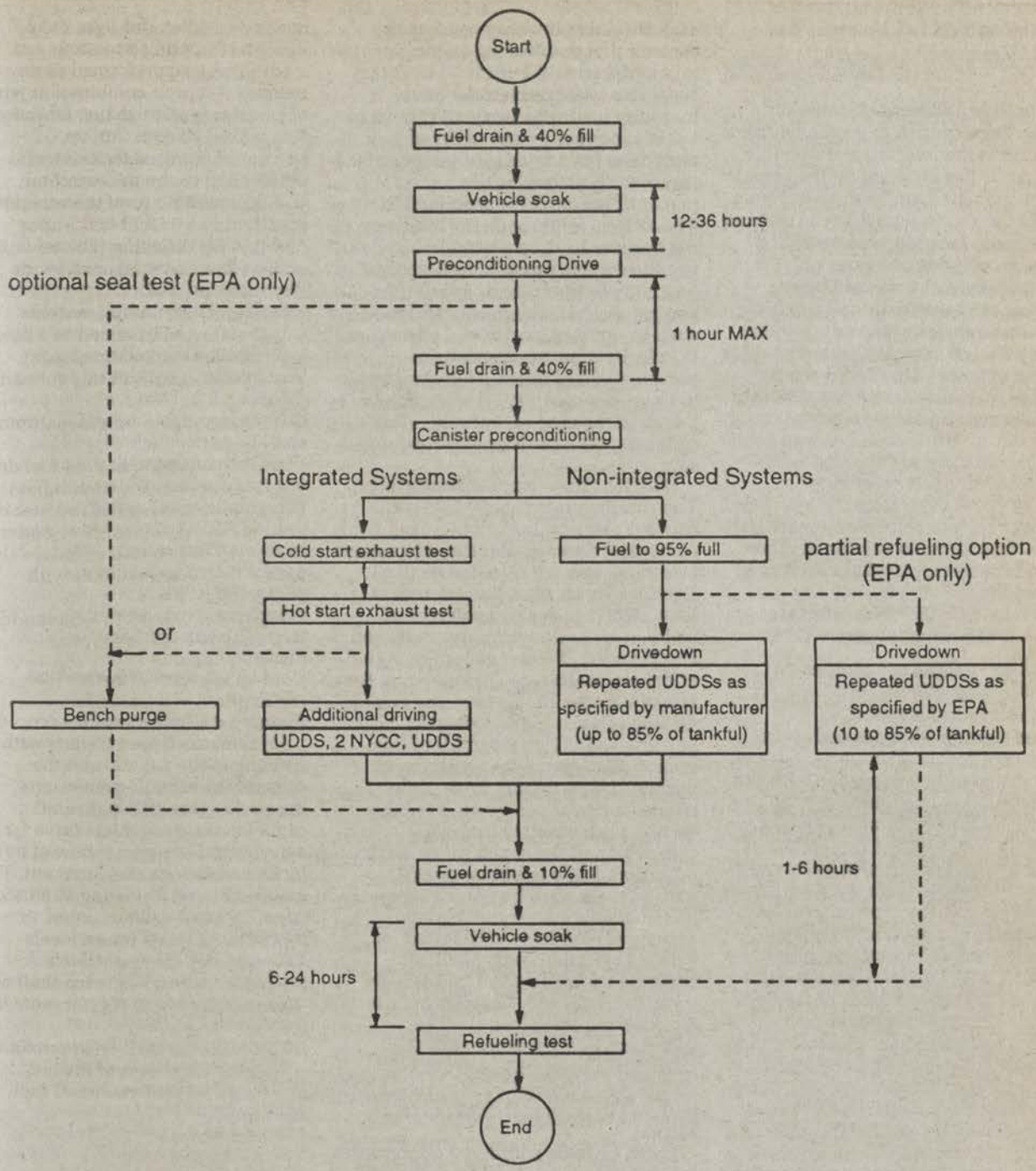

Figure B98-12: Refueling Test Sequence

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8. A new § 86.152–98 is added to subpart B to read as follows:

§ 86.152–98 Vehicle preparation; refueling test.

(a) Provide additional fittings and adapters, as required, to accommodate a fuel drain at the lowest point possible in the tank(s) as installed on the vehicle. The canister shall not be removed from the vehicle, unless access to the canister in its normal location is so restricted that purging and loading can only reasonably be accomplished by removing the canister from the vehicle. Special care shall be taken during this step to avoid damage to the components and the integrity of the fuel system.

(b) Provide valving or other means to allow the venting of the refueling vapor line to the atmosphere rather than to the refueling emissions canister(s) when required by this test procedure.

(c) For preconditioning that involves loading the vapor collection canister(s) with butane, provide valving or other means as necessary to allow loading of the canister(s).

9. A new § 86.153–98 is added to subpart B to read as follows:

§ 86.153–98 Vehicle and canister preconditioning; refueling test.

(a) *Vehicle and canister preconditioning.* Vehicles and vapor storage canisters shall be preconditioned in accordance with the preconditioning procedures for the supplemental two-diurnal evaporative emissions test specified in § 86.132–96 (a) through (j). For vehicles equipped with non-integrated refueling emission control systems, the canister must be loaded using the method involving butane loading to breakthrough (see § 86.132–96 (j)(1)). If the refueling test procedure is started within 24 hours of the completion of an evaporative emission test on the same vehicle at the same ambient conditions, the fuel tank drain and fill and minimum soak period requirement described in § 86.132–96 (b) and (c) may be omitted from the refueling test procedure.

(b) *Seal test.* The Administrator may choose to omit certain canister load and purge steps, and replace them with a bench purge of the refueling canister(s), in order to verify the adequacy of refueling emission control system seals. Failure of this seal test shall constitute a failure of the refueling emission control test. For integrated systems, this bench purge may be performed after the exhaust testing in order to obtain exhaust emission test results. Non-integrated system seal testing shall be performed using paragraph (b)(1) of this section.

(1) *Without the exhaust emission test.* The Administrator may conduct the canister preconditioning by purging the canister(s) with at least 1200 canister bed volumes of ambient air (with humidity controlled to 50±25 grains of water vapor per pound of dry air) maintained at a nominal flow rate of 0.8 cfm directly following the preconditioning drive described in § 86.132–96 (c) through (e). In this case, the canister loading procedures and the vehicle driving procedures described in § 86.132–96 (f) through (j) and in paragraphs (c) through (d) of this section shall be omitted, and the 10 minute and 60 minute time requirements of paragraph (e) of this section shall apply to time after completion of the bench purge. In the case of multiple refueling canisters, each canister shall be purged separately.

(2) *With the exhaust emission test.* The Administrator may conduct the canister preconditioning by purging the canister(s) directly after the exhaust test (see paragraph (c)(1) of this section). The canister shall be purged with at least 1200 canister bed volumes of ambient air (with humidity controlled to 50±25 grains of water vapor per pound of dry air) maintained at a nominal flow rate of 0.8 cfm. In this case, the vehicle driving procedures described in paragraphs (c)(2) through (d) of this section shall be omitted, and the 10 minute and 60 minute time requirements of paragraph (e) of this section shall apply to time after completion of the bench purge. In the case of multiple refueling canisters, each canister shall be purged separately.

(c) *Canister purging; integrated systems* (1) Vehicles to be tested for exhaust emissions only shall be processed according to §§ 86.135–94 through 86.137–96. Vehicles to be tested for refueling emissions shall be processed in accordance with the procedures in §§ 86.135–94 through 86.137–96, followed by the procedures outlined in paragraph (c)(2) of this section.

(2) To provide additional opportunity for canister purge, conduct additional driving on a dynamometer, within one hour of completion of the hot start exhaust test, by operating the test vehicle through one UDDS, a 2 minute idle, two NYCCs, another 2 minute idle, another UDDS, then another 2 minute idle (see § 86.115–78 and Appendix I of this part). Fifteen seconds after the engine starts, place the transmission in gear. Twenty seconds after the engine starts, begin the initial vehicle acceleration of the driving schedule. The transmission shall be operated according to the specifications of § 86.128–79 during the driving cycles. A cooling fan(s) shall be positioned as described in § 86.135–94(b).

(d) *Canister purging; non-integrated systems.* Within one hour of completion of canister loading to breakthrough, the fuel tank(s) shall be further filled to 95 percent of nominal tank capacity determined to the nearest one-tenth of a U.S. gallon (0.38 liter) with the fuel specified in § 86.113–94. During this fueling operation, the refueling emissions canister(s) shall be disconnected. Following completion of refueling, the refueling emissions canister(s) shall be reconnected. Special care shall be taken during this step to avoid damage to the components and the integrity of the fuel system. Vehicle driving to purge the refueling canister(s) shall be performed using either the chassis dynamometer procedure or the test track procedure, as described in paragraphs (d)(1) and (d)(2) of this section. The Administrator may choose to shorten the vehicle driving for a partial refueling test as described in paragraph (d)(3) of this section. For vehicles equipped with dual fuel tanks, the required volume of fuel shall be driven out of one tank, the second tank shall be selected as the fuel source, and the required volume of fuel shall be driven out of the second tank.

(1) *Chassis dynamometer procedure.* (i) Vehicle driving on a chassis dynamometer shall consist of repeated drives with the UDDS until 85 percent of fuel tank capacity has been consumed. Driving in testing performed by manufacturers may be terminated before 85 percent of the fuel tank capacity has been consumed, provided that driving is not terminated partway through a UDDS cycle. Driving in testing performed by the Administrator may be terminated after the same number of UDDS cycles as driven in the manufacturer's certification testing.

(ii) Except with the advance approval of the Administrator, the number of UDDSs required to consume 85 percent of tank fuel capacity (total capacity of both tanks when the vehicle is equipped with dual fuel tanks) shall be determined from the fuel economy on the UDDS applicable to the test vehicle and from the number of gallons to the nearest 0.1 gallon (0.38 liter) that constitutes 85 percent of tank volume. If this "fuel consumed point" occurs partway through a UDDS cycle, the cycle shall be completed in its entirety.

(iii) For vehicles equipped with dual fuel tanks, fuel switching from the first tank to the second tank shall occur at the 10 percent volume of the first tank regardless of the point in the UDDS cycle at which this occurs.

(iv) If necessary to accommodate work schedules, the engine may be turned off and the vehicle parked on the dynamometer. The vehicle may be parked off of the dynamometer to facilitate maintenance or repairs if required.

(v) During the driving on the dynamometer, a cooling fan(s) shall be positioned as described in § 86.135–94(b).

(2) *Test track procedure.* (i) Vehicle driving on a test track shall consist of repeated drives with the UDDS until 85 percent of fuel tank capacity has been consumed. Driving performed by manufacturers may be terminated before 85 percent of the fuel tank capacity has been consumed, provided that driving is not terminated partway through a UDDS cycle. Driving performed by the Administrator may be terminated after the same number of UDDS cycles as driven in the manufacturer's certification testing.

(ii) If the distance from the emission laboratory to the test track is less than 5 miles (8.05 km) the vehicle may be driven to the test track at a speed not to exceed 25 mph. If the distance is greater than 5 miles (8.05 km) the vehicle shall be moved to the test track with the engine off.

(iii) Except with the advance approval of the Administrator, the number of UDDSs required to consume 85 percent of tank fuel capacity (total capacity of both tanks when the vehicle is equipped with dual fuel tanks) shall be determined from the fuel economy on the UDDS applicable to the test vehicle and from the number of gallons to the nearest 0.1 gallon (0.38 liter) that constitutes 85 percent of tank volume. If this "fuel consumed point" occurs partway through a UDDS cycle, the cycle shall be completed in its entirety.

(iv) The vehicle shall be driven at a speed not to exceed 25 mph from the test track to the laboratory provided the distance from the test track to the laboratory does not exceed 5 miles (8.05 km). If the distance from the test track to the emission laboratory is greater than 5 miles (8.05 km) the vehicle shall be moved from the test track with the engine off.

(v) For vehicles equipped with dual fuel tanks, fuel switching from the first tank to the second tank shall occur at the 10 percent volume of the first tank regardless of the point in the UDDS cycle at which this occurs.

(vi) If necessary to accommodate work schedules, the engine may be turned off and the vehicle parked on the test track. The vehicle may be parked off of the test track to facilitate maintenance or repairs if required. If the vehicle is moved from the test track, it shall be returned to the track with the engine off when mileage accumulation is to be resumed.

(3) *Drive schedule for partial refueling test.* The Administrator may conduct a partial refueling test involving a shortening of the drive procedures described in paragraphs (d) (1) and (2) of this section and a modified soak and refueling procedure as described in paragraph (e) of this section and § 86.154–98(e)(7)(i). The drive shall be performed as described in paragraph (d) (1) or (2) of this section except that the drive shall be terminated when at least 10 percent but no more than 85 percent of the fuel tank nominal capacity has been consumed and not partway through a UDDS cycle. The amount of fuel consumed in the drive shall be determined by multiplying the number of UDDSs driven by the mileage accumulated per UDDS and dividing by the fuel economy for the UDDS applicable to the test vehicle.

(e) *Vehicle cool down*—(1) *Partial refueling test.* If the Administrator is conducting the non-integrated system partial refueling test, after the driving procedure specified in paragraph (d)(3) of this section, the vehicle shall be parked (without starting the engine) and soaked at 80±3 °F (27±1.7 °C) for a minimum of 1 hour and a maximum of 6 hours.

(2) *For all other refueling emission tests.* Within 10 minutes of completion of refueling emissions canister stabilization (see paragraph (c) or (d) of this section), the refueling emissions canister(s) shall be disconnected. Within 60 minutes of completion of refueling emissions canister stabilization (see paragraph (c) or (d) of this section), the vehicle fuel tank(s) shall be drained, the fuel tank(s) fueled to 10 percent of nominal tank capacity determined to the nearest one-tenth of a U.S. gallon (0.38 liter) with the specified fuel, and the vehicle parked (without starting the engine) and soaked at 80±3 °F (27±1.7 °C) for a minimum of 6 hours and a maximum of 24 hours.

10. A new § 86.154–98 is added to subpart B to read as follows:

§ 86.154–98 Measurement procedure; refueling test.

(a) The refueling test measurement procedure described in this section immediately follows the vehicle and canister preconditioning described in § 86.153–98.

(b) The refueling emission enclosure shall be purged for several minutes immediately prior to the test. Warning: If at any time the concentration of hydrocarbons, of methanol, or of methanol and hydrocarbons exceeds 15,000 ppm C, the enclosure should be immediately purged. This concentration provides a 4:1 safety factor against the lean flammability limit.

(c)(1) The FID (or HFID) hydrocarbon analyzer, and additional analyzer, if needed, shall be zeroed and spanned immediately prior to the test.

(2) For methanol-fueled vehicles only, impingers charged with known volumes of pure deionized water shall be placed in the methanol sampling system.

(d) If not already on, the enclosure mixing fan and the spilled fuel mixing blower shall be turned on at this time.

(e) The refueling emission measurement portion of the refueling test shall be performed as follows:

(1) The line from the fuel tank(s) to the refueling emissions canister(s) shall be connected.

(2) The test vehicle, with the engine shut off, shall be moved into the enclosure. The test vehicle windows and luggage compartment shall be opened if not already open.

(3) An electrical ground shall be attached to the vehicle. The enclosure door shall be closed and sealed. The FID (or HFID) trace shall be allowed to stabilize.

(4) The dispensed fuel temperature recording system shall be started.

(5)(i) Within 10 minutes of closing and sealing the doors, analyze enclosure atmosphere for hydrocarbons and record. This is the initial (time=0 minutes) hydrocarbon concentration, C_{HCi}, required in § 86.143–96.

(ii) For methanol-fueled vehicles only, measure the initial concentration of methanol as described in § 86.133–96(i)(6).

(6) Within one minute of obtaining the initial FID (or HFID) reading, and methanol reading if applicable, the fuel nozzle shall be inserted into the filler neck of the test vehicle, to its maximum penetration, and the refueling operation shall be started. The plane of the nozzle's handle shall be approximately perpendicular to the floor of the laboratory. The fuel shall be dispensed at a temperature of 67±1.5 °F (19.4±0.8 °C) and at a dispensing rate of 9.8±0.3 gal/min (37.1±1.1 liter/min). In testing conducted by the Administrator, a lower dispensing rate (no lower than 4.0 gal/min (15.1 liter/min)) may be used.

(7)(i) *Partial refueling test.* If the Administrator conducts the non-integrated system partial refueling test, the fuel flow shall continue until the amount of fuel pumped is equal to the fuel consumed during the driving, as determined in accordance with § 86.153–98(d)(3). The final volume of fuel dispensed must be within one-tenth of a U.S. gallon (0.38 liter) of the

targeted amount. If automatic nozzle shut-off occurs prior to this point, the nozzle shall be reactivated within 15 seconds and fuel dispensing continued as needed. A minimum of 3 seconds shall elapse between any automatic shutoff and subsequent resumption of dispensing.

(ii) *For all other refueling tests.* The fuel flow shall continue until the refueling nozzle automatic shut-off is activated. The amount of fuel dispensed must be at least 85 percent of nominal fuel tank volume, determined to the nearest one-tenth of a U.S. gallon (0.38 liter). If automatic nozzle shut-off occurs prior to this point, the nozzle shall be reactivated within 15 seconds and fuel dispensing continued as needed. A minimum of 3 seconds shall elapse between any automatic shutoff and subsequent resumption of dispensing. Dispensing may not be manually terminated, unless the test vehicle has already clearly failed the test.

(8)(i) The final reading of the evaporative enclosure FID analyzer shall be taken 60±5 seconds following the final shut-off of fuel flow. This is the final hydrocarbon concentration, C_{HCf}, required in § 86.143–96. The elapsed time, in minutes, between the initial and final FID (or HFID) readings shall be recorded.

(ii) *For methanol-fueled vehicles only.* Measure the final concentration of methanol as described in § 86.133–96(m)(2).

(9) For vehicles equipped with more than one fuel tank, the procedures described in this section shall be performed for each fuel tank.

11. A new § 86.155–98 is added to subpart B to read as follows:

§ 86.155–98 Records required; refueling test.

The following information shall be recorded with respect to each test:

(a) Test number.

(b) System or device tested (brief description).

(c) Date and time of day.

(d) Instrument operated.

(e) Operator.

(f) Vehicle: ID number, manufacturer, model year, engine family, evaporative/refueling emission family, refueling emission control system, refueling emissions canister continuous drive purge miles and number of UDDSs driven for non-integrated systems, fuel system (including fuel tank(s) capacity and location), basic engine description (including displacement, number of cylinders, turbocharger (if used), and catalyst usage), engine code, and odometer reading.

(g) All pertinent instrument information including nozzle and fuel delivery system description. As an alternative, a reference to a vehicle test cell number may be used, with advance approval of the Administrator, provided test cell calibration records show the pertinent instrument information.

(h) Recorder charts: Identify zero, span, and enclosure gas sample traces.

(i) Enclosure barometric pressure and ambient temperature: a central laboratory barometer may be used, *provided* that individual test cell barometric pressures are shown to be within ±0.1 percent of the barometric pressure at the central barometer location.

(j) Temperatures: Soak area; dispensed fuel, initial and final.

(k) Fuel dispensing rate(s).

(l) Dispensed fuel volume.

(m) For methanol-fueled vehicles:

(1) Volume of sample passed through the methanol sampling system and the volume of deionized water in each impinger.

(2) The methanol concentration in the reference sample and the peak area from the GC analysis of the reference sample.

(3) The peak area of the GC analyses of the test samples (methanol).

(n) All additional information necessary for the calculations specified in § 86.156–98.

12. A new § 86.156–98 is added to subpart B to read as follows:

§ 86.156–98 Calculations; refueling test.

(a) The calculation of the net hydrocarbon mass change and methanol mass change (if applicable) in the enclosure is used to determine refueling mass emissions. The mass is calculated from initial and final hydrocarbon and methanol (if applicable) concentrations in ppm carbon, initial and final enclosure ambient temperatures, initial and final barometric pressures, and net enclosure volume using the equations of § 86.143–96. For vehicles with multiple tanks, the results for each tank shall be calculated and then summed to determine overall refueling emissions.

(b) The final results for comparison with the refueling control emission standard shall be computed by dividing the total refueling mass emissions by the total gallons of fuel dispensed in the refueling test (see § 86.154–98(e)(7)(ii)).

(c) The results of all emission tests shall be rounded, in accordance with ASTM E 29–67 (reapproved 1980) (as referenced in § 86.094–28(a)(4)(i)(B)(*2*)(*ii*)) to the number of decimal places contained in the applicable emission standard expressed to one additional significant figure.

Subpart G—[Amended]

1. A new § 86.602–98 is added to subpart G to read as follows:

§ 86.602–98 Definitions.

Section 86.602–98 includes text that specifies requirements that differ from § 86.602–84. Where a paragraph in § 86.602–84 is identical and applicable to § 86.602–98, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.602–84." Where a corresponding paragraph of § 86.602–84 is not applicable, this is indicated by the statement "[Reserved].".

(a) through (b)(2) [Reserved]. For guidance see § 86.602–84.

(b)(3)(i) *Configuration*, when used for LDV exhaust emissions testing, means a subclassification of an engine-system combination on the basis of engine code, inertia weight class, transmission type and gear ratios, axle ratio, and other parameters which may be designated by the Administrator.

(ii) *Configuration*, when used for LDV refueling emissions testing, means a subclassification of an evaporative/refueling emission family on the basis of evaporative and refueling control system and other parameters which may be designated by the Administrator.

(4) *Test sample* means the collection of vehicles of the same configuration which have been drawn from the population of vehicles of that configuration and which will receive emission testing.

(b)(5) through (b)(8) [Reserved]. For guidance see § 86.602–84.

2. A new § 86.603–98 is added to subpart G to read as follows:

§ 86.603–98 Test orders.

Section 86.603–98 includes text that specifies requirements that differ from § 86.603–88. Where a paragraph in § 86.603–88 is identical and applicable to § 86.603–98, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.603–88." Where a corresponding paragraph of § 86.603–88 is not applicable, this is indicated by the statement "[Reserved].".

(a) through (c) [Reserved]. For guidance see § 86.603–88.

(d) A manufacturer may indicate preferred assembly plants for the various engine families and evaporative/refueling families produced by the manufacturer for selection of vehicles in response to a test order. This shall be accomplished by submitting a list of engine families with the associated evaporative/refueling families, and the corresponding assembly plants from

which the manufacturer desires to have vehicles selected, to the Administrator. In order that a manufacturer's preferred location for issuance of a test order for a configuration of a particular engine family and/or evaporative/refueling family be considered, the list must be submitted prior to issuance of the test order. Notwithstanding the fact that a manufacturer has submitted the above list, the Administrator may, upon making the determination that evidence exists indicating noncompliance at other than the manufacturer's preferred plant, order selection at such other plant where vehicles of the configuration specified in the test order are assembled.

(e) [Reserved]. For guidance see § 86.603–88.

3. A new § 86.605–98 is added to subpart G read as follows:

§ 86.605–98 Maintenance of records; submittal of information.

Section 86.605–98 includes text that specifies requirements that differ from § 86.605–88. Where a paragraph in § 86.605–88 is identical and applicable to § 86.605–98, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.605–88." Where a corresponding paragraph of § 86.605–88 is not applicable, this is indicated by the statement "[Reserved].".

(a) through (a)(1)(i)(D) [Reserved]. For guidance see § 86.605–88.

(E) Refueling Enclosure (Refueling SHED).

(*1*) Total internal volume.

(*2*) Capacity of mixing blower.

(*3*) Location of refueling access ports.

(*4*) Enclosure barometric pressure and ambient temperature.

(*5*) Soak area temperature records.

(F) Fuel Dispenser for Refueling.

(*1*) Fuel dispensing rate.

(*2*) Manufacturer and model of fuel nozzle.

(*3*) Dispensed fuel temperature.

(*4*) Dispensed fuel volume.

(a)(1)(ii) through (e) [Reserved]. For guidance see § 86.605–88.

4. A new § 86.608–98 is added to subpart G to read as follows:

§ 86.608–98 Test procedures.

(a) The prescribed test procedures are the Federal Test Procedure, including the refueling test procedure or the fuel spitback test, whichever is applicable, as described in subpart B of this part, the cold temperature CO test procedure as described in subpart C of this part, and the Certification Short Test as described in subpart O of this part. For purposes of Selective Enforcement Audit Testing, the manufacturer shall not be required to perform any of the test procedures in subpart B of this part relating to evaporative emission testing, other than refueling emissions testing, except as specified in paragraph (a)(2) of this section.

(1) The Administrator may omit any of the testing procedures described in paragraph (a) of this section and may select and prescribe the sequence of any CSTs. Further, the Administrator may, on the basis of a written application by a manufacturer, approve optional test procedures other than those in subparts B, C, and O of this part for any motor vehicle which is not susceptible to satisfactory testing using the procedures in subparts B, C, and O of this part.

(2) The following exceptions to the test procedures in subpart B of this part are applicable to Selective Enforcement Audit testing:

(i) For mileage accumulation, the manufacturer may use test fuel meeting the specifications for mileage and service accumulation fuels of § 86.113–94. Otherwise, the manufacturer may use fuels other than those specified in this section only with the advance approval of the Administrator.

(ii) The manufacturer may measure the temperature of the test fuel at other than the approximate mid-volume of the fuel tank, as specified in § 86.131–96(a) with only a single temperature sensor, and may drain the test fuel from other than the lowest point of the tank, as specified in § 86.131–96(b) and § 86.152–98(a), provided an equivalent method is used. Equivalency documentation shall be maintained by the manufacturer and shall be made available upon request.

(iii) The manufacturer may perform additional preconditioning on SEA test vehicles other than the preconditioning specified in § 86.132–98 only if the additional preconditioning had been performed on certification test vehicles of the same configuration.

(iv) If the Administrator elects to use the evaporative/refueling canister preconditioning procedure described in § 86.132–96(k), the manufacturer shall perform the heat build procedure 11 to 34 hours following vehicle preconditioning rather than according to the time period specified in § 86.133–90(a). All references to an evaporative emission enclosure and analyzing for HC during the heat build can be ignored.

(v) The manufacturer may substitute slave tires for the drive wheel tires on the vehicle as specified in paragraph § 86.135–90(e): *Provided*, that the slave tires are the same size.

(vi) If the Administrator elects to use the evaporative/refueling canister preconditioning procedure described in § 86.132–96(k), the cold start exhaust emission test described in § 86.137–96 shall follow the heat build procedure described in § 86.133–90 by not more than one hour.

(vii) In performing exhaust sample analysis under § 86.140–94.

(A) When testing diesel vehicles, or methanol-fueled Otto-cycle vehicles, the manufacturer shall allow a minimum of 20 minutes warm-up for the HC analyzer, and for diesel vehicles, a minimum of two hours warm-up for the CO, CO_2, and NO_X analyzers. (Power is normally left on infrared and chemiluminescent analyzers. When not in use, the chopper motors of the infrared analyzers are turned off and the phototube high voltage supply to the chemiluminescent analyzers is placed in the standby position.)

(B) The manufacturer shall exercise care to prevent moisture from condensing in the sample collection bags.

(viii) The manufacturer need not comply with § 86.142–90 or § 86.155–98, since the records required therein are provided under other provisions of this subpart G.

(ix) If a manufacturer elects to perform the background determination procedure described in paragraph (a)(2)(xi) of this section in addition to performing the refueling emissions test procedure, the elapsed time between the initial and final FID readings shall be recorded, rounded to the nearest second rather than minute as described in § 86.154–98(e)(8). In addition, the vehicle soak described in § 86.153–98(e) shall be conducted with the windows and luggage compartment of the vehicle open.

(x) The Administrator may elect to perform a seal test, described in § 86.153–98(b), of both integrated and non-integrated systems instead of the full refueling test. When testing non-integrated systems, an manufacturer may conduct the canister purge described in § 86.153–98(b)(1) directly following the preconditioning drive described in § 86.132–96(e) or directly following the exhaust emissions test described in § 86.137–96.

(xi) In addition to the refueling test, a manufacturer may elect to perform the following background emissions determination immediately prior to the refueling measurement procedure described in § 86.154–98, provided EPA is notified of this decision prior to the start of testing in an SEA.

(A) The SHED shall be purged for several minutes immediately prior to the background determination. Warning: If at any time the concentration of

hydrocarbons, of methanol, or of methanol and hydrocarbons exceeds 15,000 ppm C, the enclosure should be immediately purged. This concentration provides a 4:1 safety factor against the lean flammability limit.

(B) The FID (or HFID) hydrocarbon analyzer shall be zeroed and spanned immediately prior to the background determination. If not already on, the enclosure mixing fan and the spilled fuel mixing blower shall be turned on at this time.

(C) Place the vehicle in the SHED. The ambient temperature level encountered by the test vehicle during the entire background emissions determination shall be 80 °F ±3 °F. The windows and luggage compartment of the vehicle must be open and the gas cap must be secured.

(D) Seal the SHED. Immediately analyze the ambient concentration of hydrocarbons in the SHED and record. This is the initial background hydrocarbon concentration.

(E) Soak the vehicle for ten minutes ±1 minute.

(F) The FID (or HFID) hydrocarbon analyzer shall be zeroed and spanned immediately prior to the end of the background determination.

(G) Analyze the ambient concentration of hydrocarbons in the SHED and record. This is the final background hydrocarbon concentration.

(H) The total hydrocarbon mass emitted during the background determination is calculated according to § 86.156–98. To obtain a per-minute background emission rate, divide the total hydrocarbon mass calculated in this paragraph by the duration of the soak, rounded to the nearest second, described in paragraph (a)(2)(xi)(G) of this section.

(I) The background emission rate is multiplied by the duration of the refueling measurement obtained in paragraph (a)(2)(ix) of this section. This number is then subtracted from the total grams of emissions calculated for the refueling test according to § 86.156–98(a) to obtain the adjusted value for total refueling emissions. The final results for comparison with the refueling emission standard shall be computed by dividing the adjusted value for total refueling mass emissions by the total gallons of fuel dispensed in the refueling test as described in § 86.156–98(b).

(xii) In addition to the requirements of subpart B of this part, the manufacturer shall prepare gasoline-fueled and methanol-fueled vehicles as follows prior to emission testing:

(A) The manufacturer shall inspect the fuel system to ensure the absence of any leaks of liquid or vapor to the atmosphere by applying a pressure of 14.5±0.5 inches of water (3.6±0.1 kPa) to the fuel system allowing the pressure to stabilize and isolating the fuel system from the pressure source. Following isolation of the fuel system, pressure must not drop more than 2.0 inches of water (0.5 Kpa) in five minutes. If required, the manufacturer shall perform corrective action in accordance with paragraph (d) of this section and report this action in accordance with § 86.609–98(d).

(B) When performing this pressure check, the manufacturer shall exercise care to neither purge nor load the evaporative or refueling emission control systems.

(C) The manufacturer may not modify the test vehicle's evaporative or refueling emission control systems by component addition, deletion, or substitution, except to comply with paragraph (a)(2)(ii) of this section if approved in advance by the Administrator.

(3) The following exceptions to the test procedures in subpart C of this part are applicable to Selective Enforcement Audit testing:

(i) The manufacturer may measure the temperature of the test fuel at other than the approximate mid-volume of the fuel tank, as specified in § 86.131–90(a), and may drain the test fuel from other than the lowest point of the fuel tank as specified in § 86.131–90(b), provided an equivalent method is used. Equivalency documentation shall be maintained by the manufacturer and shall be made available to the Administrator upon request.

(ii) In performing exhaust sample analysis under § 86.140–94, the manufacturer shall exercise care to prevent moisture from condensing in the sample collection bags.

(iii) The manufacturer need not comply with § 86.142–90 since the records required therein are provided under other provisions of this subpart G.

(iv) In addition to the requirements of subpart C of this part, the manufacturer shall prepare gasoline-fueled vehicles as follows prior to exhaust emission testing:

(A) The manufacturer shall inspect the fuel system to ensure the absence of any leaks of liquid or vapor to the atmosphere by applying a pressure of 14.5±0.5 inches of water (3.6±0.1 Kpa) to the fuel system allowing the pressure to stabilize and isolating the fuel system from the pressure source. Following isolation of the fuel system, pressure must not drop more than 2.0 inches of water (0.5 Kpa) in five minutes. If required, the manufacturer shall perform corrective action in accordance with paragraph (d) of this section and report this action in accordance with § 86.609–98(d).

(B) When performing this pressure check, the manufacturer shall exercise care to neither purge nor load the evaporative or refueling emission control system.

(C) The manufacturer shall not modify the test vehicle's evaporative or refueling emission control system by component addition, deletion, or substitution, except if approved in advance by the Administrator, to comply with paragraph (a)(3)(i) of this section.

(4) The exceptions to the test procedures in subpart O of this part applicable to Selective Enforcement Audit testing are listed in paragraphs (a)(4) (i) and (ii) of this section.

(i) The manufacturer need not comply with § 86.1442, since the records required therein are provided under provisions of this subpart G.

(ii) In addition to the requirements of subpart O of this part, the manufacturer must prepare vehicles as in paragraphs (a)(4)(ii) (A) through (C) of this section prior to exhaust emission testing.

(A) The manufacturer must inspect the fuel system to insure the absence of any leaks of liquid or vapor to the atmosphere by applying a pressure of 14.5±0.5 inches of water (3.6±0.1 Kpa) to the fuel system, allowing the pressure to stabilize, and isolating the fuel system from the pressure source. Pressure must not drop more than 2.0 inches of water (0.5 Kpa) in five minutes. If required, the manufacturer performs corrective action in accordance with paragraph (d) of this section and must report this action in accordance with § 86.609–98(d).

(B) When performing this pressure check, the manufacturer must exercise care to neither purge nor load the evaporative or refueling emission control system.

(C) The manufacturer may not modify the test vehicle's evaporative or refueling emission control system by component addition, deletion, or substitution.

(b)(1) The manufacturer shall not adjust, repair, prepare, or modify the vehicles selected for testing and shall not perform any emission tests on vehicles selected for testing pursuant to the test order unless this adjustment repair, preparation, modification, and/or tests are documented in the manufacturer's vehicle assembly and inspection procedures and are actually performed or unless these adjustments and/or tests are required or permitted

under this subpart or are approved in advance by the Administrator.

(2) For 1981 and later model years the Administrator may adjust or cause to be adjusted any engine or vehicle parameter which the Administrator has determined to be subject to adjustment for new vehicle compliance testing (e.g., for certification or Selective Enforcement Audit testing) in accordance with § 86.081–22(c)(1), to any setting within the physically adjustable range of that parameter, as determined by the Administrator in accordance with § 86.081–22(e)(3)(ii), prior to the performance of any tests. However, if the idle speed parameter is one which the Administrator has determined to be subject to adjustment, the Administrator shall not adjust it to a setting which causes a lower engine idle speed than will be possible within the physically adjustable range of the idle speed parameter on the vehicle when it has accumulated 4,000 miles, all other parameters being adjusted identically for the purpose of comparison. The Administrator, in making or specifying such adjustments, will consider the effect of the deviation from the manufacturer's recommended setting on emissions performance characteristics as well as the likelihood that similar settings will occur on in-use light-duty vehicles or light-duty trucks. In determining likelihood, the Administrator will consider factors such as, but not limited to, the effect of the adjustment on vehicle performance characteristics and surveillance information from similar in-use vehicles.

(c) Prior to performing emission testing pursuant to paragraph (a) of this section on an SEA test vehicle, the manufacturer may accumulate on each vehicle a number of miles equal to the greater of 4,000 miles, or the number of miles the manufacturer accumulated during certification on the emission-data vehicle corresponding to the configuration specified in the test order.

(1) Mileage accumulation must be performed in any manner using good engineering judgment to obtain emission results representative of normal production vehicles. This mileage accumulation must be consistent with the new vehicle break-in instructions contained in the applicable vehicle owner's manual, if any.

(2) The manufacturer shall accumulate mileage at a minimum rate of 300 miles per vehicle during each 24-hour period, unless otherwise provided by the Administrator.

(i) The first 24-hour period for mileage accumulation shall begin as soon as authorized vehicle checks, inspections and preparations are completed on each vehicle.

(ii) The minimum mileage accumulation rate does not apply on weekends or holidays.

(iii) If the manufacturer's mileage accumulation target is less than the minimum rate specified (300 miles per day), then the minimum daily accumulation rate shall be equal to the manufacturer's mileage accumulation target.

(3) Mileage accumulation shall be completed on a sufficient number of test vehicles during consecutive 24-hour periods to assure that the number of vehicles tested per day fulfills the requirements of paragraph (g) of this section.

(d) The manufacturer shall not perform any maintenance on test vehicles after selection for testing nor shall the Administrator allow deletion of any test vehicle from the test sequence, unless requested by the manufacturer and approved by the Administrator before any test vehicle maintenance of deletion.

(e) The manufacturer will be allowed 24 hours to ship test vehicles from the assembly plant or storage facility to the test facility if the test facility is not located at the plant or storage facility or in close proximity to the plant or storage facility: Except, that the Administrator may approve more time based upon a request by the manufacturer accompanied by a satisfactory justification.

(f) If a vehicle cannot complete the mileage accumulation or emission tests because of vehicle malfunction, the manufacturer may request the Administrator to authorize the repair of that vehicle or its deletion from the test sequence.

(g) Whenever the manufacturer conducts testing pursuant to a test order issued under this subpart, the manufacturer shall notify the Administrator within one working day of receipt of the test order, which test facility will be used to comply with the test order and the number of available test cells at that facility. If no test cells are available at the desired facility, the manufacturer must provide alternate testing capability satisfactory to the Administrator.

(1) The manufacturer shall perform a combination of tests pursuant to paragraph (a) of this section so that a minimum of four tests are performed per 24 hour period, including voided tests, for each available test cell.

(2) The Administrator may approve a longer period based upon a request by a manufacturer accompanied by satisfactory justification.

(h) The manufacturer shall perform test vehicle selection, preparation, mileage accumulation, shipping, and testing in such a manner as to assure that the audit is performed in an expeditious manner.

(i) The manufacturer may retest any test vehicle after a fail decision has been reached in accordance with § 86.610–98(d) based on the first test on each vehicle; except that the Administrator may approve retests at other times during the audit based upon a request by the manufacturer accompanied by a satisfactory justification. The manufacturer may test each vehicle a total of three times. The manufacturer shall test each vehicle the same number of times. The manufacturer may accumulate additional mileage on test vehicles before conducting retests, subject to the provisions of paragraph (c) of this section.

5. A new § 86.609–98 is added to subpart G to read as follows:

§ 86.609–98 Calculation and reporting of test results.

(a) Initial test results are calculated following the test procedures specified in § 86.608–98(a). Round the initial test results to the number of decimal places contained in the applicable emission standard expressed to one additional significant figure. Rounding is done in accordance with ASTM E 29–67, (reapproved 1980) (as referenced in § 86.094–28 (a)(4)(i)(B)(*2*)(*ii*).

(b) Final test results for each test vehicle are calculated by summing the initial test results derived in paragraph (a) of this section for each test vehicle, dividing by the number of times that specific test has been conducted on the vehicle, and rounding to the same number of decimal places contained in the applicable standard expressed to one additional significant figure. Rounding is done in accordance with ASTM E 29–67, (reapproved 1980) (as referenced in § 86.094–28 (a)(4)(i)(B)(*2*)(*ii*).

(c) Final deteriorated test results.

(1) *For each test vehicle.* The final deteriorated test results for each light-duty vehicle tested for exhaust emissions and/or refueling emissions according to subpart B or subpart C of this part are calculated by multiplying or adding the final test results by the appropriate deterioration factor derived from the certification process for the engine or evaporative/refueling family and model year to which the selected configuration belongs and rounding to the same number of decimal places contained in the applicable emission

standard. Rounding is done in accordance with ASTM E 29–67, (reapproved 1980) (as referenced in § 86.094–28(a)(4)(i)(B)(*2*)(*ii*). For the purpose of this paragraph, if a multiplicative deterioration factor as computed during the certification process is less than one, that deterioration factor shall be one. If an additive deterioration factor as computed during the certification process is less than zero, that deterioration factor will be zero.

(2) *Exceptions.* There are no deterioration factors for light-duty vehicle emissions obtained during testing in accordance with subpart O of this part or with § 86.146–96. Accordingly, for the CST and the fuel dispensing spitback test the term "final deteriorated test results" means the final test results derived in paragraph (b) of this section for each test vehicle, rounded to the same number of decimal places contained in the applicable emission standard. Rounding is done in accordance with ASTM E 29–67, (reapproved 1980) (as referenced in § 86.094–28 (a)(4)(i)(B)(*2*)(*ii*).

(d) Within five working days after completion of testing of all vehicles pursuant to a test order, the manufacturer shall submit to the Administrator a report which includes the following information:

(1) The location and description of the manufacturer's emission test facilities which were utilized to conduct testing reported pursuant to this section.

(2) The applicable standards against which the vehicles were tested.

(3) Deterioration factors for the selected configuration.

(4) A description of the vehicle selection method used.

(5) For each test conducted.

(i) Test vehicle description including:

(A) Configuration, engine family, and refueling family identification.

(B) Year, make, build date, and model of vehicle.

(C) Vehicle Identification Number.

(D) Miles accumulated on vehicle.

(ii) Location where mileage accumulation was conducted and description of accumulation schedule.

(iii) Test number, date initial test results, final results and final deteriorated test results for all valid and invalid exhaust emission tests, and the reason for invalidation.

(iv) A complete description of any modification, repair, preparation, maintenance and/or testing which was performed on the test vehicle and:

(A) Has not been reported pursuant to any other paragraph of this subpart; and

(B) Will not be performed on all other production vehicles.

(v) Carbon dioxide emission values for all valid and invalid exhaust emission tests.

(vi) Where a vehicle was deleted from the test sequence by authorization of the Administrator, the reason for the deletion.

(vii) Any other information the Administrator may request relevant to the determination as to whether the new motor vehicles being manufactured by the manufacturer do in fact conform with the regulations with respect to which the certificate of conformity was issued.

(6) The following statement and endorsement:

This report is submitted pursuant to sections 206 and 208 of the Clean Air Act. This Selective Enforcement Audit was conducted in complete conformance with all applicable regulations under 40 CFR part 86 and the conditions of the test order. No emission related change(s) to production processes or quality control procedures for the vehicle configuration tested have been made between receipt of this test order and conclusion of the audit. All data and information reported herein is, to the best of

(Company Name)

knowledge, true and accurate. I am aware of the penalties associated with violations of the Clean Air Act and the regulations thereunder.

(Authorized Company Representative)

6. A new § 86.610–98 is added to subpart G to read as follows:

§ 86.610–98 Compliance with acceptable quality level and passing and failing criteria for Selective Enforcement Audits.

(a) The prescribed acceptable quality level is 40 percent.

(b) A failed vehicle is one whose final deteriorated test results pursuant to § 86.609–98(c) exceed at least one of the applicable emission standards associated with the test procedures pursuant to § 86.608–98(a).

(c)(1) *Pass/fail criteria.* The manufacturer shall test vehicles comprising the test sample until a pass decision is reached for all of the pollutants associated with all of the test procedures pursuant to § 86.608–98(a) or a fail decision is reached for one of these pollutants. A pass decision is reached when the cumulative number of failed vehicles, as defined in paragraph (b) of this section, for each pollutant is less than or equal to the fail decision number appropriate to the cumulative number of vehicles tested. A fail decision is reached when the cumulative number of failed vehicles for one pollutant is greater than or equal to the fail decision number appropriate to the cumulative number of vehicles tested. The pass and fail decision numbers associated with the cumulative number of vehicles tested are determined by use of the tables in appendix XI of this part appropriate for the annual projected sales as made by the manufacturer in its report submitted under § 600.207–80(a)(2) of this chapter (Automobile Fuel Economy Regulations). In the tables in appendix XI of this part, sampling plan "stage" refers to the cumulative number of vehicles tested. Once a pass decision has been made for a particular pollutant associated with a particular test procedure pursuant to § 86.608–98(a), the number of vehicles whose final deteriorated test results exceed the emission standard for that pollutant may not be considered any further for purposes of the audit.

(2) CST criteria only. For CST testing pursuant to subpart O, a pass or fail decision is determined according to the pass/fail criteria described in paragraph (c)(1) of this section, except that for each vehicle, the CST in its entirety is considered one pollutant.

(d) Passing or failing of an SEA audit occurs when the decision is made on the last vehicle required to make a decision under paragraph (c) of this section.

(e) The Administrator may terminate testing earlier than required in paragraph (c) of this section.

Subpart K—[Amended]

1. A new § 86.1002–2001 is added to subpart K to read as follows:

§ 86.1002–2001 Definitions.

(a) The definitions in this section apply to this subpart.

(b) As used in this subpart, all terms not defined in this section have the meaning given them in the Act.

(1) *Acceptable quality level* (AQL) means the maximum percentage of failing engines or vehicles, that for purposes of sampling inspection, can be considered satisfactory as a process average.

(2) *Compliance level* means an emission level determined during a Production Compliance Audit pursuant to subpart L of this part.

(3) *Configuration* means a subclassification, if any, of a heavy-duty engine family for which a separate projected sales figure is listed in the manufacturer's Application for Certification and which can be described on the basis of emission control system, governed speed, injector size, engine calibration and other parameters which may be designated by the Administrator, or for light-duty trucks a subclassification of a light-duty

truck engine family/emission control system combination on the basis of engine code, inertia weight class, transmission type and gear ratios, axle ratio, and other parameters which may be designated by the Administrator and/or a subclassification of a light-duty truck evaporative/refueling emission family/emission control system.

(4) *Test sample* means the collection of vehicles or engines of the same configuration which have been drawn from the population of vehicles or engines of that configuration and which will receive emission testing.

(5) *Inspection criteria* means the pass and fail numbers associated with a particular sampling plan.

(6) *Test engine* means an engine in a test sample.

(7) *Test vehicle* means a vehicle in a test sample.

2. A new § 86.1003–2001 is added to subpart K to read as follows:

§ 86.1003–2001 Test orders.

Section 86.1003–2001 includes text that specifies requirements that differ from § 86.1003–88. Where a paragraph in § 86.1003–88 is identical and applicable to § 86.1003–2001, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.1003–88." Where a corresponding paragraph of § 86.1003–88 is not applicable, this is indicated by the statement "[Reserved].".

(a) through (c)(1)(ii) [Reserved]. For guidance see § 86.1003–88.

(c)(1)(iii) Heavy-duty vehicle manufacturers will be required to select a minimum of four vehicles per day unless an alternate selection procedure is approved pursuant to § 86.1007–84(a) or unless total production of the specified configuration is less than four vehicles per day. If total production of the specified configuration is less than four vehicles per day, the manufacturer will select the actual number of vehicles produced per day.

(2) The test order may include alternative configurations to be selected for testing in the event that engines or vehicles of the specified configuration are not available for testing because those engines or vehicles are not being manufactured during the specified time, or not being stored at the specified assembly plant or associated storage facilities.

(3) If the specified configuration is not being manufactured at a rate of at least four vehicles per day, in the case of light-duty truck manufacturers, two heavy-duty engines or heavy-duty vehicles, in the case of heavy-duty vehicle and heavy-duty engine manufacturers specified in § 86.1008–2001(g)(1), or one engine or heavy-duty vehicle per day, in the case of heavy-duty vehicle or engine manufacturers specified in § 86.1008–2001(g)(2), over the expected duration of the audit, the Assistant Administrator or a designated representative may select engines or vehicles of an alternate configuration for testing.

(4) In addition, the test order may include other directions or information essential to the administration of the required testing.

(d) A manufacturer may submit a list of engine families and, if applicable, evaporative/refueling families and the corresponding assembly plants or associated storage facilities from which the manufacturer prefers to have engines or vehicles selected for testing in response to a test order. In order that a manufacturer's preferred location be considered for inclusion in a test order for a configuration of a particular engine family and/or evaporative/refueling family, the list must be submitted prior to issuance of the test order. Notwithstanding the fact that a manufacturer has submitted the above list, the Administrator may, upon making the determination that evidence exists indicating noncompliance at other than the manufacturer's preferred plant, order testing at such other plant where vehicles of the configuration specified in the test order are assembled.

(e) Upon receipt of a test order, a manufacturer shall proceed in accordance with the provisions of this subpart.

(f)(1) During a given model year, the Administrator shall not issue to a manufacturer more Selective Enforcement Auditing (SEA) test orders than the annual limit determined by the following:

(i) For manufacturers of heavy-duty engines or vehicles, either gasoline-fueled or diesel, the number determined by dividing the projected sales bound for the United States market for that year, as made by the manufacturer in its Application for Certification, by 30,000 and rounded to the nearest whole number, unless the projected sales are less than 15,000, in which case the number is one;

(f)(1)(ii) through (f)(3) [Reserved]. For guidance see § 86.1003–88.

3. A new § 86.1008–2001 is added to subpart K to read as follows:

§ 86.1008–2001 Test procedures.

(a)(1)(i) For heavy-duty engines, the prescribed test procedure is the Federal Test Procedure as described in subparts N, I, and P of this part. The Administrator, may on the basis of a written application by a manufacturer, approve optional test procedures other than those in subparts N, I, and P of this part for any heavy-duty vehicle which is not susceptible to satisfactory testing using the procedures in subparts N, I, and P of this part.

(ii) For heavy-duty vehicles the prescribed test procedures are the Fuel Dispensing Spitback Test as described in § 86.1246–96 (for HDVs with a GVW of less than 14,000 pounds (6,400 kilograms)); this test for fuel spitback is conducted as a stand alone test, thus all references to the test sequence described in figure M96–1 of subpart M of this part can be ignored. Further, the Administrator may, on the basis of a written application by a manufacturer, approve optional test procedures other than those in subpart M of this part for any heavy-duty vehicle which is not susceptible to satisfactory testing using the procedures in subpart M of this part.

(2) For light-duty trucks, the prescribed test procedures are the Federal Test Procedure, including the refueling test procedure or the fuel spitback test, whichever is applicable, as described in subpart B of this part, the idle test procedure as described in subpart P of this part, the cold temperature CO test procedure as described in subpart C of this part, and the Certification Short Test as described in subpart O of this part. For purposes of Selective Enforcement Audit Testing, the manufacturer shall not be required to perform any of the test procedures in subpart B of this part relating to evaporative emission testing, other than refueling emissions testing, except as specified in paragraph (a)(3) of this section. The Administrator may select and prescribe the sequence of any CSTs. Further, the Administrator may, on the basis of a written application by a manufacturer, approve optional test procedures other than those in subparts B, C, P, and O of this part for any motor vehicle which is not susceptible to satisfactory testing using the procedures in subparts B, C, P, and O of this part.

(3) When testing light-duty trucks, the following exceptions to the test procedures in subpart B of this part are applicable to Selective Enforcement Audit testing:

(i) For mileage accumulation, the manufacturer may use test fuel meeting the specifications for mileage and service accumulation fuels of § 86.113–94. Otherwise, the manufacturer may use fuels other than those specified in this section only with the advance approval of the Administrator.

(ii) The manufacturer may measure the temperature of the test fuel at other

than the approximate mid-volume of the fuel tank, as specified in § 86.131–96(a) with only a single temperature sensor, and may drain the test fuel from other than the lowest point of the tank, as specified in § 86.131–96(b) and § 86.152–98(a), provided an equivalent method is used. Equivalency documentation shall be maintained by the manufacturer and shall be made available upon request.

(iii) The manufacturer may perform additional preconditioning on SEA test vehicles other than the preconditioning specified in § 86.132–96 only in the additional preconditioning had been performed on certification test vehicles of the same configuration.

(iv) If the Administrator elects to use the evaporative/refueling canister preconditioning procedure described in § 86.132–96(k), the manufacturer shall perform the heat build procedure 11 to 34 hours following vehicle preconditioning rather than according to the time period specified in § 86.133–90(a). All references to an evaporative emission enclosure and analyzing for HC during the heat build can be ignored.

(v) The manufacturer may substitute slave tires for the drive wheel tires on the vehicle as specified in paragraph § 86.135–90(e): *Provided*, that the slave tires are the same size.

(vi) If the Administrator elects to use the evaporative/refueling canister preconditioning procedure described in § 86.132–96(k), the cold start exhaust emission test described in § 86.137–96 shall follow the heat build procedure described in § 86.133–90 by not more than one hour.

(vii) In performing exhaust sample analysis under § 86.140–94.

(A) When testing diesel vehicles, or methanol-fueled Otto-cycle vehicles, the manufacturer shall allow a minimum of 20 minutes warm-up for the HC analyzer, and for diesel vehicles, a minimum of two hours warm-up for the CO, CO_2, and NO_x analyzers. (Power is normally left on infrared and chemiluminescent analyzers. When not in use, the chopper motors of the infrared analyzers are turned off and the phototube high voltage supply to the chemiluminescent analyzers is placed in the standby position.)

(B) The manufacturer shall exercise care to prevent moisture from condensing in the sample collection bags.

(viii) The manufacturer need not comply with § 86.142–90 or § 86.155–98, since the records required therein are provided under other provisions of this subpart K.

(ix) If a manufacturer elects to perform the background determination procedure described in paragraph (a)(3)(xi) of this section in addition to performing the refueling emissions test procedure, the elapsed time between the initial and final FID readings shall be recorded, rounded to the nearest second rather than minute as described in § 86.154–98(e)(8). In addition, the vehicle soak described in § 86.153–98(e) shall be conducted with the windows and luggage compartment of the vehicle open.

(x) The Administrator may elect to perform a seal test, described in § 86.153–98(b), of both integrated and non-integrated systems instead of the full refueling test. When testing non-integrated systems, a manufacturer may conduct the canister purge described in § 86.153–98(b)(1) directly following the preconditioning drive described in § 86.132–96(e) or directly following the exhaust emissions test described in § 86.137–96.

(xi) In addition to the refueling test, a manufacturer may elect to perform the following background emissions determination immediately prior to the refueling measurement procedure described in § 86.154–98, provided EPA is notified of this decision prior to the start of testing in an SEA.

(A) The SHED shall be purged for several minutes immediately prior to the background determination. Warning: If at any time the concentration of hydrocarbons, of methanol, or of methanol and hydrocarbons exceeds 15,000 ppm C, the enclosure should be immediately purged. This concentration provides a 4:1 safety factor against the lean flammability limit.

(B) The FID (or HFID) hydrocarbon analyzer shall be zeroed and spanned immediately prior to the background determination. If not already on, the enclosure mixing fan and the spilled fuel mixing blower shall be turned on at this time.

(C) Place the vehicle in the SHED. The ambient temperature level encountered by the test vehicle during the entire background emissions determination shall be 80 °F ±3 °F. The windows and luggage compartment of the vehicle must be open and the gas cap must be secured.

(D) Seal the SHED. Immediately analyze the ambient concentration of hydrocarbons in the SHED and record. This is the initial background hydrocarbon concentration.

(E) Soak the vehicle for ten minutes ±1 minute.

(F) The FID (or HFID) hydrocarbon analyzer shall be zeroed and spanned immediately prior to the end of the background determination.

(G) Analyze the ambient concentration of hydrocarbons in the SHED and record. This is the final background hydrocarbon concentration.

(H) The total hydrocarbon mass emitted during the background determination is calculated according to § 86.156–98. To obtain a per-minute background emission rate, divide the total hydrocarbon mass calculated in this paragraph by the duration of the soak, rounded to the nearest second, described in paragraph (a)(3)(xi)(G) of this section.

(I) The background emission rate is multiplied by the duration of the refueling measurement obtained in paragraph (a)(3)(ix) of this section. This number is then subtracted from the total grams of emissions calculated for the refueling test according to § 86.156–98(a) to obtain the adjusted value for total refueling emissions. The final results for comparison with the refueling emission standard shall be computed by dividing the adjusted value for total refueling mass emissions by the total gallons of fuel dispensed in the refueling test as described in § 86.156–98(b).

(xii) In addition to the requirements of subpart B of this part, the manufacturer shall prepare gasoline-fueled and methanol-fueled vehicles as follows prior to emission testing:

(A) The manufacturer shall inspect the fuel system to ensure the absence of any leaks of liquid or vapor to the atmosphere by applying a pressure of 14.5±0.5 inches of water (3.6±0.1 Kpa) to the fuel system allowing the pressure to stabilize and isolating the fuel system from the pressure source. Following isolation of the fuel system, pressure must not drop more than 2.0 inches of water (0.5 Kpa) in five minutes. If required, the manufacturer shall perform corrective action in accordance with paragraph (d) of this section and report this action in accordance with § 86.1009–2001(d).

(B) When performing this pressure check, the manufacturer shall exercise care to neither purge nor load the evaporative or refueling emission control systems.

(C) The manufacturer may not modify the test vehicle's evaporative or refueling emission control systems by component addition, deletion, or substitution, except to comply with paragraph (a)(3)(ii) of this section if approved in advance by the Administrator.

(4) When testing light-duty trucks, the following exceptions to the test procedures in subpart C of this part are

applicable to Selective Enforcement Audit testing:

(i) The manufacturer may measure the temperature of the test fuel at other than the approximate mid-volume of the fuel tank, as specified in § 86.131–90(a), and may drain the test fuel from other than the lowest point of the fuel tank as specified in § 86.131–90(b), provided an equivalent method is used. Equivalency documentation shall be maintained by the manufacturer and shall be made available to the Administrator upon request.

(ii) In performing exhaust sample analysis under § 86.140–94, the manufacturer shall exercise care to prevent moisture from condensing in the sample collection bags.

(iii) The manufacturer need not comply with § 86.142–90 since the records required therein are provided under other provisions of this subpart K.

(iv) In addition to the requirements of subpart C of this part, the manufacturer shall prepare gasoline-fueled vehicles as follows prior to exhaust emission testing:

(A) The manufacturer shall inspect the fuel system to ensure the absence of any leaks of liquid or vapor to the atmosphere by applying a pressure of 14.5±0.5 inches of water (3.6±0.1 Kpa) to the fuel system allowing the pressure to stabilize and isolating the fuel system from the pressure source. Following isolation of the fuel system, pressure must not drop more than 2.0 inches of water (0.5 Kpa) in five minutes. If required, the manufacturer shall perform corrective action in accordance with paragraph (d) of this section and report this action in accordance with § 86.1009–2001(d).

(B) When performing this pressure check, the manufacturer shall exercise care to neither purge nor load the evaporative or refueling emission control system.

(C) The manufacturer shall not modify the test vehicle's evaporative or refueling emission control system by component addition, deletion, or substitution, except if approved in advance by the Administrator, to comply with paragraph (a)(4)(ii) of this section.

(5) When testing light-duty trucks, the exceptions to the test procedures in subpart O of this part applicable to Selective Enforcement Audit testing are listed in paragraphs (a)(5) (i) and (ii) of this section.

(i) The manufacturer need not comply with § 86.1442, since the records required therein are provided under provisions of this subpart K.

(ii) In addition to the requirements of subpart O of this part, the manufacturer must prepare vehicles as in paragraphs (a)(5)(ii) (A) through (C) of this section prior to exhaust emission testing.

(A) The manufacturer must inspect the fuel system to insure the absence of any leaks of liquid or vapor to the atmosphere by applying a pressure of 14.5±0.5 inches of water (3.6±0.1 Kpa) to the fuel system, allowing the pressure to stabilize, and isolating the fuel system from the pressure source. Pressure must not drop more than 2.0 inches of water (0.5 Kpa) in five minutes. If required, the manufacturer performs corrective action in accordance with this section and must report this action in accordance with § 86.1009–2001.

(B) When performing this pressure check, the manufacturer must exercise care to neither purge nor load the evaporative or refueling emission control system.

(C) The manufacturer may not modify the test vehicle's evaporative or refueling emission control system by component addition, deletion, or substitution.

(b)(1) The manufacturer shall not adjust, repair, prepare, or modify the vehicles selected for testing and shall not perform any emission tests on vehicles selected for testing pursuant to the test order unless this adjustment repair, preparation, modification, and/or tests are documented in the manufacturer's vehicle assembly and inspection procedures and are actually performed or unless these adjustments and/or tests are required or permitted under this subpart or are approved in advance by the Administrator.

(2) For 1984 and later model years the Administrator may adjust or cause to be adjusted any engine or vehicle parameter which the Administrator has determined to be subject to adjustment for certification, Selective Enforcement Audit testing, and Production Compliance Audit testing in accordance with § 86.090–22(c)(1), to any setting within the physically adjustable range of that parameter, as determined by the Administrator in accordance with § 86.090–22(e)(3)(ii), prior to the performance of any tests. However, if the idle speed parameter is one which the Administrator has determined to be subject to adjustment, the Administrator shall not adjust it to a setting which causes a lower engine idle speed than will be possible within the physically adjustable range of the idle speed parameter if the manufacturer had accumulated 125 hours of service on the engine or 4,000 miles on the vehicle under paragraph (c) of this section, all other parameters being identically adjusted for the purpose of comparison. The manufacturer may be requested to supply information to establish such an alternative minimum idle speed. The Administrator, in making or specifying such adjustments, will consider the effect of the deviation from the manufacturer's recommended setting on emissions performance characteristics as well as the likelihood that similar settings will occur on in-use heavy-duty engines or light-duty trucks. In determining likelihood, the Administrator will consider factors such as, but not limited to, the effect of the adjustment on engine or vehicle performance characteristics and surveillance information from similar in-use vehicles.

(c) Prior to performing emission testing on an SEA test engine, the manufacturer may accumulate on each engine a number of hours of service equal to the greater of 125 hours or the number of hours the manufacturer accumulated during certification on the emission-data engine corresponding to the configuration specified in the test order. Prior to performing emission testing on an SEA test vehicle, the manufacturer may accumulate on each vehicle a number of miles equal to the greater of 4,000 miles, or the number of miles the manufacturer accumulated during certification on the emission-data vehicle corresponding to the configuration specified in the test order.

(1) Service or mileage accumulation must be performed in a manner using good engineering judgment to obtain emission results representative of normal production vehicles. This service or mileage accumulation must be consistent with the new vehicle break-in instructions contained in the applicable vehicle owner's manual, if any.

(2) The manufacturer shall accumulate service at a minimum rate of 16 hours per engine or mileage at a minimum rate of 300 miles per vehicle during each 24-hour period, unless otherwise provided by the Administrator.

(i) The first 24-hour period for service or mileage accumulation shall begin as soon as authorization checks, inspections and preparations are completed on each engine or vehicle.

(ii) The minimum service or mileage accumulation rate does not apply on weekends or holidays.

(iii) If the manufacturer's service or mileage accumulation target is less than the minimum rate specified (16 hours or 300 miles per day), then the minimum daily accumulation rate shall be equal to the manufacturer's service or mileage accumulation target.

(3) Service or mileage accumulation shall be completed on a sufficient number of test engines or vehicles during consecutive 24-hour periods to assure that the number of engines or vehicles tested per day fulfills the requirements of paragraph (g) of this section.

(d) The manufacturer shall not perform any maintenance on test vehicles or engines after selection for testing, nor shall the Administrator allow deletion of any test vehicle or engine from the test sequence, unless requested by the manufacturer, and approved by the Administrator before any test vehicle or engine maintenance or deletion.

(e) The manufacturer shall expeditiously ship test engines or vehicles from the point of selection to the test facility. If the test facility is not located at or in close proximity to the point of selection, the manufacturer shall assure that the test engines or vehicles arrive at the test facility within 24 hours of selection: *Except*, that the Administrator may approve more time based upon a request by the manufacturer accompanied by a satisfactory justification.

(f) If an engine or vehicle cannot complete the service or mileage accumulation or emission test because of a malfunction, the manufacturer may request that the Administrator authorize the repair of that engine or vehicle or its deletion from the test sequence.

(g) Whenever the manufacturer conducts testing pursuant to a test order issued under this subpart, the manufacturer shall notify the Administrator within one working day of receipt of the test order, which test facility will be used to comply with the test order and the number of available test cells at that facility. If no test cells are available at the desired facility, the manufacturer must provide alternate testing capability satisfactory to the Administrator.

(1) Heavy-duty engine manufacturers with projected sales for the United States market for that year of 30,000 or greater shall complete emission testing at their facility on a minimum of two engines per 24-hour period, including each voided test and each diesel engine smoke test.

(2) Heavy-duty engine manufacturers with projected sales for the United States market for that year of less than 30,000 shall complete emission testing at their facility on a minimum of one engine per 24-hour period, including each voided test and each diesel engine smoke test.

(3) Light-duty truck and heavy-duty vehicle manufacturers shall perform a combination of tests pursuant to paragraph (a) of this section so that a minimum of four tests are performed per 24 hour period, including voided tests, for each available test cell.

(4) The Administrator may approve a longer period based upon a request by a manufacturer accompanied by satisfactory justification.

(h) The manufacturer shall perform test engine or vehicle selection, shipping, preparation, service or mileage accumulation, and testing in such a manner as to assure that the audit is performed in an expeditious manner.

(i) The manufacturer may retest any test vehicle or engine after a fail decision has been reached in accordance with § 86.1010–2001(d) based on the first test on each vehicle or engine; except that the Administrator may approve retests at other times during the audit based upon a request by the manufacturer accompanied by a satisfactory justification. The manufacturer may test each vehicle or engine a total of three times. The manufacturer shall test each vehicle or engine the same number of times. The manufacturer may accumulate additional service or mileage before conducting retests, subject to the provisions of paragraph (c) of this section.

4. A new § 86.1009–2001 is added to subpart K to read as follows:

§ 86.1009–2001 Calculation and reporting of test results.

(a) Initial test results are calculated following the Federal Test Procedure specified in § 86.1008–2001(a). Rounding is done in accordance with ASTM E 29–67 (reapproved 1980) (as referenced in § 86.094–28 (a)(4)(i)(B)(*2*)(*ii*) to the number of decimal places contained in the applicable emission standard expressed to one additional significant figure.

(b) Final test results are calculated by summing the initial test results derived in paragraph (a) of this section for each test vehicle or engine, dividing by the number of times that specific test has been conducted on the vehicle or engine, and rounding to the same number of decimal places contained in the applicable standard expressed to one additional significant figure. Rounding is done in accordance with ASTM E 29–67 (reapproved 1980) (as referenced in § 86.094–28(a)(4)(i)(B)(*2*)(*ii*)).

(c) *Final deteriorated test results.* (1) The final deteriorated test results for each light-duty truck, heavy-duty engine, or heavy-duty vehicle tested according to subpart B, C, D, I, M, N, or P of this part are calculated by multiplying or adding the final test results by the appropriate deterioration factor derived from the certification process for the engine or evaporative/refueling family and model year to which the selected configuration belongs. For the purpose of this paragraph, if a multiplicative deterioration factor as computed during the certification process is less than one, that deterioration factor shall be one. If an additive deterioration factor as computed during the certification process is less than zero, that deterioration factor will be zero.

(2) *Exceptions.* There are no deterioration factors for light-duty truck emissions obtained during testing in accordance with subpart O of this part or with § 86.146–96. Accordingly, for the CST and the fuel dispensing spitback test the term "final deteriorated test results" means the final test results derived in paragraph (b) of this section for each test vehicle.

(3) The final deteriorated test results obtained in paragraph (c) (1) and (2) of this section are rounded to the same number of decimal places contained in the applicable emission standard. Rounding is done in accordance with ASTM E 29–67 (reapproved 1980) (as referenced in § 86.094–28(a)(4)(i)(B)(*2*)(*ii*)).

(d) Within five working days after completion of testing of all engines or vehicles pursuant to a test order, the manufacturer shall submit to the Administrator a report which includes the following information:

(1) The location and description of the manufacturer's emission test facilities which were utilized to conduct testing reported pursuant to this section.

(2) The applicable standards or compliance levels against which the engines or vehicles were tested.

(3) Deterioration factors for the selected configuration.

(4) A description of the engine or vehicle and any emission-related component selection method used.

(5) For each test conducted.

(i) Test engine or vehicle description including:

(A) Configuration, engine family, and evaporative/refueling family identification.

(B) Year, make, build date, and model of vehicle.

(C) Vehicle Identification Number.

(D) Miles accumulated on vehicle.

(ii) Location where mileage accumulation was conducted and description of accumulation schedule.

(iii) Test number, date initial test results, final results and final deteriorated test results for all valid and

invalid exhaust emission tests, and the reason for invalidation, if applicable.

(iv) A complete description of any modification, repair, preparation, maintenance and/or testing which was performed on the test engine or vehicle and has not been reported pursuant to any other paragraph of this subpart and will not be performed on all other production engines or vehicles.

(v) Where an engine or vehicle was deleted from the test sequence by authorization of the Administrator, the reason for the deletion.

(vi) For all valid and invalid exhaust emission tests, carbon dioxide emission values for LDTs and brake-specific fuel consumption values for HDEs.

(vii) Any other information the Administrator may request relevant to the determination as to whether the new motor vehicles being manufactured by the manufacturer do in fact conform with the regulations with respect to which the certificate of conformity was issued.

(6) The following statement and endorsement:

This report is submitted pursuant to sections 206 and 208 of the Clean Air Act. This Selective Enforcement Audit was conducted in complete conformance with all applicable regulations under 40 CFR part 86 and the conditions of the test order. No emission related change(s) to production processes or quality control procedures for the engine or vehicle configuration tested have been made between receipt of this test order and conclusion of the audit. All data and information reported herein is, to the best of

(Company Name)

knowledge, true and accurate. I am aware of the penalties associated with violations of the Clean Air Act and the regulations thereunder.

(Authorized Company Representative)

5. A new § 86.1010–2001 is added to subpart K to read as follows:

§ 86.1010–2001 Compliance with acceptable quality level and passing and failing criteria for Selective Enforcement Audits.

(a) The prescribed acceptable quality level is 40 percent.

(b) A failed vehicle or engine is one whose final deteriorated test results pursuant to § 86.1009–2001(c) exceed at least one of the applicable emission standards associated with the test procedures pursuant to § 86.1008–2001(a).

(c)(1) *Pass/fail criteria.* The manufacturer shall test light-duty trucks, heavy-duty engines, or heavy-duty vehicles comprising the test sample until a pass decision is reached for all of the pollutants associated with all of the test procedures pursuant to § 86.1008–2001(a) or a fail decision is reached for one of these pollutants. A pass decision is reached when the cumulative number of failed vehicles or engines, as defined in paragraph (b) of this section, for each pollutant is less than or equal to the fail decision number appropriate to the cumulative number of vehicles tested. A fail decision is reached when the cumulative number of failed vehicles or engines for one pollutant is greater than or equal to the fail decision number appropriate to the cumulative number of vehicles tested. The pass and fail decision numbers associated with the cumulative number of vehicles tested are determined by use of the tables in appendix X of this part appropriate to the projected sales as made by the heavy-duty engine or heavy-duty vehicle manufacturer in its Application for Certification, or as made by the light-duty truck manufacturer in its report submitted under § 600.207–80(a)(2) of this chapter (Automobile Fuel Economy Regulations). In the tables in appendix X of this part, sampling plan "stage" refers to the cumulative number of vehicles or engines tested. Once a pass decision has been made for a particular pollutant associated with a particular test procedure pursuant to § 86.1008–2001(a), the number of vehicles or engines whose final deteriorated test results exceed the emission standard for that pollutant may not be considered any further for purposes of the audit.

(2) *CST criteria only.* For CST testing pursuant to subpart O, a pass or fail decision is determined according to the pass/fail criteria described in paragraph (c)(1) of this section, except that for each vehicle, the CST in its entirety is considered one pollutant.

(d) Passing or failing of an SEA audit occurs when the decision is made on the last vehicle or engine required to make a decision under paragraph (c) of this section.

(e) The Administrator may terminate testing earlier than required in paragraph (c) of this section.

PART 88—CLEAN-FUEL VEHICLES

1. The authority citation for part 88 continues to read as follows:

Authority: 42 U.S.C. 7410, 7418, 7581, 7582, 7583, 7584, 7586, 7588, 7589, and 7601(a).

2. A new § 88.311–98 is added to subpart C, to read as follows:

§ 88.311–98 Emissions standards for Inherently Low-Emission Vehicles.

Section 88.311–98 includes text that specifies requirements that differ from § 88.311–93. Where a paragraph in § 88.311–93 is identical and applicable to § 88.311–98, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 88.311–93."

(a) heading through (a)(1)(ii) [Reserved]. For guidance see § 88.311–93.

(iii) The vehicle must meet other special requirements applicable to conventional or clean-fuel vehicles and their fuels as described in any other regulations in 40 CFR chapter I, subchapter C, including 40 CFR parts 86 and 88 (e.g., onboard refueling provisions).

(b) through (e) [Reserved]. For guidance see § 88.311–93.

PART 600—FUEL ECONOMY OF MOTOR VEHICLES

1. The authority citation for part 600 continues to read as follows:

Authority: Title III of the Energy Policy and Conservation Act of 1975, Pub. L. 94–163, 89 Stat. 871, Title IV of the National Energy Conservation Policy Act of 1978, Pub. L. 95–619, 92 Stat. 3206, Section 371 of the North American Free Trade Agreement Implementation Act of 1993, Pub. L. 103–182, 107 Stat. 2057.

2. Section 600.111–80 in subpart B is amended by revising paragraph (a) to read as follows:

§ 600.111–80 Test procedures.

(a) The test procedures to be followed for generation of the city fuel economy data are those prescribed in §§ 86.127–94 through 86.138–78 of this chapter, as applicable. (The evaporative and refueling loss portions of the test procedure may be omitted unless specifically required by the Administrator.)

* * * * *

[FR Doc. 94–4752 Filed 4–5–94; 8:45 am]

BILLING CODE 6560–50–P

federal register

Wednesday
April 6, 1994

Part III

Department of Transportation

National Highway Traffic Safety Administration

49 CFR Part 533

Light Truck Average Fuel Economy Standards; Model Years 1996–2006; Final Rule and Proposed Rule

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 533

[Docket No. 91–50; Notice 4]

RIN 2127 AE42

Light Truck Average Fuel Economy Standards; Model Years 1996–1997

AGENCY: National Highway Traffic Safety Administration (NHTSA).

ACTION: Final rule.

SUMMARY: This final rule establishes the average fuel economy standard for light trucks manufactured in model years (MY) 1996–97. The issuance of the standard is required by Title V of the Motor Vehicle Information and Cost Savings Act. The (combined) standard for all light trucks manufactured by a manufacturer is 20.7 mpg for both MY 1996 and MY 1997. The agency also refers interested parties to an Advance Notice of Proposed Rulemaking (ANPRM), addressing light truck CAFE standards for MYs 1998–2006, published in today's **Federal Register**.

DATES: The amendment is effective May 6, 1994. The standard applies to the 1996 and 1997 model years. Petitions for reconsideration must be submitted within 30 days of publication.

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

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

SUPPLEMENTARY INFORMATION:

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I. Background

In December 1975, during the aftermath of the energy crisis created by the oil embargo of 1973–74, Congress enacted the Energy Policy and Conservation Act. Congress included a provision in that Act establishing an automotive fuel economy regulatory program. That provision added a new title, title V, "Improving Automotive Efficiency," to the Motor Vehicle Information and Cost Saving Act (the Act). Title V provides for the establishment of average fuel economy standards for cars and light trucks.

Section 502(b) of the Act requires the Secretary of Transportation to issue light truck fuel economy standards for each model year. Standards are required to be set at least 18 months prior to the beginning of the model year. The Act provides that the fuel economy standards are to be set at the maximum feasible average fuel economy level. In determining maximum feasible average fuel economy level, the Secretary is required under section 502(e) of the Act to consider four factors: technological feasibility; economic practicability; the effect of other Federal motor vehicle standards on fuel economy; and the need of the nation to conserve energy. (Responsibility for the automotive fuel economy program was delegated by the Secretary of Transportation to the Administrator of NHTSA (41 FR 25015, June 22, 1976)).

On October 8, 1991, NHTSA published in the **Federal Register** (56 FR 50694) a questionnaire concerning fuel economy standards for MYs 1995–1997. The comments received in response to the questionnaire are available in Docket No. 91–50.

After analyzing the responses to the questionnaire and reviewing other available data, NHTSA published a notice of proposed rulemaking (NPRM) proposing average fuel economy standards for light trucks for MYs 1995–97. 57 FR 61377 (December 24, 1992). The agency proposed to select the standards from within a range of 20.5–21.0 mpg for MY 1995, and 20.5–21.5 mpg for MYs 1996 and 1997. These ranges were based on the agency's tentative evaluation of manufacturer capabilities.

In response to the December 24, 1992 NPRM, the agency received comments from General Motors (GM), Ford, Chrysler, the American Automobile Manufacturers Association (AAMA, formerly the Motor Vehicle Manufacturers Association), Rover Group, the National Automobile Dealers Association, and about 50 organizations concerned about the continuing availability to consumers of a full range of light trucks, including, among others, the Coalition for Vehicle Choice, Consumer Alert, and the Competitive Enterprise Institute (CEI). The issues raised by the commenters are addressed below.

On April 7, 1993, the agency published a final rule establishing a 20.6 mpg combined average fuel economy standard for light trucks manufactured in MY 1995 (58 FR 18019). The limited time then available to promulgate a final rule for MY 1995 precluded a thorough consideration of the issues related to light truck CAFE standards for MYs 1996–97. Therefore, NHTSA announced that it would reach a decision later with respect to the light truck standard for those model years.

Subsequent to publication of the final rule establishing the CAFE standard for MY 1995, NHTSA received another comment from Ford, in which the manufacturer revised some of the risks and opportunities it believed it faced in MYs 1996–97. This resulted in revised CAFE projections for those years. The Department also received a letter from the Energy Conservation Coalition (ECC) recommending that light truck CAFE for those years be sharply increased. ECC's letter was signed by ECC, itself, as well as the Environmental & Energy Study Institute, Public Citizen, Sierra Club, American Council for an Energy-Efficient Economy, Center for Auto Safety, and U.S. Public Interest Research Group.

II. Summary of Decision

Based on its analysis, the agency is establishing a combined average fuel economy standard for MYs 1996 and 1997 at 20.7 mpg. The agency notes that the relatively short leadtime for MYs 1996–97 precludes significant technological changes beyond that which manufacturers have already planned. Given the continuing need to conserve energy, as discussed elsewhere in this notice, and the increasing ratio of light truck to passenger car sales, NHTSA desires to insure that feasible light truck CAFE improvements will continue to be made. To achieve this goal, the agency has published an ANPRM in today's **Federal Register**

addressing light truck CAFE standards for MYs 1998–2006.

NHTSA is eliminating the requirement that captive imports and other light trucks be required to meet CAFE standards separately. Beginning in MY 1996, there will be a combined standard that will apply to each manufacturer's light truck fleet in its entirety.

III. Manufacturer Capabilities for MYs 1996–97

In evaluating manufacturers' fuel economy capabilities for MYs 1996–97, the agency has analyzed manufacturers' current projections and underlying product plans and has considered what, if any, additional actions the manufacturers could take to improve their fuel economy. A more detailed discussion of these issues is contained in the agency's Regulatory Evaluation, which is being placed in the docket for this notice. Some of the information included in the Regulatory Evaluation, including the details of manufacturers' future product plans, has been determined by the agency to be confidential business information whose release could cause competitive harm. The public version of the Regulatory Evaluation omits the confidential information.

A. Manufacturer Projections

1. General Motors

As discussed in the NPRM, General Motors (GM) projected in December 1991 that it could achieve a light truck CAFE level of 20.7 mpg for MYs 1996–97. In its February 1993 comment on the NPRM, GM revised its projection slightly downward, to 20.5 mpg. By comparison, in a mid-model year report submitted in July 1992, GM projected a MY 1992 CAFE of 20.2 mpg. In its mid-model year report submitted in July 1993, it projected a MY 1993 CAFE of 19.8 mpg.

GM stated in its February 1993 comment that the light truck CAFE standard for MYs 1996–97 "should be set no higher than 20.5 mpg, and even that may be too high."

2. Ford

Ford projected in January 1992 that it could achieve a light truck CAFE level of 21.6 mpg for MY 1996, and 21.5 mpg for MY 1997. These projections were revised by Ford in a May 1993 letter updating its comment to the NPRM, which stated that, after re-evaluating the risks and opportunities it faced in those model years, it could achieve a light truck CAFE level of 21.1 mpg in MY 1996 and 21.6 mpg in MY 1997. Ford stated that the risk factors could reduce its CAFE level for MY 1996 to as low as 20.8 mpg, and for MY 1997 to 21.0 mpg. By comparison, in its final model year data submitted to the Environmental Protection Agency (EPA), Ford reported a MY 1992 CAFE of 20.3 mpg. In its mid-model year report submitted to NHTSA in July 1993, that company projected a MY 1993 CAFE of 20.7 mpg.

Ford recommended in its comment on the NPRM that the agency establish the MY 1996 standard at the same level as the MY 1994 standard, 20.5 mpg. It commented that the agency could raise the MY 1997 standard to a level no higher than 21.0 mpg.

3. Chrysler

Chrysler projected in December 1991 that it could achieve a light truck CAFE level of 21.0 mpg for MYs 1996–97. In its January 1993 comment on the NPRM, Chrysler revised its projection slightly downward, to 20.8 mpg for MY 1996 and 20.9 mpg for MY 1997. By way of comparison, Chrysler achieved a CAFE level of 21.2 mpg for MY 1992 according to its final model year data as reported to the EPA, and projected a CAFE level of 21.0 mpg for MY 1993 in its July 1993 mid-model year report to NHTSA.

Chrysler commented that it supports a standard of 20.5 mpg for MYs 1996–97 because it does not anticipate any major improvements in light truck fuel economy through new technological applications.

4. Other Manufacturers

Most light truck manufacturers other than GM, Ford and Chrysler only compete in the small vehicle portion of the light truck market and are therefore expected to achieve CAFE levels well above those three companies. By way of example, in their mid-model year reports for 1993, Toyota projected a light truck CAFE of 21.8 mpg, Isuzu 21.8 mpg, Mazda 23.6 mpg, Mitsubishi 21.2 mpg, Subaru 29.1 mpg, Suzuki 28.9 mpg, and Volkswagen 21.0 mpg.

In the NPRM, NHTSA noted that two companies, Range Rover and PAS, projected MY 1992 light truck CAFE levels that are well below those of the large domestic manufacturers. In their mid-model year reports for MY 1992, Range Rover projected a CAFE level of 16.3 mpg and PAS 18.6 mpg. The agency notes that in their mid-model year reports for MY 1993, Range Rover projected a CAFE level of 15.4 mpg and PAS 18.5 mpg. Both of these companies sell a small number of light trucks in the U.S., on the order of about 5,000 vehicles or less. PAS modifies GM light trucks.

One other company which has a CAFE capability below that of the large domestic manufacturers is UMC, a small domestic producer of delivery vans. That company projects selling 950 light trucks in MY 1993, with a CAFE of 18.8 mpg.

B. Possible Additional Actions To Improve MYs 1996–97 CAFE

The agency analyzed the additional actions which manufacturers may be able to take to improve their CAFE levels above those that they currently project for MYs 1996–97. These actions may be divided into two categories: further technological changes and product restrictions.

1. Further Technological Changes

The ability to improve CAFE by further technological changes to product plans is dependent on the availability of fuel efficiency enhancing technologies that manufacturers are able to apply within the available time.

The agency's Regulatory Evaluation discusses the fuel efficiency enhancing technologies which are expected to be available by MYs 1996–97. However, for MYs 1996–97, limited leadtime is a significant constraint on the increased use of these technologies. NHTSA recognizes that the leadtime necessary to implement significant improvements in engines, transmissions, aerodynamics and rolling resistance is typically at least three years. Also, as the agency discussed in establishing its final rule for MYs 1993–94, once a new design is established and tested as feasible for production, the leadtime necessary to design tools and test components is typically 30 to 36 months. Some potential major changes may take even longer. Leadtimes for new vehicles are usually at least three years. Further, light trucks have a long model life, i.e., 8–10 years or more. If a manufacturer must make a major model change ahead of its normal schedule, this change may have a significant, unprogrammed financial impact. NHTSA notes that AAMA stated in its comment that the above leadtimes, which the agency cited in the NPRM, are more typical for passenger cars and that truck leadtimes are even longer.

Given the leadtime constraint, the agency does not believe that manufacturers can achieve significant improvements in their projected MYs 1996–97 CAFE levels by additional technological actions.

2. Product Restrictions

As an alternative to technological improvements, manufacturers could improve their CAFE by restricting their

product offerings, e.g., limiting or deleting production of particular larger light truck models and larger displacement engines. Such product restrictions, if made necessary by selection of a CAFE standard that is above manufacturers' capabilities, could result in adverse economic impacts on the industry and the economy as a whole.

To develop an independent indicator of the potential impacts of a standard that could be met only by product restrictions, the agency estimated the loss of production associated with sufficient production restrictions by GM to raise its CAFE by 0.5 mpg. To estimate this effect, the agency eliminated production of GM's least fuel efficient models until the desired improvement in CAFE was achieved. NHTSA stated in the NPRM that this approach tends to yield the maximum possible negative impacts, because it does not include the possibility of consumers accepting a smaller truck or engine, or switching to vehicles over 8500 pounds GVWR. Also, it ignores the possibility of additional technological improvements to these truck fleets, or compliance through the use of credits earned in other model years.

For MY 1996, the NHTSA analysis indicates that to increase its CAFE by 0.5 mpg by restricting sales, GM could suffer a sales loss of up to 151,000 units of its projected light truck production for that year. The potential job losses under this scenario in manufacturer and supplier industries could total roughly 25,000. For MY 1997, a similar increase in CAFE of 0.5 mpg could cause GM a sales loss of up to 142,000 units, with a concurrent potential loss to the industry of nearly 24,000 jobs.

GM commented that it takes issue with NHTSA's statement that its analysis of job losses is necessarily an upper bound. That company stated that it could be that a manufacturer's product restrictions would not be done by eliminating the least fuel efficient vehicles first from its CAFE fleet, but a manufacturer could instead choose to restrict products based not only on their fuel efficiency but also their profit contributions. GM stated that this strategy could lead to larger lost sales and jobs.

Given the considerations discussed above, NHTSA concludes that significant product restrictions should not be considered as part of manufacturers' capabilities to improve their MYs 1996–97 CAFE levels.

C. Manufacturer-Specific CAFE Capabilities

As discussed later in this notice, NHTSA takes "industrywide considerations" into account in setting fuel economy standards. In carrying this out, the agency has traditionally focused on the least capable manufacturer with a substantial share of light truck sales. For MYs 1996–97, the agency has determined that GM is the least capable manufacturer with a substantial share of sales.

1. GM

As indicated above, GM currently projects its MYs 1996–97 light truck CAFE level at 20.5 mpg. It has also identified certain risks related to technology and mix which it says could reduce its CAFE level by as much as 0.5 mpg in MY 1996 and 0.3 mpg in MY 1997. As discussed in the Regulatory Evaluation, however, the agency has analyzed these potential risks and believes that they are unlikely to have as large an effect as GM believes. In addition, GM has identified an additional product action it is considering which could also reduce its CAFE. However, NHTSA believes the issues of whether GM will actually take the product action, and if so, what the fleet penetration would be for MYs 1996–97, are too speculative to justify an adjustment to GM's CAFE capability. NHTSA notes that it is not identifying the product action because it is confidential business information.

After carefully evaluating GM's product plan, NHTSA believes that company is capable of achieving a light truck CAFE of 20.7 mpg in both MYs 1996 and 1997. The factors explaining the difference between GM's projection and the agency's estimate of its capability are discussed below.

First, as discussed in the NPRM, GM projects that a much larger portion of its MYs 1996–97 fleet will have four-wheel drive (4WD) than it has had in recent years, or than its competitors are projecting. The agency stated in the NPRM that it is not aware of any reason to expect that the 4WD market will continue to increase. NHTSA also stated that it believes there are alternatives to 4WD, including traction control.

GM commented that it believes its forecast of MYs 1996–97 4WD penetration is realistic, stating that competitors' actions in the 4WD segments, the use of all-wheel drive configurations and market data for future years support its projections. GM also argued that traction control is not an alternative to 4WD trucks since it has little benefit for off-road applications.

The agency continues to believe that it is unlikely that the 4WD market share will increase appreciably for the fleet in general, or for GM in particular, over the timeframe between now and MYs 1996–97. Since the mid-1980's, the 4WD share of total light truck sales for each model year has consistently been within the range of 32–35 percent. No data have been presented to the agency which demonstrate that this share will significantly change by MYs 1996–97. The agency notes that, while it agrees that traction control isn't an alternative to 4WD for off-road applications, it would be a reasonable alternative for on-road use for many consumers. No evidence has been presented to the agency which shows that there will be increased need or demand for more 4WD or off-road vehicles.

As discussed in the Regulatory Evaluation, since NHTSA believes that GM's MYs 1996 and 1997 product plans overstate the percentage of 4WD vehicles that it will sell, the agency has adjusted that company's CAFE projections to reflect what it believes is a more realistic share. In making this adjustment, the agency assumed that GM's 4WD percentage for MYs 1996–97 will be the same as for MY 1993, the model year in which GM had its highest 4WD share ever. NHTSA also refined the analysis presented in the Preliminary Regulatory Impact Analysis (PRIA) to more accurately reflect the particular vehicles that GM is likely to sell more of and less of. With this adjustment, and assuming that the 4WD share of GM's light truck fleet for MYs 1996–97 is consistent with both that company's and its competitors' historical levels, its CAFE would be more than 0.1 mpg higher in MY 1996, although it would be less than half that amount higher in MY 1997.

NHTSA stated in the NPRM that the GM fleet leads the other manufacturers in every engine performance calculation carried out by the agency and that GM's performance levels are detrimental to its fuel economy performance. The agency indicated, for example, that if GM's light truck fleet for MY 1995 were closer to the values achieved by other manufacturers for the various performance measurements, GM's CAFE values in that model year might be improved by between 0.3 and 0.4 mpg.

GM commented that it disagrees with the agency's assessment in the NPRM that GM's CAFE could be boosted 0.4 mpg by lowering engine performance. That company stated that it believes that NHTSA's performance adjustment was based on an incorrect sales weighted analysis of GM's performance levels compared to its competitors. GM stated

that a manufacturer's average performance level, like many other vehicle attributes such as average weight or engine displacement, is a function of the mix it sells. That company stated that when its mix is compared to its competitors' mix, GM's performance levels do not appear to be out of line with other manufacturers.

As discussed in the Regulatory Evaluation, the agency has evaluated GM's comment concerning comparative performance levels. NHTSA has also reviewed revised MYs 1996–97 fleet projections submitted by GM and Ford, which resulted in reduced fleet average values for almost all performance measures. In light of these adjustments, NHTSA has concluded that the performance level of the GM fleet is only slightly greater than its competitors and that GM can make a small improvement in its MYs 1996–97 light truck CAFE by bringing its performance levels more in line with its competitors. The value of a CAFE adjustment if GM were to reach comparable levels of performance would be nearly 0.2 mpg in both MYs 1996 and 1997.

NHTSA believes that there are few other opportunities available to GM to make small improvements in its MYs 1996–97 light truck CAFE. There is little time left before the start of the MY 1996 production in, roughly, July 1995. It is unlikely that GM can make any significant technological change to its products to increase its average fuel economy in this period, and the agency is unable to discern any technology plans for MY 1997 that might be pulled ahead for earlier introduction in MY 1996. The additional leadtime before MY 1997 production begins may allow for some minor technological improvements. The agency estimates that these could increase GM's CAFE by up to 0.1 mpg in MY 1997.

GM faces certain technological risks during MYs 1996–97 that could lower its CAFE in those model years. Based on its evaluation of information submitted by GM, NHTSA estimates that these risks could decrease GM's MYs 1996–97 CAFE by more than 0.1 mpg in each year.

By adjusting GM's MYs 1996 and 1997 product plans to reflect all of the factors stated above, NHTSA has concluded that GM is capable of achieving a CAFE of 20.7 mpg in both model years.

2. Ford

As indicated above, Ford currently projects its MY 1996 light truck CAFE level at 21.1 mpg, and its MY 1997 light truck CAFE level at 21.6 mpg. It has also identified certain volume sales and technological risks which it says could reduce its CAFE level by as much as 0.3 mpg in MY 1996 and 0.6 mpg in MY 1997. Ford has also identified several opportunities which could slightly increase its CAFE.

As discussed in the Regulatory Evaluation, NHTSA has evaluated the risks and opportunities identified by Ford, as well as other means that may be available to Ford to improve its CAFE. The agency believes that Ford overstates the risks that can reasonably be expected to occur in both years. NHTSA expects the risks that negatively affect Ford's CAFE to be offset by sufficient opportunities to result in a capability of 21.2 mpg in MY 1996 and 21.6 mpg in MY 1997.

3. Chrysler

As indicated above, Chrysler currently projects its MY 1996 light truck CAFE level at 20.8 mpg, and its MY 1997 light truck CAFE level at 20.9 mpg. After evaluating Chrysler's product plan, NHTSA has concluded that Chrysler can achieve CAFE levels of at least 20.8 mpg in MY 1996 and 21.0 mpg in MY 1997. The agency believes that the additional leadtime available before MY 1997 vehicles begin production may allow Chrysler to make technological refinements or improvements, or to move certain planned improvements forward to MY 1997. This could increase Chrysler's MY 1997 CAFE by up to 0.1 mpg, thus allowing the company to attain a CAFE level of 21.0 mpg.

While NHTSA has focused its analysis on GM, the least capable manufacturer with a substantial share of sales, the agency does not believe that company's capability is significantly below that of Chrysler, although it is well below that of Ford. As indicated above, the agency believes that Ford has the capability to achieve a MY 1996 CAFE of 21.2 mpg and a MY 1997 CAFE of 21.6 mpg, and that Chrysler can achieve a MY 1996 CAFE of 20.8 mpg and a MY 1997 CAFE of 21.0 mpg. The agency believes that the ability of Ford and Chrysler to improve their CAFE levels above their projections is small.

The agency must, therefore, disagree, with the comment received from ECC that argued that CAFE levels of 23 mpg in MY 1996 and 24 mpg in MY 1997 would be within the capability of manufacturers. The ECC cited a study of fuel economy by the National Academy of Sciences (NAS). The study, which was jointly commissioned by NHTSA and the Federal Highway Administration in 1991, stated that a 22 mpg CAFE standard would be within manufacturers' capabilities. ECC also cited "best-in-class" analysis performed by the EPA, purportedly showing that light trucks could achieve a 24.3 mpg CAFE level.

ECC failed to address the agency's discussion of the limitations of the NAS study in the NPRM (see 57 FR 61384), which noted that the methodology used by the NAS in its study "has little relevance as a reference value for this rulemaking." The figure used by the NAS in reaching its conclusion that a 22 mpg level was possible in MY 1996 was intended to represent the entire light truck fleet, and not the capability of one or two manufacturers with a significant share of the market. As NHTSA has noted, individual large manufacturers may have light truck fleets with a mix toward larger, less fuel efficient trucks that have the effect of lowering their overall CAFE. In addition, the model mix used in the study was derived from EPA preliminary data for MY 1990, and did not bear a close relationship to the actual mix produced in MY 1991, much less the projected mix for MY 1996. Nor did the study include large vans and utility vehicles, which are a significant segment of the light truck market, and have lower fuel economy levels. The agency stated in the NPRM that it could not use the NAS study as a blueprint for setting CAFE standards, and ECC did not rebut the agency's statement.

The best-in-class analysis does not take into account sales or popularity in the market. Most vehicles that get best-in-class fuel economy ratings have the poorest sales in their class as well. NHTSA cannot force consumers to buy best-in-class light trucks, which often suffer from the disadvantage that they do not possess the power, room, or other attributes that light truck purchasers find desirable. Nor, given the very short leadtime between now and MYs 1996–97, would manufacturers have the chance to redesign their light trucks to more closely be capable of achieving best-in-class fuel economy levels.

Based on its own analysis and in light of the lack of evidence presented by ECC, the agency rejects that commenter's argument that CAFE levels of 23 mpg in MY 1996 and 24 mpg in MY 1997 would be within manufacturers' capabilities.

IV. Other Federal Standards

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

A. Safety Standards

As discussed in the Regulatory Evaluation, NHTSA has evaluated several safety rulemakings for their potential impacts on light truck fuel economy in MYs 1996–97. These include revisions to FMVSS Nos. 208, *Occupant Crash Protection;* 214, *Side Impact Protection;* 216, *Roof Crush Resistance;* 108, *Lamps, Reflective Devices and Associated Equipment;* and 201, *Occupant Protection in Interior Impacts.* In addition, the agency is considering whether to propose a safety standard to improve rollover protection.

1. FMVSS 208

On March 26, 1991, NHTSA published (56 FR 12472) a final rule requiring automatic restraints on trucks with a gross vehicle weight rating of 8500 pounds or less and an unloaded vehicle weight of 5500 pounds or less. These requirements phase in at the following rate for each manufacturer: 20 percent of light trucks manufactured from September 1, 1994 to August 31, 1995; 50 percent of light trucks manufactured from September 1, 1995 to August 31, 1996; 90 percent of light trucks manufactured from September 1, 1996 to August 31, 1997; and all light trucks manufactured on or after September 1, 1997. Thus, the requirement will affect 50 percent of MY 1996 light trucks and 90 percent of MY 1997 light trucks. Although light truck manufacturers may comply, as passenger car manufacturers have in the past, with the automatic restraint requirements by using automatic belts or air bags, NHTSA expects that essentially all light truck manufacturers will comply by using air bags.

To encourage the use of more innovative automatic restraint systems (primarily air bags) in light trucks, during the first four years of the phase-in (i.e., through MY 1998) manufacturers may count each light truck equipped with such a restraint system for the driver's position, and a dynamically tested manual safety belt for the right-front passenger's position, as a vehicle complying with the automatic restraint requirements. Beginning with MY 1999, however, all light trucks are required to provide automatic restraints for both the driver and right-front passenger positions.

Title II of the Intermodal Surface Transportation Efficiency Act of 1991 required NHTSA to amend its automatic restraint requirements to mandate that 80 percent of MY 1998, and all MY 1999 light trucks be equipped with driver and passenger-side air bags. On September 2, 1993, NHTSA published a final rule in the **Federal Register** (58 FR 46551) to implement this requirement. Since NHTSA expects that essentially all manufacturers will rely on air bags for compliance with the light truck automatic restraints requirements, this provision should have a negligible substantive impact, and will not affect MYs 1996–97 fuel economy capabilities.

In the Final Regulatory Impact Analysis for the 1991 light truck automatic restrain rulemaking, which is available in the public docket at NHTSA, the agency estimated weight increases per vehicle ranging from 15.3 pounds for a driver's-side air bag to 35.7 pounds for both driver and right-front passenger air bags (including "secondary weight," i.e., weight added for supporting structure, etc.). Using these figures, NHTSA estimated that fuel economy could be reduced by about 0.05 to 0.11 mpg.

The automatic restraint weight estimates provided by the manufacturers in their responses to the Request for Comments, and the NPRM for this rulemaking were generally consistent with those previously developed by the agency. NHTSA calculates that the manufacturers' estimates translate into fuel economy penalties of 0.07–0.12 mpg for MY 1996 and 0.11–0.14 mpg for MY 1997. These weight effects are reflected in the manufacturers' fuel economy projections, so there is no need for NHTSA to add an explicit adjustment to their projections to consider the impact of this standard.

2. FMVSS 214

On June 14, 1991, NHTSA published (56 FR 27427) a final rule extending the "quasi-static" test requirements of FMVSS 214 to trucks, multipurpose vehicles, and buses with a GVWR of 10,000 pounds or less. On July 13, 1992, NHTSA published (57 FR 30917) a final rule establishing a brief phase-in for the requirements of this rule. Manufacturers must meet the requirements for all of their light trucks as of September 1, 1994. The "quasi-static" requirements have the effect of requiring each side door to be designed to mitigate occupant injuries in side impacts. It measures performance in terms of the ability of each door to resist a piston pressing a rigid steel cylinder against it. Manufacturers generally comply with the standard by reinforcing the side doors with metal beams or rods.

In the Regulatory Evaluation accompanying the rule, NHTSA estimated that the requirements of FMVSS 214 would result in an average weight increase of 24.8 to 26.7 pounds (including secondary weight). This weight increase could result in a fuel economy degradation of 0.1 mpg.

The weight estimates provided by the manufacturers for quasi-static side impact protection translate, according to NHTSA calculations, into fuel economy penalties of approximately 0.04–0.07 mpg for each model year, MYs 1996 and 1997. These weight effects are included in the manufacturers' fuel economy projections, so there is no need for NHTSA to add an explicit adjustment to their projections to consider the impact of this standard.

The agency is also considering other regulatory requirements to protect light truck occupants in side impacts. The agency addressed a number of possible requirements in an ANPRM published on August 19, 1988 (53 FR 31716). In addition, on June 5, 1992, pursuant to the Intermodal Surface Transportation Efficiency Act of 1991, NHTSA published (57 FR 24009) an ANPRM concerning whether passenger car dynamic side impact protection requirements should be extended to light trucks. Since any additional requirements in this area would take effect after MY 1997, there will be no impact on MYs 1996–97 fuel economy capabilities.

3. FMVSS 216

On April 17, 1991, NHTSA published a final rule (56 FR 15510) amending FMVSS 216, *Roof Crush Resistance,* to extend its requirements to light trucks with GVWRs of 6,000 pounds or less. Previously, the standard applied only to passenger cars. The effective date of the rule is September 1, 1994.

FMVSS 216 is intended to reduce deaths and injuries due to the crushing of the roof into the passenger compartment in rollover crashes. This standard established strength requirements for the forward portion of the roof to increase the resistance of the roof to intrusion and crush.

The agency believes that this requirement will have a negligible impact on light truck manufacturers' MYs 1996–97 fuel economy capabilities. Most light trucks already meet the standard. NHTSA calculates that the manufacturers' weight impact estimates translate into fuel economy penalties of about 0.003–0.030 mpg for MYs 1996–97. These weight effects are included in the manufacturers' fuel economy projections.

4. FMVSS 108

On April 19, 1991, NHTSA published (56 FR 16015) a final rule requiring new light trucks to be equipped with center high-mounted stoplamps (CHMSLs). The effective date was September 1,

1993. With an estimated weight effect of about one pound, this rule has a negligible CAFE effect.

5. FMVSS 201

On February 8, 1993, NHTSA published (58 FR 7506) a notice proposing to amend FMVSS 201 to require passenger cars and light trucks to meet a new in-vehicle component test to provide protection when an occupant's head impacts upper interior components (such as A-pillars and side rails) during a crash. The estimated weight effect for light trucks for this proposed requirement averages six to nine pounds per vehicle, for a fuel economy effect of 0.03 mpg. Currently, it is still indeterminate as to whether the proposed requirement will affect light trucks in MYs 1996–97. At this time, therefore, the agency cannot take potential fuel economy effects into consideration when establishing fuel economy standards for MYs 1996–97.

6. Rollover Prevention

The Intermodal Surface Transportation Efficiency Act of 1991 required NHTSA to publish an ANPRM or NPRM by May 31, 1992 to provide "protection against unreasonable risk of rollovers of passenger cars, multipurpose passenger vehicles, and trucks with a gross vehicle weight rating of 8,500 pounds or less and an unloaded vehicle weight of 5,500 pounds or less." On January 3, 1992, NHTSA published (57 FR 242) an ANPRM announcing that the agency is considering whether to propose a safety standard to reduce the casualties associated with rollovers of passenger cars, pickup trucks, vans, and utility vehicles. In addition, on September 29, 1992, NHTSA published a notice (57 FR 44721) announcing the availability of a document describing the agency's planned rulemaking effort, data analyses, and physical research to address the problem of rollover crashes and resulting injuries and fatalities.

Since NHTSA has not yet proposed any requirements in this area, it will not have an impact on MYs 1996–97 CAFE capabilities.

B. Revised Emissions Standards

The Clean Air Act Amendments of 1990 (CAAA) impose more stringent exhaust emissions standards on light trucks. Standards are also becoming tighter in California. Under the CAAA, new standards for light trucks with GVWRs up to 6,000 pounds have begun phasing-in. The phase-in provides for compliance by 40 percent for MY 1994, 80 percent for MY 1995, and 100 percent for MY 1996 and afterwards. For light trucks over 6,000 pounds GVWR, more stringent standards begin to take effect in MY 1996. Fifty percent of these vehicles must comply with the new standards in MY 1996; all light trucks over 6,000 pounds GVWR must meet the new standards for MY 1997 and later.

Current standards for exhaust emissions will tighten substantially under the CAAA. Over the "full useful life" of a vehicle, emissions standards will be 0.80 grams/mile for total hydrocarbons, and will range (depending on vehicle and test weight) from 0.31 to 0.56 grams/mile for non-methane hydrocarbons, from 4.2 to 7.3 grams/mile for carbon monoxide, from 0.6 to 1.53 grams/mile for oxides of nitrogen, and from 0.10 to 0.12 grams/mile for particulate matter.

The CAAA also require EPA to establish standards for carbon monoxide emissions at 20 degrees Fahrenheit, which came into effect in the current model year. Further, for all gasoline-fueled motor vehicles, the CAAA require EPA to promulgate regulations covering evaporative emissions (1) during operation ("running losses") and (2) over two or more days of non-use.

In their questionnaire responses, none of the auto companies provided substantial detail on the possible impacts of these standards on MY 1996–97 light truck fuel economy capabilities. GM stated, "The total impact of the Clean Air Act Tier I and the California emissions standards on truck fuel economy is unknown at this time. * * * Although not quantified, preliminary indications are that there will be some lost opportunities to improve fuel economy when redesigning our powertrains to comply with these standards."

Ford stated that, "[M]ost troublesome is the effect of compliance with the amended Clean Air Act. We project that compliance has reduced the average truck fuel economy by 0.3 mpg after inclusion of technology which has an offsetting effect * * * and it negates other technology benefits."

NHTSA indicated in the NPRM and PRIA that it believes the net impact on CAFE capabilities due to changes in emissions requirements is likely to be minimal. Some of the new requirements will lead to fuel savings, while others may lead to fuel economy losses. Benefits will be obtained from enhanced evaporative controls and the "low temperature" carbon monoxide standards because manufacturers will sharpen their fuel-control systems, using techniques such as sequential port fuel injection. Slight fuel economy losses may result from tighter hydrocarbon and nitrous oxides emissions standards, particularly for larger engines.

In their comments on the NPRM, the manufacturers did not provide data indicating that new emissions requirements would have a significant effect on MYs 1996–97 CAFE capabilities. GM stated the following:

> The impact of tighter Federal emissions standards enacted by the 1990 Clean Air Act Amendments is not expected to have a direct fuel economy impact related to engine efficiency. However, there will be weight increases on some engines if dual catalytic converters are required.
>
> * * * California TLEV emissions standards will most likely impact fuel economy. However, these impacts * * * have not yet been reflected in GM's CAFE forecasts.
>
> * * * Tighter evaporative emission standards requiring larger canisters and adding purge controls will add weight to the vehicle and impact fuel economy.

In its comment, Ford stated:

> Ford believes that NHTSA's list of other Federal standards that might have an impact on light truck fuel economy during MYs 1995–97 is insufficient. A more comprehensive list would include Potential Revisions to the Federal Test Procedure (FTP) such as higher speeds and accelerations and electric dynamometer true road load calibration, IM240 Short Test Requirements, Onboard Diagnostics, Cold CO Testing, Enhanced Evaporative Testing Requirements, Section 177 States, [and] Fuels or Fuel Additives such as reformulated gasoline and MMT.
>
> At this point, Ford has not allocated resources to collectively assess the fuel economy implications, of required emission control system calibration strategies and hardware, that may be associated with the above requirements. However, it is reasonable to believe that several of these potential requirements will have a significant impact on light truck fuel economy.

NHTSA believes that the actual and potential Federal standards identified by Ford will not have any significant impact on MYs 1996–97 light truck fuel economy capabilities. The agency's specific analysis of the impacts of each of these standards is presented in the Regulatory Evaluation. A summary of the agency's analysis follows:

1. Potential Revisions to the Federal Test Procedure

EPA has not to date proposed any revisions to the FTP, so no impact is expected for MYs 1996–97.

2. IM240 Short Test Requirements

EPA has issued new inspection and maintenance test procedures to help ensure that vehicle emission controls function properly in real-world use, and has proposed a new Certification Short Test procedure. It has also issued a rule,

effective for MY 1996, outlining new Certification Short Test procedures to ensure that properly maintained passenger cars and light trucks have no elements of design that would cause "pattern failure" in inspection and maintenance programs. However, EPA's analyses have not indicated that there would be any impact on manufacturers' fuel economy capabilities as a result of these rulemakings.

3. Onboard Diagnostics

EPA has issued a final rule on onboard diagnostics that applies to MY 1994 and later passenger cars and light trucks, but EPA believes that this will not affect fuel economy. There may even be some actual fuel economy benefits due to earlier identification of malfunctioning emissions control equipment.

4. Cold CO Testing

EPA has issued new low temperature carbon monoxide testing requirements which will apply to all MY 1996 and later model year passenger cars and light trucks, but EPA believes that the requirements will not result in any fuel economy loss and may actually result in a slight fuel economy benefit.

5. Enhanced Evaporative Testing Requirements

EPA has recently issued enhanced evaporative emissions standards. Any negative impact on fuel economy (due to increased weights of upgraded evaporative emissions control system) would be very slight. EPA estimates that larger evaporative canisters, vapor lines, and purge valves will add an average of 2.9 pounds to the weight of a light duty truck. Using NHTSA's secondary weight multiplier of 1.7, this would mean a total increase of 4.9 pounds, which would reduce fuel economy by approximately 0.017 mpg. However, this requirement only applies to 20 percent of MY 1996 vehicles and 40 percent of MY 1997 vehicles, so the total respective fuel economy penalties would not be greater than 0.003 mpg and 0.007 mpg. EPA, however, expects offsetting fuel economy benefits, which it has not yet quantified.

6. Section 177 States

The term "Section 177 States" refers to states which voluntarily adopt the more stringent California emissions standards. At this time, Massachusetts, Maine, Maryland, New York, and other Northeastern and Mid-Atlantic states have either passed legislation to adopt the California emissions standards during the mid-1990s, or are considering enacting such legislation. However, there are ongoing legal challenges to adoption of the California emissions standards. NHTSA has not received any data showing any impact on MYs 1996–97 light truck fuel economy capabilities as a result of states other than California adopting the California emissions standards.

7. Fuels or Fuel Additives Such as Reformulated Gasoline and MMT

EPA has not proposed any changes in the current certification test fuel, so NHTSA does not expect any fuel economy impact for MYs 1996–97 light trucks.

NHTSA has not made any adjustments to the manufacturers' CAFE projections to account for any impacts of changing emissions standards during MYs 1996–97. The agency notes that Ford appears to be the only manufacturer that explicitly included a potential fuel economy loss (an average of 0.3 mpg) in its MYs 1996–97 CAFE projection. Since Ford is not the "least capable" manufacturer and NHTSA is not basing the selection of the MYs 1996–97 light truck CAFE standard primarily on Ford's capability, it is unnecessary to resolve whether Ford's capability should be adjusted upward because of Ford's inclusion of this estimated fuel economy loss in its projection.

C. Test Weight for Light Trucks Over 6,000 Pounds GVWR

The CAAA require that, beginning with MY 1996, many light trucks over 6,000 pounds GVWR be tested, for emissions purposes, at the average of curb weight and GVWR. This requirement applies to one-half the "over 6,000 pound" fleet in MY 1996 and all of this fleet in MY 1997. Previously, test weights were determined based on "loaded vehicle weight," (LVW) which is defined as curb weight plus 300 pounds. Loaded vehicle weight has been the sole basis used to calculate "equivalent test weight," which is the weight used for dynamometer testing. EPA has defined the average of vehicle curb weight and GVWR to be "adjusted loaded vehicle weight" (ALVW) (see 56 FR 25739), which will be used as the basis for determining equivalent test weight for emission testing of the "over 6,000 pound" test fleet described above. ALVW is higher than the LVW, and if light trucks are tested at ALVW, there will be a loss in the estimated fuel economy.

The CAAA do not require fuel economy testing to be performed at ALVW. However, because exhaust emissions testing must be done at ALVW for light trucks over 6,000 pounds GVWR, use of a different test weight system for fuel economy could require manufacturers and EPA (when conducting confirmatory tests) to test each of these trucks twice: once at its "equivalent test weight" based on LVW for fuel economy purposes and once based on ALVW for exhaust emissions purposes. Another approach would be for EPA to mandate that trucks over 6,000 pounds GVWR be fuel economy tested at ALVW and for NHTSA to consider any resulting deleterious fuel economy effect in establishing CAFE standards for the affected model years. A third approach would be to have a manufacturer-specific test procedure adjustment to account for the proportion of its fleet affected by this requirement.

Domestic auto manufacturers have pointed out that testing at the higher weights would have a negative fuel economy impact. Using MY 1992 data, GM claimed a potential impact in MY 1997 of at least 0.5 mpg. Ford estimated a possible loss in MY 1997 of 0.2–0.3 mpg. Chrysler did not give a specific number but agreed that fuel economy would be lowered. Import manufacturers are unlikely to have any significant penalty from this test procedure change because they produce few, if any, light trucks with a GVWR exceeding 6,000 pounds.

In a letter dated February 18, 1992, EPA stated that NHTSA should set CAFE standards with the heavier test weight in mind and stated that dual testing would entail increased expenses. EPA also noted that EPCA requires integrated fuel economy and emissions testing, although this requirement is limited by the language "to the extent practicable."

After the EPA letter was sent, MVMA (now AAMA) indicated to EPA that requiring the heavier test weight would also increase testing expenses, by forcing separate fuel economy tests for light trucks above and below 6,000 pounds GVWR. In addition, MVMA raised concerns that changing the basis for determining fuel economy on only a portion of the light truck fleet (i.e., those above 6,000 pounds GVWR) would cause consumer confusion and affect the competitiveness of manufacturers with a higher proportion of the sales of the heavier light trucks.

In the NPRM, NHTSA requested comments on the appropriate means of handling this issue in the context of setting the MY 1995–97 light truck fuel economy standards. The agency stated that if EPA mandates fuel economy testing at ALVW, NHTSA would account for the impacts of this testing in

establishing light truck fuel economy standards.

In January 7, 1993 letters to AAMA and AIAM, EPA stated,

> Manufacturers should be aware of the NHTSA proposed rule on light truck average fuel economy standards * * * Included in the proposal is a request for comments on the consequences of performing fuel economy testing for heavy light-duty trucks under two different equivalent test weight approaches. The EPA will consider all relevant comments made during the NHTSA proposal comment period when developing an EPA guidance document or rulemaking on this subject.
>
> * * * The EPA plans to defer to NHTSA's policy decisions on issues such as the competitiveness effects of the alternatives. Once NHTSA determines the desirable CAFE solution and puts it into place, the EPA will follow with conforming amendments to either its regulations or policy as required.

In commenting on the NPRM, GM, Ford, Chrysler, AAMA and Rover Group all supported the continuation of fuel economy testing at LVW. AAMA's comment was typical, "Retention of the LVW criteria will avoid needless test and CAFE data base complexities, avoid added customer confusion when comparing fuel economy labels and avoid creation of unrealistic competitive fuel economy rating differences."

After considering the comments on the new emissions test procedure requirements, NHTSA has concluded that the simplest and most equitable procedure for both manufacturers and the Federal government is to continue fuel economy certification using LVW values for all classes of vehicles. NHTSA has informed EPA of its decision and, in a March 4, 1993 letter to NHTSA, EPA agreed to abide by NHTSA's decision and stated that it would undertake "the regulatory and guidance revisions needed to allow dual testing."

D. Phase-Out of Chlorofluorocarbons

Under terms of the international Montreal Protocol, the United States and other industrialized nations have agreed to halt production of chlorofluorocarbons (CFCs) by the year 2000. In February 1992, President Bush announced that the United States would phase out production by the end of 1995.

Both Ford and General Motors identified weight penalties for eliminating the use of CFCs in their vehicles' air conditioning systems of seven pounds or less for each MY 1995–97. NHTSA estimated that these weight additions could result in an average fuel economy penalty of 0.02 mpg. These weight effects are included in the manufacturers' fuel economy projections.

V. Domestic/Import Fleet Distinction

In the NPRM, NHTSA proposed to eliminate the requirement that captive imports and other light trucks be required to meet light truck CAFE standards separately. This requirement has been in effect since MY 1980 (see 42 FR 63184, **Federal Register**, December 15, 1977). At the time the agency introduced these separate categories, it believed that the division would prevent light truck CAFE standards from acting as an incentive for the domestic manufacturers to increase the numbers of captive import vehicles in their fleets.

Over the past decade, however, the captive import sector of the fleet has become insignificant. Whereas in 1980, captive imports accounted for 14.7 percent of the overall light truck market, in 1992 they made up less than 0.5 percent of that market. GM and Ford no longer have any captive import light trucks. Chrysler's captive import fleet consisted, for MY 1993, of only about 6,000 vehicles (compact pickups produced in Japan by Mitsubishi). Given the changes in market conditions, NHTSA tentatively concluded in the NPRM that there is no need or reason to continue to maintain the separate categories. While the Act specifies a similar two-fleet rule for passenger automobiles, it does not require the agency to provide similar treatment to light trucks.

In their comments to the NPRM, the domestic manufacturers and the AAMA supported elimination of the captive import category. The agency did not receive any other comments that addressed the issue.

For the reasons discussed above and in the NPRM, and in light of the comments, beginning in MY 1996, the agency will no longer require light trucks to meet the CAFE standard separately, based on whether they are captive imports. A new Table IV is being added to the regulatory text, which indicates a single CAFE standard for all light trucks without category distinctions.

Since CAFE credits cannot ordinarily be applied across classes of light trucks, the agency proposed a method of accommodating the 3-year carryforward and carryback of credits for light trucks after the elimination of the two-fleet requirement. Only Chrysler commented on the proposal, stating that it agreed with the agency. No other comments addressed the issue.

The manner in which NHTSA will allow CAFE credits to be carried forward or backward once the captive import and other fleets are combined is the same as that used by the agency during the transition from 2WD and 4WD standards for MYs 1980–81 to optional combined standards for MY 1982 and later (45 FR 83233, December 18, 1990), as well as the subsequent termination of any 2WD/4WD option in favor of a single combined standard for all configurations in MY 1992 (55 FR 12487, April 4, 1990). For MY's 1993–95, a manufacturer's captive import and other light truck credits can be applied to offset shortfalls in the combined fleet incurred up to three model years later (i.e., MYs 1996–98). If, on the other hand, a manufacturer wished to use credits earned in the three years after elimination of the two-fleet requirement to offset a shortfall incurred between MY 1993 and MY 1995, the manufacturer would have to separate its MYs 1996–98 CAFE credits into "captive import" and "other" components based on each fraction of the fleet's share of total production.

NHTSA notes that it does not foresee any manufacturer making use of carryforward or carryback credits for captive imports, however. As mentioned above, in the relevant years, only Chrysler has had even a minimal number of captive imports, and it has not needed to use any credits during that time. Nor does the agency expect any manufacturer to establish a captive import fleet in the MY 1996–98 timeframe.

VI. The Need of the Nation To Conserve Energy

The United States imported 15 percent of its oil needs in 1955. The import share reached 36.8 percent in 1975, the year EPCA was passed, and peaked at 46.4 percent in 1977, at a cost of $91 billion (stated in 1992 dollars). Although the share declined to below 30 percent in the mid-1980's, lately the United States has again become increasingly dependent on imported oil. Over 40 percent of the country's petroleum needs have been imported in every year since 1988. In 1992, imports totaled 43.6 percent. Sharply lower oil prices in the past decade, however, cut the value of oil imports to $50.5 billion in 1992.

Similarly, the percentage of imported oil purchased from OPEC sources, which peaked at 70 percent in 1977, and declined to a low of 36 percent in 1985, has been steadily rising since then, and has been over 50 percent every year since 1989.

The average cost of crude oil imports jumped from $4.08 per barrel in 1973 to $12.52 in 1974 as a result of the oil embargo against selected countries, including the United States, by Arab members of OPEC. Additional increases

in the cost of oil occurred in 1979–80, due to unrest in Iran (which eliminated a substantial portion of that country's oil output), and in 1980–81, when the outbreak of the Iran-Iraq war reduced supply from the area. In 1981, the United States adopted a policy of reliance on market forces and decontrolled the price of oil. Since 1981, prices have fallen as conservation efforts continue. In 1990–91, petroleum prices were affected by the conflict in the Persian Gulf. In the beginning of 1992, the continued worldwide economic recession and high levels of crude oil production by OPEC member countries together held down oil prices. The average refiner acquisition cost of imported crude oil in 1992 was $17.75 per barrel, which was 4.2 percent below the average 1991 level (in 1992 dollars).

The current energy situation and emerging trends point to the continued importance of oil conservation. The United States now imports a higher percentage of its oil needs than it did during 1975, the year EPCA was passed, and the percentage of its oil supplied by OPEC is similar to that of 1975. Oil continues to account for over 40 percent of all energy used in the United States, and 97 percent of the energy consumed in the transportation sector. Despite legislation such as the Clean Air Act Amendments of 1990 and California's strict "clean fuel" and emissions standards, gasoline will likely remain the predominant fuel in the transportation sector. Domestic oil production has declined steadily since reaching a peak of 10.6 million barrels per day in 1985 and dropping to 9.0 million barrels per day in 1992. Domestic production is expected to continue declining by roughly 200,000 barrels per day each year through the year 2000. While the United States is currently the world's second largest oil producer, it contains only about three percent of the world's known oil reserves. Persian Gulf countries contain 63 percent of known world reserves, and former communist countries contain 9 percent.

Long-term projections of petroleum prices, supply, and demand are now influenced by a wide range of uncertainties associated with sweeping economic and political changes in the former U.S.S.R. and in Eastern Europe, environmental issues, and the role of Middle East countries in determining the world's future oil supplies and prices, and future energy demands in populous developing countries. The Department of Energy projects that oil prices will be between $14 and $30 (1992 dollars) per barrel in the year 2000, and will rise to between $19 and $39 per barrel by 2010. DOE projects a continuing decline in domestic oil production to between 3.54 and 6.73 million barrels per day in 2010, with imports rising to between 52 percent and 72 percent of total use.

The level of petroleum imports is only one aspect of the total energy conservation picture. Under EPCA and NEPA, for example, national security, energy independence, resource conservation, and environmental protection must all be considered.

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

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

Based on the above, NHTSA concludes that there is a continuing need for the nation to conserve energy.

The increase in market share of light trucks points to the need for enhanced fuel economy for this class of vehicle. Light trucks are less fuel efficient and are driven more miles over their lifetime than passenger automobiles. Currently, more than half of the energy in the transportation sector is used by light-duty vehicles (automobiles and light trucks). Light trucks have steadily increased their share of petroleum use in the transportation sector. In 1973, light trucks accounted for approximately 12 percent of transportation petroleum use, a figure which increased to roughly 20 percent by 1991.

Light trucks meeting the MYs 1996–97 standard will be more fuel-efficient than the average vehicle in the current light truck fleet in service, thus making a positive contribution to petroleum conservation.

VII. Determining the Maximum Feasible Average Fuel Economy Level

As discussed above, section 502(b) requires that light truck fuel economy standards be set at the maximum feasible average fuel economy level. In making this determination, the agency must consider the four factors of section 502(e): technological feasibility, economic practicability, the effect of other Federal motor vehicle standards on fuel economy, and the need of the nation to conserve energy.

A. Interpretation of "Feasible"

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

B. Industry-wide Considerations

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

The Conference Report to the 1975 Act (S. Rep. No. 94–516, 94th Cong., 1st Sess. 154–55 (1975)) states:

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

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

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

C. Petroleum Consumption

The energy savings that could result from the MYs 1996–97 standard can be illustrated by considering the potential effects of a standard set at different levels. Since Ford and Chrysler project CAFE levels for both MY 1996 and 1997 above 20.7 mpg, a standard set at 20.7 mpg would not likely have any effect on those companies. Since GM currently projects a CAFE level of 20.5 mpg for both model years, a standard set at 20.7 mpg, the level NHTSA has determined to be GM's capability, would encourage it to achieve a higher CAFE level. If a 20.7 mpg standard resulted in GM achieving a CAFE level 0.2 mpg above its current projection, there would be a savings of 102 million gallons of gasoline over the lifetime of GM's fleet for each model year. (This assumes GM would sell the same number of light trucks in MY 1996 and MY 1997 as it did in MY 1993.)

The potential savings associated with a MY 1996–97 standard above 20.7 mpg are highly uncertain. Assume, for example, that a standard could be set at 21.2 mpg, 0.5 mpg above GM's capability for both model years and 0.4 mpg above Chrysler's capability for MY 1996 and 0.2 mpg above its capability for MY 1997. Since Ford projects CAFE levels of 21.1 mpg and 21.6 mpg for MY 1996–97, such standards would likely have little or no impact on that company. GM and Chrysler could likely meet the levels of the standards only by restricting the sales of their large light trucks. If this occurred, consumers might tend to keep their older, less-fuel efficient light trucks in service longer. Also, consumers might purchase still larger trucks that are not subject to CAFE standards. Therefore, the agency believes that any additional energy savings associated with alternative higher fuel economy standards above 20.7 mpg (the level the agency has determined to be GM's capability) would be uncertain and speculative.

D. The MYs 1996–97 Standard

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

Manufacturer	Approximate market share (percent, based on MY 1993)	CAFE (mpg)	
		MY 1996	MY 1997
GM	30	20.7	20.7
Ford	31	21.2	21.6
Chrysler	23	20.8	21.0

As indicated above, most light truck manufacturers other than GM, Ford and Chrysler only compete in the small vehicle portion of the light truck market and are therefore expected to achieve CAFE levels well above those companies. Only three light truck manufacturers, Range Rover, PAS and UMC, are expected to have fuel economy levels lower than the major domestic manufacturers. Since these companies have an extremely small market share, NHTSA concludes that setting a standard based on their capabilities would be inconsistent with a determination of maximum feasibility that takes industry-wide considerations into account, as required by statute.

As indicated above, NHTSA has concluded that GM is the least capable manufacturer with a substantial share of sales for MYs 1996–97. NHTSA also concludes that 20.7 mpg is the maximum feasible standard for both MYs 1996 and 1997. For the reasons discussed below, this level balances the potential petroleum savings associated with a higher standard against the difficulties of manufacturers facing a potentially higher standard.

The agency believes that a 20.7 mpg light truck CAFE standard for MYs 1996–97 will make a positive contribution to petroleum conservation by encouraging GM, which has a large market share, to achieve a higher CAFE level than it currently projects while remaining within its fuel economy capability. The agency notes that a 20.7 mpg standard is 0.2 mpg higher than GM's current MYs 1996–97 CAFE projection.

A 20.7 mpg standard will not unduly restrict consumer choice or have adverse economic impacts on the large domestic manufacturers. The current product plans of Ford and Chrysler indicate that they expect to achieve MYs 1996–97 CAFE levels that are above 20.7 mpg. Therefore, they will not have to make any changes in their product plans to achieve the level of the standard.

While GM's current product plan shows expected MYs 1996–97 CAFEs of 20.5 mpg in each model year, NHTSA's analysis indicates that company can achieve a CAFE of 20.7 mpg in both years. As discussed above, this conclusion is based on the following assumptions: (1) The 4WD share of the market will not significantly increase between now and MYs 1996–97, (2) GM will make successful efforts to maintain market share of certain vehicles, (3) GM can make minor changes in the performance levels of its vehicles to bring them more in line with its competitors, and (4) GM can make small improvements by increasing the penetration of some engine and transmission technology improvements that are not projected for full implementation. All of these actions are very minor and, the agency believes, within GM's capability.

NHTSA believes that a higher standard than 20.7 mpg for MYs 1996–97 could result in serious economic difficulties for GM. While GM can achieve 20.7 mpg CAFE without significant product restrictions, such restrictions could be required to achieve a CAFE higher than 20.7 mpg. Given leadtime constraints, NHTSA believes that the first potential fuel-efficiency actions that GM or any other manufacturer would consider in

response to a higher standard would consist of marketing actions. For the reasons discussed in other notices, however, the agency does not believe that marketing actions can be relied upon to significantly improve a manufacturer's CAFE. See, e.g., MY 1993–94 light truck CAFE final rule (56 FR 13775, April 4, 1991). If such marketing actions were unsuccessful in whole or in part, GM would likely have to engage in significant product restrictions to achieve the level of a higher CAFE standard. Such product restrictions could result in adverse economic consequences for GM, its employees and the economy as a whole and limit consumer choice, especially with regard to the load-carrying needs of light truck purchasers.

As indicated above, while NHTSA has concluded that GM is the least capable manufacturer with a substantial share of sales, the agency believes that GM's capability is not significantly below that of Chrysler. GM and Chrysler, combined, sell over 50 percent of all new light trucks each model year. Therefore, even if the agency were to set a standard above GM's capability, the standard could not be much above 20.7 mpg and still remain within the capability of the majority of the industry.

NHTSA believes that the 20.7 mpg standard balances the potentially serious adverse economic consequences for GM that could result from a higher standard with the potential for increased petroleum savings. The agency concludes, in view of the statutory requirement to consider specified factors, that the relatively small and uncertain energy savings associated with setting a standard above GM's capability would not justify the potential harm to that company and the economy as a whole.

Consumer Alert and CEI requested that NHTSA consider the safety effects of its decision. Those commenters stated that the agency should not in any way avoid analyzing the potential safety consequences of a decision to increase the CAFE standards for light trucks. Consumer Alert and CEI cited the record of NHTSA's rulemaking concerning the MY 1990 passenger car CAFE standard, although they recognized that the safety consequences of a decision to raise the CAFE standard for light trucks may differ somewhat.

In the context of passenger car CAFE standards, NHTSA has recognized that CAFE standards could adversely affect safety to the extent that they result in significant reductions in car size and/or weight. This issue was discussed at length in the agency's notice terminating rulemaking on the MY 1990 passenger car CAFE standard (see 58 FR 6939, February 3, 1993).

An analysis of the extent to which significantly higher light truck CAFE standards could affect safety is more complex than for passenger car standards, since purchasers would have many more options for substitution (e.g., different kinds of light trucks, trucks with a high enough GVWR that they are not subject to CAFE standards, etc.) The agency notes that since light trucks are generally significantly larger and heavier than passenger cars, any safety effects of a particular weight reduction would likely be smaller than for cars.

While NHTSA recognizes that significantly higher light truck CAFE standards could adversely affect safety, to the extent that they resulted in significant reductions in light truck size and/or weight, the available evidence indicates that MYs 1996–97 standard of 20.7 mpg will not have any impact on safety. NHTSA notes that, in setting the light truck CAFE standards for recent model years, the agency did not include in its analyses of manufacturer capabilities any product plan actions that would significantly affect the weight, size or cost of the vehicles the manufacturers planned to offer. The agency also notes that the average equivalent test weight of light trucks has increased from 3,805 pounds in MY 1984 to 4,169 pounds in MY 1992. Therefore, NHTSA believes that CAFE standards during this period have not had any measurable effect on light truck weight or size.

The agency also notes that the levels of the light truck CAFE standards have not varied significantly for more than a decade. The light truck CAFE standards for MY 1987–89 and MY 1994 were set at 20.5 mpg, and, as far back as MY 1984, the standard was 20.0 mpg.

NHTSA therefore believes that the size and weight of current and planned light trucks are not significantly different from what would have occurred in the absence of CAFE standards. As discussed above, Ford and Chrysler will exceed the level of the 20.7 mpg standard for MYs 1996–97 without making any changes in their product plans. While GM will need to make some changes in its product plan to achieve a CAFE of 20.7 mpg, the agency does not believe that it is necessary, or likely, for that company to take actions that would have any adverse effect on safety, in order to achieve that CAFE level.

As indicated above, in determining that GM can achieve MYs 1996–97 CAFE levels of 20.7 mpg, NHTSA adjusted GM's projected CAFE level of 20.5 mpg based on several factors. First, the agency adjusted it upward to reflect more realistic mix assumptions with respect to 4WD market share and maintaining market share of certain more fuel-efficient vehicles. Since this adjustment simply reflects the agency's judgment of what GM is likely to be able to sell, based on historical experience, the adjustment does not induce or compel any actions with safety implications.

NHTSA also concluded that GM can improve its projected MYs 1996–97 CAFE by a slight reduction in vehicle performance. This would involve changes in such things as axle ratios. The agency believes that a slight reduction in performance would not have any adverse safety consequences.

Finally, the agency concluded that GM could improve its MYs 1996–97 CAFE by increasing the penetration of some engine and transmission technology improvements that are not projected for full implementation. This action would not result in reduced vehicle weight.

Since the 20.7 mpg light truck CAFE standard for MYs 1996–97 will not lead to significant reductions in light truck size or weight, or shifts toward less safe vehicles, the agency concludes that it is not likely to have any impact on safety.

VIII. Rulemaking Analyses and Notices

A. Economic Impacts

The agency has considered the economic implications of the standard for MYs 1996–97 and determined that it is significant within the meaning of Executive Order 12866, and significant within the meaning of the Department's regulatory procedures. This rulemaking was reviewed under Executive Order 12866. The agency's detailed analysis of the economic effects is set forth in a Regulatory Evaluation, copies of which are available from the Docket Section. The contents of that analysis are generally described above.

B. National Environmental Policy Act

The agency has analyzed the environmental impacts of the MY 1996–97 light truck average fuel economy standard in accordance with the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.* Copies of the Environmental Assessment are available from the Docket Section. The agency has concluded that no significant environmental impact will result from this rulemaking action.

C. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, the agency has considered the

impact this rulemaking will have on small entities. I certify that this action will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required for this action. No light truck manufacturer subject to the standard will be classified as a "small business" under the Regulatory Flexibility Act. In the case of other small businesses, small organizations, and small governmental units which purchase light trucks, the standard will not affect the availability of the full range of light trucks or have a significant effect on the overall cost of purchasing and operating light trucks.

D. Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the MYs 1996–97 standard will not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

E. Civil Justice Reform

This final rule will not have any retroactive effect. Under section 509(a) of the Motor Vehicle Information and Cost Savings Act (the Cost Savings Act; 15 U.S.C. 2009(a)), whenever a Federal motor vehicle fuel economy standard is in effect, a state may not adopt or enforce any law or regulation relating to fuel economy standards or average fuel economy standards applicable to vehicles covered by the Federal standard. Under section 509(b) of the Cost Savings Act (15 U.S.C. 2009(b)) a state may not require fuel economy labels on vehicles covered by section 506 of the Cost Savings Act (15 U.S.C. 2006) which are not identical to the Federal standard. Section 509 does not apply to vehicles procured for the State's use. Section 504 of the Cost Savings Act (15 U.S.C. 2004) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal average fuel economy standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

F. Department of Energy Review

In accordance with section 502(j) of the Act, NHTSA submitted a pre-publication copy of this rule to the Department of Energy for review. The Department made no unaccomodated comments.

List of Subjects in 49 CFR Part 533

Energy conservation, Motor vehicles.

PART 533—[AMENDED]

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

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

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

2. Section 533.5(a) is amended by adding Table IV immediately following Table III to read as follows:

§ 533.5 Requirements.

* * * * *

TABLE IV

Model year	Standard
1996	20.7
1997	20.7

* * * * *

Issued: March 31, 1994.

Christopher A. Hart,

Deputy Administrator.

[FR Doc. 94–8133 Filed 3–31–94; 4:00 pm]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 533

[Docket No. 94–20; Notice 1]

RIN 2127–AF16

Light Truck Average Fuel Economy Standards, Model Years 1998–2006

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

ACTION: Advance Notice of Proposed Rulemaking (ANPRM).

SUMMARY: In a final rule published elsewhere in today's edition of the **Federal Register**, NHTSA is establishing light truck average fuel economy standards for model years 1996 and 1997. The purpose of this advance notice is to announce that the agency is beginning to develop a proposal for light truck average fuel economy standards for model years after 1997, and to request comments to assist the agency in developing the proposal. NHTSA plans to propose standards for some or all of model years 1998 to 2006. The agency is seeking information that will help it assess the extent to which manufacturers can improve light truck fuel economy during the period in question, the benefits and costs to consumers of improved fuel economy, the benefits to the nation of reducing fuel consumption, and the number of model years that should be covered by the proposal.

DATES: Comments must be received on or before August 4, 1994.

ADDRESSES: Comments must refer to the docket and notice numbers set forth above and be submitted (preferably in 10 copies) to Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street SW., Washington, DC 20590. The Docket is open 9:30 a.m. to 4 p.m., Monday through Friday. Submissions containing information for which confidential treatment is requested should be submitted (in three copies) to Chief Counsel, National Highway Traffic Safety Administration, room 5219, 400 Seventh Street, SW., Washington, DC 20590, and seven additional copies from which the purportedly confidential information has been deleted should be sent to the Docket section.

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

SUPPLEMENTARY INFORMATION:

I. Introduction

In December 1975, Congress enacted the Energy Policy and Conservation Act (EPCA) because of a national concern with the depletable nature and uncertain availability of most of the energy upon which the Nation relies for its economic and social well being, and the need to implement a national program for conserving energy. Among other things, EPCA added Title V, "Improving Automotive Efficiency," to the Motor Vehicle Information and Cost Savings Act (Cost Savings Act). Title V provides for the establishment of corporate average fuel economy (CAFE) standards for passenger cars and light trucks.

While Title V provides that the CAFE standard for passenger cars is 27.5 mpg for each model year after model year (MY) 1984 unless NHTSA amends it, the statute does not specify any particular level of light truck CAFE standards. Instead, Title V requires the agency to set light truck CAFE standards for each model year, at least 18 months before the beginning of the model year. In a final rule published elsewhere in today's edition of the **Federal Register**, NHTSA is establishing light truck CAFE standards for MYs 1996 and 1997 at 20.7 mpg. The final rule follows a notice of proposed rulemaking (NPRM) published by the agency in the **Federal Register** (57 FR 61377) on December 24, 1992. That NPRM did not address standards for model years after 1997.

With the rulemaking for the MYs 1996–1997 light truck CAFE standards completed, NHTSA is turning its attention to developing a proposal for light truck average fuel economy standards for model years after MY 1997. While the agency has in the last decade set light truck CAFE standards for only one or two model years at a time, it believes that it may be appropriate now to set standards for a much longer period, i.e., for some or all of the period including MYs 1998 to 2006.

Since the early 1980's, NHTSA has established light truck CAFE standards as little as 18 months and not more than 30 months before the beginning of the model year. The effect of this practice has been to limit the CAFE increases that could be required because there was insufficient leadtime for the manufacturers to change their product plans and improve their light truck fuel economy by means of significant technological improvements. In this period, the light truck CAFE standard changed very little. For MY 1984, it was 20 mpg; for MY 1994, it is 20.5 mpg.

NHTSA explained the impact of such limited leadtime as follows in its December 1992 NPRM to establish the MYs 1995–97 light truck CAFE standards:

> NHTSA recognizes that the leadtime necessary to implement significant improvements in engines, transmissions, aerodynamics and rolling resistance is typically at least three years. Also, * * * once a new design is established and tested as feasible for production, the leadtime necessary to design tools and test components is typically 30 to 36 months. Some potential major changes may take even longer. Leadtimes for new vehicles are usually at least three years. Further, light trucks have a long model life, i.e., 8–10 years or more. If a manufacturer must make a major model change ahead of its normal schedule, this change may have a significant, unprogrammed impact.
>
> Given the leadtime constraints, the agency does not believe that manufacturers can achieve significant improvements in their projected CAFE levels for these model years by additional technological actions.

57 FR 61379, December 14, 1992. The agency notes that manufacturers commenting on the December 1992 NPRM argued that the leadtimes discussed above are more typical for passenger cars and that light truck leadtimes are even longer.

If the upcoming light truck CAFE rulemaking is to be effective in encouraging manufacturers to improve their light truck fuel economy by means of significant technological improvements, it must address model years for which the manufacturers would have substantial leadtime. Thus, the rulemaking must address model years well beyond MY 1997, the last model year for which a standard has been established.

There are several reasons why it appears necessary now for the agency to change the way it has been setting light truck CAFE standards and to establish them high enough and far enough in advance to require significant fuel economy improvements.

First, the need of the Nation to conserve energy is increasing. The import share of oil is growing, as is the percentage from Arab OPEC sources. The United States imported 15 percent of its oil needs in 1955. The import share reached 36.8 percent in 1975, the year EPCA was passed, and peaked at 46.4 percent in 1977, at a cost of $91 billion (stated in 1992 dollars). Although the share declined to below 30 percent in the mid-1980's, lately the United States has again become increasingly dependent on imported oil.

In 1992, imports totaled 43.6 percent. The Department of Energy projects that imports will rise to between 52 percent and 72 percent of total use in 2010.

Thus, the United States now imports a higher percentage of its oil needs than it did during 1975, the year EPCA was passed. Despite the establishment of the Strategic Petroleum Reserve in the late 1970s, concern still exists over the stability of the oil import supply. The trend during the 1980s toward increasing diversity in sources of oil imports appears to be reversing. In 1975, OPEC accounted for 61 percent of U.S. oil imports; by 1984, OPEC's share had dropped to 43 percent. However, in 1992 OPEC accounted for 59 percent of U.S. oil imports. Moreover, the percentage of total U.S. oil consumption supplied by Arab OPEC sources was 11.6 percent in 1992, higher than the 8.5 percent level for 1975. Oil continues to account for over 40 percent of all energy used in the United States, and 97 percent of the energy consumed in the transportation sector. Despite legislation such as the Clean Air Act Amendments of 1990 and California's strict "clean fuel" and emissions standards, fuels derived from petroleum will likely remain the predominant fuels in the transportation sector.

Domestic oil production has declined steadily since reaching a peak of 10.6 million barrels per day in 1985. By 1992, it had dropped to 9.0 million barrels per day. Domestic production is expected to continue declining by roughly 200,000 barrels per day each year through the year 2000. While the United States is currently the world's second largest oil producer, it contains only about three percent of the world's known oil reserves. Persian Gulf countries contain 63 percent of known world reserves, and former Communist countries contain 9 percent. The Department of Energy projects a continuing decline in domestic oil production to between 3.54 and 6.73 million barrels per day in 2010.

A second reason why NHTSA believes there may be a need now to change its approach to setting light truck CAFE standards is the current lack of consumer demand or other market pressure for manufacturers to improve light truck fuel economy. In the early 1980's, during the energy crisis brought on by events in Iran, gasoline prices rose rapidly. That rise significantly increased consumer demand for more fuel-efficient vehicles. Thereafter, however, gasoline prices fell sharply and have remained at very low levels for a decade. Consumers now place much greater emphasis on high performance, and make little demand for improved light truck fuel economy. Performance levels are now higher than they were when EPCA was enacted.

In the absence of strong consumer demand or other market pressure for improved light truck fuel economy, there is no reason to expect manufacturers to make significant technological improvements for the purpose of improving light truck fuel economy, absent higher light truck CAFE standards or other government measures. Indeed, light truck CAFE has not changed appreciably in the last six years and is not expected to do so in the next several years. The average light truck fuel economy of the domestic manufacturers was 20.5 mpg in MY 1987, and 20.4 mpg in MY 1992, five model years later. (The import manufacturers' average light truck CAFE, representing a relatively small market share, declined significantly during this time, from slightly more than 25 mpg in MY 1987 to less than 23 mpg in MY 1992.) Moreover, as discussed in today's final rule establishing the MY 1996–97 light truck CAFE standards, GM currently projects a MY 1997 CAFE of 20.5 mpg, Ford 21.6 mpg, and Chrysler 20.9 mpg.

A third reason why effective light truck CAFE standards assume increased importance now is the continued growth in market share of those vehicles. Light truck production increased from 1.9 million in MY 1980 to 4.1 million in MY 1992. Data Resources, Inc., projects sales of 6 million light trucks in MY 1998 and close to 7 million by MY 2004. Light trucks comprised nearly 33 percent of the total light vehicle production in MY 1992, almost double their share in MY 1980. That share is expected to increase to 39 percent in MY 1998 and 42 percent by MY 2004. As light trucks increase in market share, so does their impact on energy consumption and the importance of their potential contribution in addressing the Nation's need to conserve energy.

The impact of the growing light truck population on energy conservation efforts can be more fully appreciated when the CAFE of the total light truck fleet is compared with that of the total passenger car fleet. The light truck CAFE is approximately 21 mpg, while the passenger car CAFE is approximately 28 mpg.

NHTSA also notes that there has been increasing concern in recent years about the impact of cars, light trucks and other personal vehicles on global warming. There is an almost direct relationship between fuel consumption and emission of carbon dioxide, a primary "greenhouse" gas. In other words, reducing fuel consumption also reduces carbon dioxide emissions.

As part of the Administration's Climate Change Action Plan, issued in October 1993, the White House's National Economic Council, the Office on Environmental Policy and the Office of Science and Technology Policy will co-chair a process to develop measures to significantly reduce greenhouse gas emissions from personal motor vehicles. The efforts of the task force may have a bearing on future light truck fuel economy standards.

NHTSA also notes that the Administration is supporting research in improving vehicle fuel efficiency in a number of areas, including the Partnership for a New Generation of Vehicles. However, the purpose of this notice is a limited one—requesting comments to assist NHTSA in developing a proposal for light truck CAFE average fuel economy standards for model years after 1997, possibly through MY 2006. To aid the agency in obtaining useful comments, this notice discusses a variety of issues which are considered by NHTSA in developing a CAFE standard proposal, and asks a number of questions and makes a number of requests for data. For easy reference, the questions and requests are numbered consecutively throughout the document.

In providing a comment on a particular matter or in responding to a particular question, interested persons are requested to provide any relevant factual information to support their conclusions or opinions, including but not limited to test data, statistical and cost data, and the source of such information.

In addition to the questions in the body of this notice, NHTSA is also including an appendix to this notice which consists of a number of additional questions directed primarily toward light truck manufacturers. The appendix questions address their product plans through MY 2006 and the assumptions underlying those plans. The agency recognizes that the manufacturers' product plans may not be approved formally for even the earlier model years addressed in this notice and that some of the questions may be difficult to answer. Setting standards well in advance instead of only one or two years in advance necessitates reliance on less definitive information. However, that approach is necessary in order for the agency to attain greater CAFE improvements. The agency would appreciate answers that are as responsive as possible so that appropriate weight can be given to the many factors whose magnitude now can

only be estimated. While the questions in the appendix are directed toward manufacturers, the agency welcomes comments from all interested persons in response to those questions.

II. The Statute

Section 502(b) of the Cost Savings Act requires the Secretary of Transportation to issue light truck fuel economy standards for each model year. The Act provides that the fuel economy standards must be set at the maximum feasible average fuel economy level. In determining maximum feasible average fuel economy level, the Secretary is required under section 502(e) of the Act to consider four factors: Technological feasibility; economic practicability; the effect of other Federal motor vehicle standards on fuel economy; and the need of the nation to conserve energy. The Secretary is permitted but not required to set separate standards for different classes of light trucks. (Responsibility for the automotive fuel economy program was delegated by the Secretary of Transportation to the Administrator of NHTSA (41 FR 25015, June 22, 1976.)

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

The statute does not expressly state whether the concept of feasibility is to be determined on a manufacturer-by-manufacturer basis or on an industry-wide basis. As discussed in many fuel economy notices, it is clear from the legislative history that Congress did not intend that standards simply be set at the level of the least capable manufacturer. Instead, NHTSA must take industry-wide considerations into account in determining the maximum feasible average fuel economy level. NHTSA has consistently set light truck standards at a level that can be achieved by manufacturers whose vehicles constitute a substantial share of the market. Because of the relatively high volume of production by those manufacturers, their capability bears a strong and close relationship to that of the industry as a whole.

III. Issues in Developing a Proposal for MY 1998–2006

Among the significant issues involved in developing a proposal for the MY 1998–2006 light truck CAFE standards is the ability of manufacturers to improve their light truck fuel economy during that period. In order to help it analyze that issue, NHTSA requests information or comments on the questions which follow.

NHTSA is interested in the technology that will be available for improving fuel economy. It is particularly interested in technological advancements. For example, the development of two-cycle engines may have progressed to the point that their introduction to the light truck fleet would be feasible some time in the MY 1998–2006 period. Another example is the development of aluminum and nonmetal composites for automotive applications. These high performance materials, which have become less expensive, are providing new opportunities for lightweight, high-performance automotive components. The Miller cycle engine or other variations on the internal combustion engine may offer improvements in fuel economy.

1. What is the technological feasibility and economic practicability of the various fuel efficiency enhancing technologies, including, but not limited to each of the following, which were noted in the National Academy of Sciences (NAS) study discussed below: Multi-valve and variable valve timing engines; electronic engine controls; port fuel injection; lean burn-fast burn combustion; engine friction reduction; two-stroke engines; turbocharging; improved transmissions, including continuously variable transmissions and electronic controls; redesigning vehicles for weight reduction and aerodynamic enhancement; substitution of lighter-weight materials; lowering rolling resistance; low-friction lubricants; and reducing parasitic losses, for improving manufacturers' CAFE for MY 1998–2006? In answering this question, please address, for each of these technologies, as well as any other relevant technologies not yet available:

(a) The impact on fuel efficiency;

(b) Costs and benefits to the consumer;

(b) Manufacturer costs;

(c) Leadtime;

(d) Potential fleet penetration.

2. What is the cost-effectiveness of each technology identified in Question 1, as well as any other relevant technologies, assuming alternative plausible gasoline prices forecast for MY 1998–2006, and assuming alternative payback periods ranging from 3 years to 10 years?

3. Taking into account the response to Question 1, indicate the ability of each manufacturer to improve its light truck CAFE for each model year during the MY 1998–2006 timeframe. By what model year would maximum penetration of all current fuel economy enhancing technologies be feasible? Why wouldn't such maximum penetration be feasible earlier than that model year?

4. What analyses of manufacturer light truck fuel economy capabilities for MY 1998–2006 are available? What are the strengths and weaknesses of each such analysis?

NHTSA notes that, in 1991, it joined with the Federal Highway Administration in commissioning the NAS to estimate the practically achievable levels of fuel economy for various classes of passenger cars and light trucks. The NAS report, Automotive Fuel Economy—How Far Should We Go?, was published in April 1992. NAS did not reach conclusions on what the "practically achievable" levels of fuel economy were because it stated that it could not determine the correct balance of the variables that would affect such an estimate. The variables include the "technically achievable" levels of fuel economy (described below), the economic effects in terms of jobs, higher vehicle prices, and competitiveness, the effects on vehicle safety and petroleum consumption, etc.

The NAS report did venture to offer "technically achievable" predictions of fuel economy capabilities in MYs 2001 and 2006. The "technically achievable" values were based on certain assumptions. The assumptions were that only currently existing technologies would be used, that fleets would meet the Tier I emissions standards of the Clean Air Act Amendments (CAAA) of 1990, that vehicle interior volume and acceleration performance would be equivalent to those of the MY 1990 fleet, and that the technologies used would be cost-effective at gasoline prices of $5–10 or less.

NAS offered two estimates for the light truck fleet for both MYs 2001 and 2006. One estimate was given with a high degree of confidence that the light truck fleet could achieve such a level. The other estimate, for a higher CAFE level, was given with a lower degree of confidence that the fleet could achieve that level due to unidentified uncertainties. These values are as follows:

TABLE 1.—"TECHNICALLY ACHIEVABLE" FUEL ECONOMY LEVELS: NEW LIGHT TRUCK FLEET (FROM NAS REPORT)

	MY 2001	MY 2006
Higher confidence	24	26
Lower confidence	25	28

The figures in the table have several limitations. They do not represent the capability of any particular manufacturer. Instead, they are intended to represent the light truck fleet as a whole. However, the fleet used by NAS did not include all light trucks. The fleet included small pickups, small vans, small utility vehicles, and large pickups, but not large vans and large utility vehicles. While those last two types of vehicles make up a small percentage of the light truck market, they have low fuel economies.

NHTSA is particularly interested in receiving comments concerning the NAS report and whether, and how, it should be used in rulemaking for the MY 1998–2006 light truck CAFE standards.

Energy and Environmental Analysis, Inc. has prepared a report for the Department of Energy that analyzes the domestic manufacturers' light duty truck fuel economy potential to 2005. NHTSA is including it in the docket for this notice, and would welcome comments on the relevance of the report to this rulemaking.

NHTSA and the Environmental Protection Agency (EPA) have mandated a number of safety and emissions standards for light trucks that become effective in the next few years and that are likely to contribute to increased weight (and, hence, decreased fuel economy) and increased cost of these vehicles. Among the safety requirements are the addition of air bags (which phase-in through MY 1999), quasi-static side impact protection (by MY 1995), roof crush resistance (by MY 1995), and interior head impact protection (with an effective date to be determined). The Clean Air Act Amendments mandated a phase-in of more stringent emission standards for light trucks. The U.S. has agreed under the Montreal Protocol to phase-out the chloroflourocarbons used in vehicle air conditioners. This will result in somewhat heavier and less efficient air conditioners. Finally, EPA has also issued several final rules relating to test procedures which could require calibration changes that reduce fuel economy and to onboard diagnostics which could add weight.

5. To what extent are other Federal standards likely to affect manufacturers' CAFE capabilities in MYs 1998–2006? Answers to this question should include not only the effects of such standards when first implemented, but also the prospect for reducing those effects subsequently.

6. Assuming that NHTSA establishes a single light truck CAFE standard for each of MYs 1998–2006, what would be the manufacturers' responses to CAFE standards set at alternative levels, and what would the energy savings be from those levels? For example, what would be the effect of setting a CAFE standard at x − y mpg versus x mpg versus x+y mpg for a given model year? NHTSA requests that, at a minimum, commenters answer the questions in this paragraph based on the standard levels discussed in the NAS report.

Another issue that the agency must consider in setting light truck CAFE standards is the basic structure of the standards. As indicated above, Title V provides the agency with discretion concerning whether to establish a single standard for all light trucks or separate standards for different classes of light trucks. While NHTSA has in the past used its authority to set separate standards for different classes of light trucks, most notably for two-wheel drive and four-wheel drive light trucks, it has more recently established a single standard for all light trucks.

A single standard has the advantage of maximizing manufacturer flexibility, e.g., enabling a manufacturer to decide where in its light truck fleet to make fuel efficiency improvements. On the other hand, since the agency sets standards at a level that can be achieved by manufacturers whose vehicles constitute a substantial share of the market, it is possible that a single large manufacturer with a mix toward larger, less fuel-efficient vehicles could skew the single standard downward for the entire industry. It might be possible to address this potential problem by establishing separate standards for different classes of light trucks. The agency requests comments on the following question:

7. For MYs 1998–2006, should NHTSA propose a single standard for all light trucks or separate standards for different classes of light trucks? Should the answer to this question vary depending on the extent to which the CAFE capabilities of manufacturers differ? If the agency should propose separate standards for different classes of light trucks, how should the different classes be defined?

In the final rule issued today establishing light truck CAFE standards for MYs 1996–1997, NHTSA stated it believes that CAFE standards for the last decade have not had any measurable effect on light truck weight or size; and, hence, safety. In support of that belief, the agency noted that the levels of the light truck CAFE standards have not varied significantly for more than a decade. The light truck CAFE standards for MY 1987–89 and MY 1994 were set at 20.5 mpg, and, as far back as MY 1984, the standard was only slightly lower at 20.0 mpg. NHTSA also noted that, in setting the light truck CAFE standards over the last decade, the agency has not included in its analyses of manufacturer capabilities any product plan actions that would significantly affect the weight, size or cost of the vehicles the manufacturers planned to offer. Further, the average equivalent test weight of light trucks increased from 3,805 pounds in MY 1984 to 4,200 pounds in MY 1993.

8. NHTSA requests comments on the extent to which the increases in light truck CAFE feasible during MYs 1998–2006 involve means, such as significant weight or size reduction, that could adversely affect safety. Would achievement during that period of NAS' estimated "technically achievable" levels necessarily depend on such means?

In setting CAFE standards, the agency takes into consideration that there are often technological risks associated with actually achieving the full potential fuel economy improvement from a particular type of technology.

9. How should the agency take technological risks into account in setting the light truck CAFE standards? What technological risks are associated with gaining the full potential fuel economy improvements from any of the available types of fuel economy enhancing technologies? What are the prospects for overcoming those risks or offsetting their effects on CAFE capability?

IV. Rulemaking Analyses and Notices

A. Executive Order 12866 (Regulatory Planning and Review) and the Departmental Regulatory Policies and Procedures

This rulemaking was reviewed under E.O. 12866. The agency has considered the potential economic implications of this rulemaking and determined that it is significant within the meaning of the Department's regulatory policies and regulatory procedures. A preliminary regulation evaluation has been prepared for this notice and placed in the public docket.

B. Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it is likely that CAFE standards for MYs 1998–2006 will not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

C. Civil Justice Reform

This rule, when proposed, would not have any retroactive effect. Under section 509(a) of the Act (15 U.S.C. 2009(a)), whenever a Federal motor vehicle fuel economy standard is in effect, a state may not adopt or enforce any law or regulation relating to fuel economy standards or average fuel economy standards applicable to vehicles covered by the Federal standard. Under section 509(b) of the Cost Savings Act (15 U.S.C. 2009(b)), a state may not require fuel economy labels on vehicles covered by section 506 of the Cost Savings Act (15 U.S.C. 2006) which are not identical to those required by the Federal requirement. Section 509 does not apply to vehicles procured for the State's use. Section 504 of the Cost Savings Act (15 U.S.C. 2004) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal average fuel economy standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Comments

NHTSA solicits public comments on the questions presented in this ANPRM and on other relevant issues. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above for the advance proposal will be considered. To the extent possible, comments filed after the closing date will also be considered. Comments on the advance proposal will be available for inspection in the docket. After the closing date, NHTSA will continue to file relevant information in the docket as this information becomes available, and recommends that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

A regulatory information 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 contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 533

Energy conservation, Gasoline, Imports, Motor vehicles.

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

Dated: March 31, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

APPENDIX

I. Definitions

As used in this appendix—

1. "Automobile," "fuel economy," "manufacturer," and "model year," have the meaning given them in Section 501 of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 2001.

2. "Cargo-carrying volume," "gross vehicle weight rating" (GVWR), and "passenger-carrying volume" are used as defined in 49 CFR 523.2.

3. "Basic engine" has the meaning given in 40 CFR 600.002–85(a)(21). When identifying a basic engine, respondent should provide the following information:

(i) Engine displacement (in cubic inches).

(ii) Number of cylinders or rotors.

(iii) Number of valves per cylinder.

(iv) Cylinder configuration (V, in-line, etc.).

(v) Number of carburetor barrels, if applicable.

(vi) Other engine characteristics, abbreviated as follows:

DD—Direct Injection Diesel
ID—Indirect Injection Diesel
R—Rotary
TB—Throttle Body Fuel Injection S.I. (Spark Ignition)
MP—Multipoint Fuel Injection S.I.
TD—Turbocharged Diesel
TS—Turbocharged S.I.
FFS—Feedback Fuel System
2C—Two—Cycle
OHC—Overhead camshaft
DOHC—Dual overhead camshafts

4. "Domestically manufactured" is used as defined in Section 503(b)(2)(E) of the Act.

5. "Light truck" means an automobile of the type described in 49 CFR Part 523.5.

6. A "model" of light truck is a line, such as the Chevrolet C–10 or Astro, Ford F150 or E150, Jeep Wrangler, etc., which exists within a manufacturer's fleet.

7. "Model Type" is used as defined in 40 CFR 600.002–85(a)(19).

8. "Percent fuel economy improvements" means that percentage which corresponds to the amount by which respondent could improve the fuel economy of vehicles in a given model or class through the application of a specified technology, averaged over all vehicles of that model or in that class which feasibly could use the technology. Projections of percent fuel economy improvement should be based on the assumption of maximum efforts by respondent to achieve the highest possible fuel economy increase through the application of the technology. The baseline for determination of percent fuel economy improvement is the level of technology and vehicle performance with respect to acceleration and gradeability for respondent's 1994 model year light trucks in the equivalent class.

9. "Percent production implementation rate" means that percentage which corresponds to the maximum number of light trucks of a specified class which could feasibly employ a given type of technology if respondent made maximum efforts to apply the technology by a specified model year.

10. "Production percentage" means the percent of respondent's light trucks of a specified model projected to be manufactured in a specified model year.

11. "Project" or "projection" refers to the best estimates made by respondent, whether or not based on less than certain information.

12. "Redesign" means any change, or combination of changes, to a vehicle that would change its weight by 50 pounds or more or change its frontal area or aerodynamic drag coefficient by 2 percent or more.

13. "Relating to" means constituting, defining, containing, explaining, embodying, reflecting, identifying, stating, referring to, dealing with, or in any way pertaining to.

14. "Respondent" means each manufacturer (including all its divisions) providing answers to the questions set forth in this appendix, and its officers, employees, agents or servants.

15. "Test weight" is used as defined in 40 CFR 86.082–2.

16. "Transmission class" is used as defined in 40 CFR 600.002–05(22)(a). When identifying a transmission class, respondent also must indicate whether the transmission is equipped with a lockup torque converter (LUTC), a split torque converter (STC), and/or a wide gear ratio range (WR) and specify

the number of forward gears or whether the transmissions a continuously variable design (CVT).

17. "Truckline" means the name assigned by the Environmental Protection Agency to a different group of vehicles within a make or car division in accordance with that agency's 1994 model year pickup, van (cargo vans and passenger vans are considered separate truck lines), and special purpose vehicle criteria.

18. "Utility vehicle" means a form of light truck, either two-wheel drive (4x2) or four-wheel drive (4x4), and is exemplified by a Jeep Wrangler or Cherokee, a Chevrolet Blazer, Ford Explorer, or a Toyota Land Cruiser.

19. The term "van" is used as defined in 40 CFR 86.082–2.

20. "Variants of existing engines" means versions of an existing basic engine that differ from that engine in terms of displacement, method of aspiration, induction system or that weigh at least 25 pounds more or less than that engine.

II. Assumptions

All assumptions concerning emission standards, damageability regulations, safety standards, etc., should be listed and described in detail by the respondent.

III. Specifications

1. Identify all light truck models currently offered for sale in MY 1994 whose production you project discontinuing before MY 1999 and identify the last model year in which each will be offered.

2. Identify all basic engines offered by respondent in MY 1994 light trucks which respondent projects it will cease to offer for sale in light trucks before MY 1999, and identify the last model year in which each will be offered.

3. Does the respondent currently project offering for sale for the time period of MY 1998–2006 any new or redesigned light trucks, including vehicles smaller than those now produced? If so, provide the following information for each model (e.g., Chevrolet C–10, Ford F150). Model types which are essentially identical except for their nameplates (e.g., Dodge Caravan/Plymouth Voyager) may be combined into one item. See Table A for a sample format; 4x2 and 4x4 light trucks are different models.

a. Body types to be offered for sale (e.g., regular cab, super cab).

b. Description of basic engines, including optional horsepower and torque ratings, if any; displacement; number and configuration of cylinders; type of carburetor or fuel injection system; fuel type; number of valves per cylinder, and whether it is 2-cycle or 4-cycle.

c. Transmission type (manual, automatic, number of forward speeds, overdrive, etc., as applicable), including gear ratios and final drive, alternative ratios offered, driveline configuration, and special features such as torque converter lockup clutches, electronic controls or CVT design.

d. (i) The range of GVW ratings to be offered for each body type.

(ii) The range of test weights for each body type.

e. All wheelbases.

f. Estimated power absorption unit (PAU) setting, in hp.

g. The range of projected EPA composite fuel economies for each body type in the initial model year of production.

h. Projected introduction date (model year).

i. Projected sales for each model year from the projected year of introduction through MY 2006, expressed both as an absolute number of units sold and as percentage of all light trucks sold by respondent.

j. Projections of:

(i) Existing models replaced by new models.

(ii) Reduced sales of respondent's existing models as a result of the sale of each of the new models.

(iii) New sales not captured from any of the respondent's existing models.

4. Does respondent project introducing any variants of existing basic engines or any new basic engines, other than those mentioned in your response to Question 3, in its light truck fleets in MYs 1998–2006? If so, for each basic engine or variant indicate:

a. The projected year of introduction,

b. Type (e.g., spark ignition, direct injection diesel, 2-cycle, alternative fuel use),

c. Displacement,

d. Type of induction system (e.g., fuel injection with turbocharger, naturally aspirated, 2 barrel carburetor),

e. Cylinder configuration (e.g., V–8, V–6, I–4),

f. Number of valves per cylinder (e.g., 2, 3, 4),

g. Horsepower and torque ratings,

h. Models in which engines are to be used, giving the introduction model year for each model if different from "a," above.

(See Table B for a sample format.)

5. Relative to MY 1994 levels, for MYs 1998–2006, please provide information, by truckline and as an average effect on a manufacturer's entire light truck fleet, on the weight and/or fuel economy impacts of the following standards or equipment:

a. Federal Motor Vehicle Safety Standard (FMVSS 208) Automatic Restraints,

b. FMVSS 214 Side Door Strength,

c. FMVSS 216 Roof Crush Resistance,

d. Voluntary installation of safety equipment (i.e., antilock brakes),

e. Environmental Protection Agency regulations,

f. California Air Resources Board requirements,

g. Other applicable motor vehicle regulations affecting fuel economy.

6. For each of the model years 1998–2006, and for each light truck model projected to be manufactured by respondent (if answers differ for the various models), provide the requested information for each of items "6a" through "6o" listed below:

(i) Description of the nature of the technological improvement;

(ii) The percent fuel economy improvement averaged over the model;

(iii) The basis for your answer to 6(ii), (e.g., data from dynamometer tests conducted by respondent, engineering analysis, computer simulation, reports of test by others);

(iv) The percent production implementation rate and the reasons limiting the implementation rate;

(v) A description of the 1994 baseline technologies and the 1994 implementation rate; and

(vi) The reasons for differing answers you provide to items (ii) and (iv) for different models in each model year. Include as a part of your answer to 6(ii) and 6(iv) a tabular presentation, a sample portion of which is shown in Table C.

a. Improved automatic transmissions. Projections of percent fuel economy improvements should include benefits of lock-up or bypassed torque converters, electronic control of shift points and torque converter lock-up, and other measures which should be described.

b. Improved manual transmissions. Projections of percent of fuel economy improvement should include the benefits of increasing mechanical efficiency, using improved transmission lubricants, and other measures (specify).

c. Overdrive transmissions. If not covered in "a" or "b" above, project the percentage of fuel economy improvement attributable to overdrive transmissions (integral or auxiliary gear boxes), two-speed axles, or other similar devices intended to increase the range of available gear ratios. Describe the devices to be used and the application by model, engine, axle ratio, etc.

d. Use of engine crankcase lubricants of lower viscosity or with additives to improve friction characteristics or accelerate engine break-in, or otherwise improved lubricants to lower engine friction horsepower. When describing the 1994 baseline, specify the viscosity of and any fuel economy-improving additives used in the factory-fill lubricants.

e. Reduction of engine parasitic losses through improvement of engine-driven accessories or accessory drives. Typical engine-driven accessories include water pump, cooling fan, alternator, power steering pump, air conditioning compressor, and vacuum pump.

f. Reduction of tire rolling losses, through changes in inflation pressure, use of materials or constructions with less hysteresis, geometry changes (e.g., increased aspect ratio), reduction in sidewall and tread deflection, and other methods. When describing the 1994 baseline, include a description of the tire types used and the percent usage rate of each type.

g. Reduction in other driveline losses, including losses in the non-powered wheels, the differential assembly, wheel bearings, universal joints, brake drag losses, use of improved lubricants in the differential and wheel bearing, and optimizing suspension geometry (e.g., to minimize tire scrubbing loss).

h. Reduction of aerodynamic drag.

i. Turbocharging or supercharging.

j. Improvements in the efficiency of 4-cycle spark ignition engines including (1) increased compression ratio; (2) leaner air-to-fuel ratio; (3) revised combustion chamber configuration; (4) fuel injection; (5) electronic fuel metering; (6) interactive electronic control of engine operating parameters (spark advance, exhaust gas recirculation, air-to-fuel ratio); (8) variable valve timing or valve lift; (9) multiple valves per cylinder; (10) friction reduction by means such as low tension

piston rings and roller cam followers; (11) higher temperature operation; and (12) other methods (specify).

k. Naturally aspirated diesel engines, with direct or indirect fuel injection.

l. Turbocharged or supercharged diesel engines with direct or indirect fuel injection.

m. Stratified-charge reciprocating or rotary engines, with direct or indirect fuel injection.

n. Two cycle spark ignition engines.

o. Other technologies for improving fuel economy.

7. For each model of respondent's light truck fleet projected to be manufactured in each of MYs 1998–2006, describe the methods used to achieve reductions in average test weight. For each specified model year and model, describe the extent to which each of the following methods for reducing vehicle weight will be used. Separate listings are to be used for 4x2 light trucks and 4x4 light trucks.

a. Substitution of materials.

b. "Downsizing" of existing vehicle design to reduce weight while maintaining interior roominess and comfort for passengers, and utility, i.e., the same or approximately the same, payload and cargo volume, using the same basic body configuration and driveline layout as current counterparts.

c. Use of new vehicle body configuration concepts which provides reduced weight for approximately the same payload and cargo volume.

8. For each model year 1998–2006, list all projected light truck model types and provide the information specified in "a" through "k" below for each model type.

The information should be in tabular form, with a separate table for each model year. Each grouping is to be subdivided into separate listings for models with 4×2 and 4×4 drive systems. Engines having the same displacement but belonging to different engine families are to be grouped separately. The vehicles are to be sorted first by truckline, second by basic engine, and third by transmission type. For these groupings, the average test weights are to be placed in ascending order. List the categories in terms "a" through "k" below in the order specified from left to right across the top of the table. Include in the table for each model year the total sales-weighted harmonic average fuel economy and average test weight for imported and domestic light trucks for each truckline and for all of the respondent's light trucks.

a. Truckline, e.g., C–10, F–150, B–150. Model types which are essentially identical except for their nameplates (e.g., Chevrolet S–10/GMC S–15 and Dodge Caravan/Plymouth Voyager) may be combined into one line item.

b. Light truck vehicle type, e.g., compact pickup, cargo van, passenger van, utility, truck-based station wagon, and chassis cab. Other light truck designations, which are adequately defined, can be used if these are not suitable.

c. Basic engine: Include the engine characteristics used in Definition 3.

d. Transmission class (e.g., A3, L4, A40D, M5, CVT): Include the characteristics used in Definition 16.

e. Average ratio of engine speed to vehicle speed in top gear (N/V), rounded to one decimal place.

f. Average test weight.

g. Average PAU setting: Provide the value and show whether the value (or estimated value) is based on coastdown testing (T) or calculated from the vehicle frontal area (C). Round the PAU value to one decimal place.

h. Composite fuel economy (Sales weighted, harmonically averaged over the specified vehicles, rounded to the nearest 0.1 mpg).

i. Projected sales for the vehicles described in each line item.

9. For each transmission identified in response to 8(d) above, provide a listing showing whether the transmission is manual or automatic, the gear ratios for the transmission, and the models which will use the transmission.

10. Indicate any MY 1998–2006 light truck model types which have higher average test weights than comparable MY 1994 model types. Describe the reasons for any weight increases (e.g., increased option content, less use of premium materials) and provide supporting justification.

11. For each new or redesigned vehicle identified in response to Question 3 and each new engine or fuel economy improvement identified in your response to Questions 3, 5, and 6, provide your best estimate of the following, in terms of constant 1993 dollars:

(a) Total capital costs required to implement the new/redesigned model or improvement according to the implementation schedules specified in your response. Subdivide the capital costs into tooling, facilities, launch, and engineering costs.

(b) The maximum production capacity, expressed in units of capacity per year, associated with the capital expenditure in (a) above. Specify the number of production shifts on which your response is based and define "maximum capacity" as used in your answer.

(c) The actual capacity that is planned to be used each year for each new/redesigned model or fuel economy improvement.

(d) The increase in variable costs per affected unit, based on the production volume specified in (b) above.

(e) The equivalent retail price increase per affected vehicle for each new/redesigned model or improvement. Provide an example describing methodology used to determine the equivalent retail price increase.

12. Please provide respondent's actual and projected U.S. light truck sales, 4×2 and 4×4, 0–8,500 lbs. GVWR and 8501–10,000 lbs., GVWR for each model year from 1994 thorough 2006, inclusive. Please subdivide the data into the following vehicle categories:

i. Standard Pickup Heavy (e.g., C–20/30, F–250/350, D–250/350)
ii. Standard Pickup Light (e.g., C–10, F–150, D–150)
iii. Compact Pickup (e.g., S–10, Ranger)
iv. Standard Cargo Vans Heavy (e.g., G–30, E–250/350, B–350)
v. Standard Cargo Vans Light (e.g., G–10/20, E–150, B–150/250)
vi. Standard Passenger Vans Heavy (e.g., G–30, E–250/350, B–350)
vii. Standard Passenger Vans Light (e.g., G–10/20, E–150, B–150/250)
viii. Compact Cargo Vans (e.g., Astro, Aerostar, Mini Ram Van)
ix. Compact Passenger Vans (e.g., Astro, Villager, Voyager)
x. Standard Utilities (e.g., K1500 Blazer, Bronco)
xi. Compact Utilities (e.g., S–10 Blazer, Explorer, Wrangler)
xii. Other (e.g., Suburban, Loyale)

See Table D for a sample format.

13. Please provide your estimates of projected *total industry* U.S. light (0–10,000 lbs, GVWR) truck sales for each model year from 1994 through 2008, inclusive. Please subdivide the data into 4×2 and 4×4 sales and into the vehicle categories listed in the sample format in Table E.

14. Please provide your company's assumptions for U.S. gasoline and diesel fuel prices during 1994 through 2006.

15. Please provide projected production capacity available for the North American market (at standard production rates) for each of your company's light truckline designations during MYs 1994–2006.

16. Please provide your estimate of production leadtime for new models, your expected model life in years, and the number of years over which tooling costs are amortized.

TABLE A.—NEW MODELS

[Model: A–1 Standard Pickups Drivetrain Configuration: 4×2, Front Engine/Rear Drive]

Body type (3a.)	Passenger volume, ft³	No. of seating positions	Cargo volume, ft³	Wheelbase, in. (3e.)	PAU setting, hp. (3f.)
Regular cab, short bed	50	3	48	115	7.5
Regular cab, long bed	50	3	64	133	7.8
Extended cab, long bed	75	4	64	151	8.2
Crew cab, long bed	100	6	64	170	9.0

Engine options (b.)	Config./ No. of cyl.	Fuel system	Hp @ RPM	Torque @ RPM
160 CID, turbocharged[1]	I–4	MPI	140 @ 4200	90 @ 3400
235 CID	V–6	TBI	150 @ 3800	125 @ 2800
235 CID, 4-valve[2]	V–6	MPI	180 @ 4500	130 @ 3200
285 CID	V–8	MPI	200 @ 4200	150 @ 3000

[1] Not available with crew cab.
[2] Available with automatic transmission only.

Ratios (c.)	Transmission type		
	Manual overdrive	Manual creeper	Automatic with electronic controls and TCLU
1st gear	4.50	6.50	3.20
2nd gear	3.00	3.60	2.50
3rd gear	1.75	1.80	1.50
4th gear	1.00	1.00	1.00
5th gear	0.80		
Reverse gear	4.70	6.10	3.00
Torque converter			2.10
Axle	3.54/3.73	3.54/3.73	3.23/3.54

Body type (3a.)	Range of GVWR (3d.(i))	Range of test weights (3d.(ii))	Range of composite fuel economy ratings (3g.)
Regular cab, short bed	6,050–7,000	4,250–4,500	16.0–17.5
Regular cab, long bed	6,100–7,200	4,250–4,500	16.0–17.2
Extended cab, long bed	6,100–7,400	4,500–5,000	15.5–17.0
Crew cab, long bed	6,300–7,800	4,500–5,000	14.5–16.5

Model year	Production (3i.)	Share of fleet, percent (3i.)	Notes (3h., 3j.)
1998	36,000	5	Mid-year introduction, North American production.
1999	78,000	10	
2000	110,000	13	Extended cab introduced.
2001	120,000	14	Facelift.

New Models

Model year (3k.)	New model designation	Model replaced or augmented	Sales derived from old model	Additional sales anticipated
1998	A-Std Pickup	T-Std Pickup	20,000	10,000
1999	....do	....do	50,000	30,000

TABLE B.—NEW ENGINES

New/Redesigned Engines

Year of introduction by model (4a./h.)	Type (4b.)	Displacement, L. (4c.)	Induction system (4d.)	Configuration (4e.)	Valves per cylinder (4f.)	Horsepower @ rpm (4g.)	Torque, lb-ft @ rpm (4g.)
1998—Std Pickups 1999—Std Vans	2-cycle, diesel	4.42	Turbocharged, direct injection.	W–9	3	250 @ 4000	190 @ 3500

TABLE C.—TECHNOLOGY IMPROVEMENTS

Technological improvement	Percent fuel economy improvement	Percent production share					
		1998	1999	2000	2001	2002	2003
Improved auto trans. (6a.):							
LT–1	7.0	0	0	15	25	55	60
LT–2	6.5	0	0	0	20	25	30
LT–3	5.0	0	10	30	60	60	60
Improved Manual Trans. (6b):							
LV–1	1.0	2	5	5	5	5	5
U–1	0.7	0	0	0	8	10	10

TABLE D.—ACTUAL AND PROJECTED U.S. SALES

Amalgamated Motors 2WD light truck sales projections

Model Line (12.)	Model Year					
	1994	1995	1996	1997	1998	etc.
0–8,500 lbs. GVWR:						
Std pickup, heavy	43,500					
Std pickup, light	509,340					
Compact pickup	120,000					
Std cargo van, heavy	60,000					
Std cargo van, light	20,000					
Compact cargo van	29,310					
Std passenger van, heavy	54,196					
Std passenger van, light	38,900					
Compact passenger van	30,000					
Std utility	53,800					
Compact utility	44,000					
Other (specify)						
8,501–10,000 lbs. GVWR:						
Std pickup heavy	5,500					
Std vans, heavy	4,000					
Other (specify)						
Total	1,012,546					

TABLE E.—TOTAL U.S. TRUCK SALES

Model type (13.)	1994	1995	1996	1997	1998	etc.
1. 2WD light trucks:						
a. Pickup:						
Compact						
Mid-size						
Standard						
b. Cargo vans:						
Compact						
Standard						
c. Passenger vans:						
Compact						
Standard						
d. Utilities:						
Compact						
Standard						
Pass. car based						
e. Truck based station wagons						
f. Other (specify)						
2. 4WD light trucks [same breakout as 2WD]						
3. Total light trucks [2WD + 4WD]						

[FR Doc. 94–8132 Filed 3–31–94; 4:00 pm]

BILLING CODE 4910–59–P

federal register

Wednesday
April 6, 1994

Part IV

Department of Labor

Occupational Safety and Health Administration

29 CFR Part 1910

Personal Protective Equipment for General Industry; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. S–060]

RIN 1218–AA71

Personal Protective Equipment for General Industry

AGENCY: Occupational Safety and Health Administration; Labor.

ACTION: Final Rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is revising portions of the general industry safety standards addressing personal protective equipment (PPE). The standards being revised include those containing general requirements for all PPE (§1910.132) and standards that set design, selection, and use requirements for specific types of PPE (eye, face, head, foot and hand).

The Agency is updating the standards for PPE to be more consistent with the current consensus regarding good industry practices, as reflected by the latest editions of the pertinent American National Standards Institute (ANSI) standards. The revision will provide guidance for the selection and use of PPE as well as clearer requirements that are performance-oriented, where appropriate.

New paragraphs (d), (e), and (f) (containing requirements covering equipment selection, defective and damaged equipment, and training, respectively) have been added to §1910.132. Also, a new section (§1910.138) has been added to this Subpart to address hazards to the hands.

Non-mandatory appendices A and B have also been added to this Subpart to provide additional guidance to employers and employees with regard to PPE for eye, face, head, foot, and hand hazards.

DATES: This standard will become effective on July 5, 1994. The incorporation by reference of certain publications listed in the standards is approved by the Director of the Federal Register as of April 6, 1994.

ADDRESS: In compliance with 28 U.S.C. 2112(a), the Agency designates for receipt of petitions for review of the standard the Associate Solicitor for Occupational Safety and Health, Office of the Solicitor, Room S–4004, U.S. Department of Labor, 200 Constitution Ave. N.W., Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–3647, 200 Constitution Ave., N.W., Washington, D.C. 20210. Telephone: (202) 219–8151.

SUPPLEMENTARY INFORMATION:

In this preamble, OSHA identifies sources of information submitted to the record by an exhibit number (Ex. 3). When applicable, comment numbers follow the exhibit in which they are contained (Ex. 3: 1). If more than one comment within an exhibit is cited, the comment numbers are separated by commas (Ex. 3: 1, 2, 3). The page number is also cited if other than page 1 (Ex. 3: 2, pg. 8). The transcript of the hearing is cited by the page number followed by identification of the hearing date (Tr. 80: 4/3). Exhibit and transcript citations are separated by semicolons (Ex. 3: Ex. 7; Tr. 80: 4/3).

I. Background

The existing OSHA standards for personal protective equipment (PPE) are contained in Subpart I of OSHA's general industry standards. These standards were adopted in 1971 from established Federal standards and national consensus standards.

In developing a proposed revision of Subpart I, the Agency performed a comprehensive review of the PPE standards. This review revealed several limitations and concerns with respect to these standards. First, OSHA determined that many of the existing PPE standards were outdated since they reflected knowledge and practices regarding PPE as they existed in the late 1960's and early 1970's. This meant that employers were being required to explain how compliance with more recent editions of the pertinent consensus standards provides equivalent protection to that provided by the older editions in the OSHA standards.

Second, the Agency determined that there were certain gaps in coverage of the PPE standards, and that the standards set very restrictive design criteria which might limit the use of new technology. OSHA was concerned that restraints on innovation might also make it more difficult for employers either to increase acceptance of PPE, or to provide more protective PPE. Recognizing this situation, the Agency established a process under which OSHA has accepted, for example, on a case-by-case basis, the use of eye protection which, while not designed to meet the specifications in the existing standards, had been demonstrated to provide equivalent or superior worker protection. The Agency determined, however, that this process could not keep pace with the development of improved PPE. Consequently, OSHA was concerned that, unless the PPE standards were revised to be more performance-oriented, employers and product manufacturers might be discouraged from improving their equipment and from providing improved protection to workers.

Also, OSHA had obtained injury data and technical reports which showed that injuries were occurring to employees who were wearing PPE as well as to those employees who were not wearing PPE. This indicated that, in some cases, significant improvements in PPE design and acceptance might be needed.

Based on these concerns, OSHA developed a proposed revision to its PPE standards. The proposed revision was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 16, 1989 (54 FR 33832). OSHA proposed to revise the safety standards for eye and face protection (§1910.133); head protection (§1910.135); and foot protection (§1910.136) by referencing the latest editions of the corresponding standards published by the American National Standards Institute (ANSI). The provisions of existing §§1910.134 and 1910.137 (which cover respiratory protection and electrical protective devices, respectively) are the subjects of separate rulemaking actions and are not addressed by this rulemaking.

OSHA also proposed to revise the "general requirements" for PPE (§1910.132) by adding provisions that: (1) require employers to select appropriate PPE based on the hazards present and to assure that employees who obtain their own PPE follow the employers' selection decisions; (2) prohibit the use of defective or damaged PPE; and (3) require that employees be trained in the proper use of their PPE.

The NPRM set a period, that ended on October 16, 1990, during which interested persons could comment on the proposal and request a hearing. OSHA received 129 comments in response to the proposal (Exhibit 3). The Agency also received several requests for an informal public hearing to discuss and clarify some of the requirements in the proposal, and to discuss and comment on issues and concerns raised as a result of the proposal. Accordingly, OSHA published a hearing notice on February 1, 1990 (55 FR 3412). The hearing notice requested testimony and supporting information on the following issues: (1) Marking of eye and face protection; (2) Third party certification; (3) The use of photochromic lenses; (4) Training in the proper use of PPE; and (5) The need for additional regulation of

PPE (such as gloves, chemical protective clothing, and bump caps). The hearing notice (55 FR 3412) also extended the comment period until March 20, 1990.

Hearings on the proposed standard were held in Washington, D.C., on April 3 and 4, 1990, with Administrative Law Judge Sheldon R. Lipson presiding. At the conclusion of the hearing, Judge Lipson set July 13, 1990, as the deadline for submission of post hearing comments and evidence, and September 11, 1990, as the deadline for submission of summations and briefs. On November 9, 1990, Judge Lipson certified the hearing record, including the hearing transcript and all written submissions to the docket.

The rulemaking record contains 173 comments, 577 pages of testimony, and 53 exhibits.

II. Workplace Hazards Involved

OSHA has determined that workers involved in a wide range of occupations are exposed to a significant risk of death or injury from being struck by various objects in the workplace. OSHA's incident data indicate that a significant portion of all work related injuries and fatalities involve workers being struck in the eyes, head, face, hand, and or feet by foreign objects. For example, it has been estimated that as many as 2,500 eye injuries occur in the workplace every working day (Ex. 2: 9).

One study indicated that there were 333,272 reported occupational eye injuries for 1985 (Ex. 2: 8). Another study, pertaining to *disabling* injuries, estimated that there were 320,000 hand and finger injuries, 70,000 eye injuries, 70,000 head and face injuries, and 110,000 foot and toe injuries in 1987. These injuries constituted 31.7 percent of the estimated 1,800,000 total disabling work injuries for 1987 (Ex. 2: 15).

These examples indicate the degree of the hazard to which employees are exposed. OSHA reviewed many sources that described the type and number of injuries to employees (e.g. Ex. 2: 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 16, 17, 18, 19, 20, 21, 22; Ex. 6: 2, 3, 4). While these sources differ as to the number and kind of injuries, they are consistent in pointing out the high incidence and severity of these accidents, and provide clear evidence of a significant risk to workers.

In particular, one data source reviewed by OSHA included the Bureau of Labor Statistics (BLS) Work Injury Reports (WIR) on eye, face, foot, head and hand injuries (Ex. 2: 11, 12, 13, 14; Ex. 6: 2). These reports, which examined only those cases where a worker was injured, identified two major factors: Personal protective equipment was not being worn the vast majority of the time; and, when some type of protective equipment was worn, it did not fully protect the worker. For example, one study (Ex. 6: 2) indicated that 70% of the workers experiencing hand injuries were not wearing gloves. Hand injuries to the remaining 30% of the workers who were wearing gloves were caused by the gloves being either inadequate, damaged, or the wrong type for the type of hazard present.

Based on the above-documented incidence of hand injury, OSHA has determined that employers and employees need more guidance regarding the selection of hand protection than is provided through the generic provisions of proposed §1910.132(d). Therefore, as discussed below, the Agency has provided performance-oriented provisions by adding §1910.138, "*Hand protection*" to the final rule.

The final rule addresses the problems identified in the BLS reports by allowing new innovative designs through the use of performance-oriented language, by providing information for selecting the proper protection, and by improving the protection afforded by the equipment.

OSHA believes that the revised standards will result in improvement in worker acceptance of wearing PPE by allowing better and more comfortable designs not presently permitted by the current standards, and by providing information on selecting the proper equipment for the job.

The Agency has determined that compliance with the final rule will result in a significant reduction in the risks to workers. As noted in the Regulatory Impact Analysis, discussed below, it is estimated that full compliance with the final rule will prevent 712,000 lost-workdays and 4 fatalities a year.

The Agency has also determined that the revised PPE requirements and criteria in the final rule provide a cost-effective means for reducing risks to workers. The Agency has determined that these provisions are reasonably necessary and appropriate to address the need for personal protective equipment.

III. Summary and Explanation of the Final Rule

This section contains an analysis of the rulemaking record pertaining to certain issues raised in the NPRM, and to the provisions of the standard, both as proposed and as promulgated.

One general objection received during this rulemaking concerned the use of the phrase "employers shall ensure" in certain provisions of the proposed standard (e.g. Ex. 3: 46, 80, 94). The commenters expressed the view that, under the proposed language, employers would be held liable for violations of the standards, regardless of employee misconduct or other exculpatory considerations. The Agency had proposed the language in question to emphasize the employer's obligations for compliance with OSHA standards. The proposed language would not have affected an employer's ability to raise defenses to a citation.

In light of the objections, OSHA is revising the proposed language to remove the phrase "the employer shall ensure" wherever it appears. The employer's obligations for compliance with standards issued under the OSH Act are unaffected by this change.

Also, concern was expressed regarding the extent to which the proposed standard would allow employees to use PPE that satisfied the old ANSI standards which were being superseded by current editions through the proposal. In particular, some commenters (Ex. 3: 68, 69, 100) suggested that the Agency "grandfather" existing stocks of PPE (i.e., allow existing stocks of PPE to be depleted) as long as the PPE meets the ANSI standard in effect at the time of manufacture. Those commenters stated that, without grandfathering, employers would be required to bear the unreasonable expense and disruption of replacing millions of items of usable PPE.

The proposal simply required the affected PPE to comply with the then-current editions of the pertinent ANSI standards, without indicating how PPE produced and tested to satisfy the existing OSHA standards would be treated.

The Agency believes that virtually all of the PPE in question has been produced and tested to satisfy the ANSI editions referenced in either the proposed rule or in the final rule. Therefore, OSHA believes that, by and large, existing stocks of PPE would comply with the final rule. However, the Agency recognizes that some PPE that pre-dates the referenced ANSI standards might be unnecessarily excluded from use unless it was "grandfathered".

In particular, certain protective footwear that complied with the 1983 ANSI edition referenced by the proposal could be excluded from use because it was not produced and tested to satisfy the 1991 edition referenced by the final rule, unless the employer demonstrated that the footwear provided equivalent

protection. OSHA believes that the differences between the 1983 and 1991 editions are so slight that it would be unreasonable to require employers to demonstrate equivalency. The Agency also believes that PPE satisfying the pertinent criteria of the pre-1989 ANSI Z87.1 standard for eye and face protection or the pre-1986 Z89.1 standard for head protection will adequately protect affected employees. Therefore, the Agency agrees that it is appropriate to allow continued use of PPE that was purchased prior to the effective date of the final rule and has revised the proposed rule accordingly.

In the final rule, as in the NPRM, OSHA has incorporated the pertinent ANSI standards by reference. The Agency has determined that it is unnecessary to adopt the text of the three ANSI standards, because their criteria are addressed to PPE manufacturers, not to employers who would be selecting PPE for use by their employees. OSHA believes that it is sufficient to require that employers ensure either that the PPE used by employees complies with the appropriate ANSI standard or that the PPE provides protection equivalent to that provided by PPE manufactured to the ANSI criteria.

§1910.132 General Requirements.

Paragraphs (a), (b), and (c) of this section were not proposed for revision. Paragraph (a) requires that protective equipment be provided, used and maintained in sanitary and reliable condition, as necessary, to protect employees from workplace hazards.

Paragraph (b) requires that, where employees provide their own equipment, the employer assure the adequacy, including the proper maintenance and sanitation, of such equipment.

Paragraph (c) requires that all personal protective equipment be of safe design and construction for the work to be performed.

Paragraph (d): Selection.

OSHA proposed to add a new paragraph, (d), to §1910.132 to address the selection of PPE. OSHA proposed to require employers to select the PPE for their employees based on an assessment of the hazards in the workplace, and the hazards which employees are likely to encounter. Because OSHA is aware that some employees obtain their own PPE, the Agency also proposed that employers be required to inform their employees of the selection decisions and to have their employees follow those decisions when obtaining PPE.

OSHA believes that a hazard assessment is an important element of a PPE program because it produces the information needed to select the appropriate PPE for the hazards present or likely to be present at particular workplaces. The Agency believes that the employer will be capable of determining and evaluating the hazards of a particular workplace. Paragraph (d) of the final rule is a performance-oriented provision which simply requires employers to use their awareness of workplace hazards to enable them to select the appropriate PPE for the work being performed. Paragraph (d) clearly indicates that the employer is accountable both for the quality of the hazard assessment and for the adequacy of the PPE selected.

Proposed paragraph (d), which was substantively identical to the final rule, has been revised for the sake of clarity. The Agency has also added a note which references Non-mandatory Appendix B of §1910.132. That Appendix provides an example of procedures that satisfy the hazard assessment requirement.

Most rulemaking participants supported the proposed requirement (e.g. Ex. 3: 90, 91, 102). However, some commenters stated that the proposed paragraph did not clearly indicate if employers would be required to document the hazard assessment. For example, a commenter from S.C. Johnson & Son, Inc. (Ex. 3: 1) suggested that OSHA clarify documentation requirements of the workplace assessment. In addition, a commenter from Union Carbide (Ex. 3: 68, pp. 1–2) stated:

> * * * OSHA should clarify that the hazard assessment referred to there need not be in writing.
>
> OSHA can best determine whether the employer conducted an adequate hazard assessment by inspecting the areas where PPE is required. It should not be necessary for employers to prepare and retain a formal written hazard assessment.

OSHA believes that some form of record is needed to provide OSHA compliance officers and affected employees with appropriate assurance that the required hazard assessment has been performed. The Agency agrees with the commenter that it is not "necessary for employers to prepare and retain a formal written hazard assessment." Given the performance-oriented nature of this rulemaking, OSHA has determined that the generation and review of extensive documentation would be unnecessarily burdensome.

The Agency has addressed such situations in other rulemakings by requiring employers to verify their compliance with a requirement through a written certification. For example, OSHA has required certification of training in the permit-required confined space standard; §1910.146(g)(4); the control of hazardous energy (lockout/tagout) standard, §1910.147(c)(7)(iv); in the Telecommuni-cations standard, §1910.268(c); and (as discussed below) in §1910.132(f)(4) of this final rule. The Agency has found that a written certification is a reasonable means by which to establish accountability for compliance.

Therefore, the Agency has determined that employers can adequately verify compliance with §1910.132(d) of the final rule through a written certification which identifies the workplace evaluated; the person certifying that the evaluation has been performed; the date(s) of the hazard assessment; and which identifies the document as a certification of hazard assessment. This requirement has been added to the final rule as paragraph (d)(2).

The Paperwork Reduction Act (PRA) (44 U.S.C. Chapter 35) sets limits on the efforts of federal agencies to collect "information". The definition of "Information" in the OMB regulations implementing the PRA (5 CFR 1320.7(j)) specifies that "*Information* does not generally include * * * certifications * * * provided that they entail no burden other than that necessary to identify the respondent, the date, the respondent's address, and the nature of the instrument." OSHA has determined that the certification required by paragraph (d)(2) constitutes a "certification" for the purposes of the PRA. Therefore, that certification would not be subject to the requirements of the Paperwork Reduction Act or of the implementing regulations (5 CFR part 1320).

Another concern raised during this rulemaking, related to the selection process, was the subject of proper fit of PPE. A commenter (Ex. 7:10) has stated that, in the past, males constituted the majority of the workforce and PPE was sized accordingly. As more and more females have entered the workforce, they often have had to choose between wearing PPE that was sized to fit males, and not wearing PPE at all. This was particularly common with foot protection. As a result, female workers frequently either have used PPE which did not adequately protect them, or have simply stopped using PPE because of improper fit and subsequent discomfort. Based on concern for the safety of female employees, the commenter suggested that OSHA require PPE to fit properly.

OSHA agrees with this comment. Since females constitute a larger percentage of the workforce than ever before, it is imperative that they (as well as male employees) be provided with PPE that fits properly. Therefore, OSHA is revising §1910.132 (d) to add proper fit as a criterion for PPE selection.

Paragraph (e): Defective and damaged equipment.

OSHA proposed to add a new paragraph, (e), to §1910.132 that stated:

Defective or damaged personal protective equipment shall not be used.

This paragraph is based, in part, on existing §1910.133 (a)(2)(vii), which states that eye protectors should be kept clean and in good repair. Under the proposed paragraph, the existing requirement was to be strengthened and extended to cover all PPE, not just eye protectors.

Some commenters (e.g. Ex. 3: 1, 41) stated that proposed paragraph (e) should only cover visually observable defects or damage. For example, a commenter from Johnson Wax (Ex. 3: 1) stated:

We urge OSHA to limit the scope of this section to "visible" defects or damage in PPE.

OSHA certainly agrees that visibly damaged or defective PPE must not be used. However, there are other methods (such as performance tests to ensure continued integrity) that the employer could use to assure that the PPE used by employees is repaired or replaced as necessary for the protection of each affected employee. Also, employees can often determine if the protectiveness of the PPE has been compromised when they are handling the PPE prior to or while donning it. Accordingly, OSHA believes it would be inappropriate to narrow this provision to cover only visible defects or damage. Therefore, the Agency is promulgating paragraph 1910.132 (e) as proposed.

Paragraph (f): Training.

Proposed paragraph (f) required employers to train employees in the proper use of their PPE. This proposed provision was based on OSHA's recognition that, as documented by the Bureau of Labor Statistics Work Injury Reports (Ex. 2: 11, 12, 13, 14), a significant number of the employees who sustain work-related injuries have not been trained in the proper use of PPE.

Some commenters (Ex. 3: 64, 117, 119) stated that PPE training, while necessary for respirators and other complex PPE, is not necessary for relatively simple equipment such as safety shoes and eye protectors. In particular, the American Trucking Association (ATA) (Ex. 3: 64) stated:

Requiring training and record-keeping for all PPE would severely burden motor carriers in terms of time and the related costs.

As an alternative, the ATA suggested that OSHA set non-mandatory appendices for the guidance of employers.

Other commenters (Ex. 3: 84, 104, 121) suggested that the employer be required to train employees only for use of the PPE that is required by the employer to provide protection against hazards identified for the particular workplace. The Texas Chemical Council (Ex. 3: 121) stated:

Requiring the employer to train employees on equipment they provide creates an unnecessary and inappropriate burden on the employer.

Several commenters (Ex. 3: 75, 83, 90, 106, 126) supported the training requirement, as proposed. Du Pont (Ex. 3: 90, pg. 2) remarked:

Du Pont's position is that proper employee training is fundamental to an effective PPE program. We also agree with the flexibility this proposed section provides employers.

Some commenters (e.g. Ex. 3: 100, 104) suggested that OSHA revise the proposed paragraph (f) to indicate that training need only be provided when PPE is first provided to employees. For example, Union Electric (Ex. 3: 100) said:

Company suggests adding "at the time it is initially issued." The proposal, as written, could imply that employees must be periodically retrained in the proper use of their equipment. This certainly is unnecessary for such items as safety glasses, footwear and headgear, which usually are worn routinely on the job. Respirators already have a periodic training requirement.

Also, several commenters (Ex. 3: 46, 64, 102, 117) expressed concern that proposed §1910.132(f) would require employers to operate formal training programs. For example, Monsanto (Ex. 3: 102, pg. 2) stated that OSHA should revise proposed paragraph (f) to indicate clearly that the training required need not be formal classroom training.

In addition, McDonnell Douglas (Ex. 3: 129) inquired:

In regard to training all employees in the proper use of all PPE, what would qualify as "training"? The term "training" could range from awareness type information to competency training of the employee.

OSHA should define the term "training" or be specific in individual standards.

Some commenters (Ex. 3: 36, 81, 119) stated that proposed paragraph (f) should be revised to require "instruction" rather than "training". The Motor Vehicle Manufacturers Association (MVMA) (Ex. 3: 81, pg. 2) said:

Training is too elaborate a term for the degree of explanation required with PPE. More sophisticated PPE such as respirators or hearing protection, which require detailed training, is already provided for by certain OSHA standards. MVMA recommends that subparagraph (f) be retitled "Instruction" and the term "training" be changed to "instructed".

Some public hearing participants testified in support of the proposed §1910.132(f) performance-oriented approach to training. For example, the Chemical Manufacturers Association (CMA) testified (Tr. 159: 4/3):

* * * CMA agrees that training is an essential element of an effective personal protective equipment program. We believe, however, that OSHA should continue to address training with performance-oriented provisions, not with HAZWOPER-type training requirements. Not only are additional requirements *not* necessary, they would be over-burdensome.

In addition, many commenters (e.g., Ex. 3: 36, 41, 50, 60, 73, 86, 98, 116, 128) suggested that OSHA revise proposed §1910.132(f) to provide more detailed guidance regarding what constitutes adequate training. For example, CSX Transportation (Ex. 3: 116) remarked:

A description of the performance requirements for a PPE training program should be included under 1910.132(f), since training is the responsibility of the employer.

Other commenters (Ex. 3: 123 and 128) emphasized that "personal" training is important to a successful training program. For example, the Food & Allied Services Trades (Ex. 3: 128, pg. 6) stated:

It is imperative that this training be conducted by "live" personnel who will be available to answer questions that workers may have. Simply showing a twenty minute video tape shall not constitute adequate training.

Also, commenters (Ex. 3: 36, 73) suggested that OSHA require training in the "use and care" of PPE. For example, the Edison Electric Institute (EEI) (Ex. 3: 73, pg. 2) said:

To further enhance the protection provided by the standard, EEI recommends amending proposed 1910.132(f) to require employees to be trained not only in the use of their equipment, but also in its care.

Further, some commenters (Ex. 3: 41, 59, 128) suggested that OSHA require training in the "use and limitations" of PPE. The Food & Allied Services Trades (Ex. 3: 128) stated that training in the limitations of PPE is needed "to prevent accidents from occurring due to

overconfidence in the protective ability of certain types of equipment."

Other commenters (Ex. 3: 60, 107–D) suggested that employees be trained regarding PPE limitations and precautions. The American Optometric Association (Ex. 3: 60) remarked:

We do not believe that Section 1910.132(f) on training requirements goes far enough to ensure that any limitations or precautions provided by the manufacturer of the protector are transmitted to the user and care is taken to see that such limitations are strictly observed. In addition, we do not believe that appendix B Non-Mandatory Compliance Guidelines for Hazard Assessment and Personal Protective Equipment Selection adequately addresses this area. There is no guarantee that the training provided employees in the use of eye and face protectors will uniformly cover the limitations and precautions relating to the use of protectors unless specific requirements for this training are given. We strongly urge that language making this a mandatory part of training be included in the regulation.

Some other commenters (Ex. 3: 74, 88) suggested that training include information provided by PPE manufacturers. For example, CF Industries, Inc. (CF) (Ex. 3: 74) objected to the proposed replacement of existing §1910.133(a)(5) (which requires employers to pass on to employees any information received from manufacturers regarding the limitations and precautions to be considered when using eye and face protection) by proposed §1910.132(f). The commenter stated: "CF believes that the proposed section is too broad. Various pieces of personal protective equipment can be used for the same purpose, but have very different limitations."

Also, two commenters from the State of Connecticut (Ex. 3: 50, 51) stated that "the final rule for 1910.132(f) should lean towards being more specific" and that proposed paragraph (f) should be revised to provide that "Employees shall be trained in the proper use, maintenance, care, warning labels and limitations of their personal protective equipment."

Other commenters (Ex. 3: 70, 86, 97) stated that proposed §1910.132(f) should be revised to incorporate the specific training requirements of existing §1910.120, the standard for *Hazardous Waste Operations and Emergency Response* (HAZWOPER). For example, the Emergency Response Management & Training Corporation (Ex. 3: 97) stated:

As it [proposed §1910.132(f)] is currently written there are no specifications as to the quality or quantity of training an employee will receive on the proper use and limitations of personal protective equipment. The inclusion of specific knowledge requirements and competency demonstration may assist in the goal of improving worker safety in hazardous environments. 29 CFR 1910.120 and NFPA 472–1989 (Standard for Professional Competence of Responders to Hazardous Materials Incidents) are two examples of this type.

Based on the concerns expressed regarding what constitutes adequate training, OSHA requested testimony in Issue 4 of the hearing notice (54 FR 3414, February 1, 1990) on the need for additional training requirements. In particular, Issue 4 indicated that OSHA was considering the promulgation of more specific training requirements, including provisions similar to those in existing §1910.120, Hazardous Waste Operations and Emergency Response (HAZWOPER). The Agency also solicited input regarding what training is needed; how training can be evaluated; when retraining is necessary; how much time is required for training; what recordkeeping is necessary for training activities; and what impacts (i.e., costs and benefits) the training requirements would have.

With respect to Issue 4, several commenters (Ex. 7: 3, 8, 11, 20, 29, 38) stated that the training requirements should be more detailed. For example, the General Electric Company (Ex. 7: 3, pg. 2) said:

Protective equipment training needs to include:

1. Where and how personnel can get the equipment,

2. A system for identifying the correct equipment for an application * * * procedures and operating manuals should include specifics on protective equipment types, needs and objectives,

3. Equipment should be shown to individuals prior to using each for the first time * * * let them touch and try the items on, the more senses you allow one to use during training the better the person will recall what he/she learned,

4. Persons should not be considered competent in protective equipment items until they do a practical test * * * are able to properly put on the item, explain what protection it provides, etc.

Also, Boeing (Ex. 7: 38) remarked:

Boeing supports the position that additional detail be included in 1910.132 regarding training objectives and methods. Training should be based on the complexity of the protective equipment requirements. For certain protective equipment (e.g. safety spectacles) training requirements should be minimal or nonexistent.

In addition, OSHA received testimony in favor of more specific training requirements at the public hearing. For example, the National Institute for Occupational Safety and Health (NIOSH) testified (Tr. 23–24: 4/3) that the key elements of a successful training program are:

1) Sensitizing the workers to the need for such protectors and inviting their participation in developing a suitable plan for affecting PPE use.

2) Clearly defining the written goals of the PPE program in terms of the target behaviors sought (e.g., appropriate footwear/eyewear/headwear to be worn, in what areas, what kinds of care required).

3) Explicit rewards or recognition to be given contingent on the workers displaying actions that conform to the aforementioned positive acts, including knowledge of results or other forms of feedback.

4) Each PPE program should have some basis for evaluation (numbers of workers using/not using specified PPE) so that modifications could be made should the efforts fall short of the stated goals.

Also, the International Chemical Workers Union testified (Tr. 16: 4/4): Who is responsible for training employees in the proper use and limitations of personal protective equipment? It is the employer's responsibility to carry out this training but it is not being done * * * Every worker should be able to determine that the glove being provided to them by their employer is the right one for the chemicals which they handle.

Another hearing participant, the National Environmental Training Association (NETA), testified (Tr. 272: 4/4) that "the proposal in 132(f) is not performance-oriented, it's too vague and nonspecific." NETA also testified (Tr. 285: 4/4):

The National Environmental Testing Association feels that if OSHA seriously considers training to be important in protecting worker safety * * * then the language at 29 CFR 1910.132(f) will have to be more specific. Unless training is based on measurable objectives as OSHA has pointed out in the U.S. Department of Labor publication OSHA 2254 (Training Requirements in OSHA Standards and Training Guidelines) then it can only be effective by coincidence.

Many Issue 4 commenters (e.g. Ex. 7: 2, 13, 15, 21, 22) stated that OSHA should not promulgate more detailed training requirements. Those commenters expressed the belief that performance-oriented proposed §1910.132(f) allowed employers in general industry the flexibility to implement training programs as needed. For example, Amoco Corporation (Ex. 7: 21, pg.2) stated:

We agree that employees should be trained in the proper use of their personal protective equipment, since the equipment may not provide adequate protection if used improperly. We feel, however, that training programs are best left to each employer to develop on an individualized, site-specific

basis. Manufacturers often provide information on their particular products upon which an instructional program can be based. Employers do need an effective formal training session when the use of new or significantly different equipment is instituted. This requirement helps ensure that time is actually dedicated to this purpose, and emphasizes the importance of proper use to the employee. Training guidance would be helpful, especially to small businesses, but we feel strongly that such guidance should be of a non-mandatory nature.

In addition, the Department of the Air Force (Ex. 7: 25) stated that it "supports locally devised training, rather than an OSHA legislated program training requirement, as both cost efficient and effective."

Also, several Issue 4 commenters (Ex. 7: 19, 31, 35) stated that proposed §1910.132(f) should not incorporate the HAZWOPER training requirements, because 1) general industry PPE was used in a broader class of work environments than HAZWOPER-mandated PPE, and 2) the PPE covered by proposed §1910.132(f) (e.g., eye and face protection, head protection and foot protection) was much less complex than that covered by HAZWOPER. For example, the American Petroleum Institute (API) (Ex. 7: 35) stated:

Suggestions that would treat Subpart I in a manner similar to paragraph 1910.120 are without justification. There is no relationship between the training requirements of paragraph 1910.120 (which are directly responsive to the enabling legislation dealing with hazardous waste sites) and the use of PPE in the controlled environment of a more typical place of employment.

In addition, the National Solid Waste Management Association (NSWMA) stated (Ex. 7: 19, pg. 2–3):

While NSWMA supports the concept of a structure for training of employees in the use of PPE, we find the use of the Part 1910.120 training requirements for Hazardous Waste Operations and Emergency Response as a model for general industry to be without any justification.

The Section 1910.120 rule was intended to provide specific safety criteria to cover a specific industry segment. There are other industries with equivalent or higher risks where the use of this section as a model would be appropriate.

NSWMA suggests that OSHA instead consider a training requirement more closely aligned with the concepts of its Hazard Communication Standard, wherein the complexity of the program required for compliance would be directly related to the hazards present. Such a program would require a survey of hazards, establishment of specifications for PPE to control those hazards, training for employees and documentation of the training, and availability of PPE information to employees * * * In the low-risk example, having donning and doffing procedures formalized provides no useful function. What is critical is communicating the need for employees to understand the hazards and the need to utilize PPE on a consistent basis.

Based on the rulemaking record, OSHA agrees with commenters that employers need more specific guidance regarding how to train employees who use PPE. In particular, the Agency has determined that employees need training which enables them to know, at least: 1) when PPE is necessary; 2) what PPE is necessary; 3) how to properly don, doff, adjust, and wear PPE; 4) the limitations of the PPE; and 5) the proper care, maintenance, useful life and disposal of the PPE.

Accordingly, OSHA has revised proposed paragraph (f) so that paragraph (f)(1) of the final rule reads as follows:

The employer shall provide training, including retraining where appropriate, to each employee who is required by this section to use PPE. Each such employee shall be trained to know at least the following:

(i) When PPE is necessary;

(ii) What PPE is necessary;

(iii) How to properly don, doff, adjust, and wear PPE;

(iv) The limitations of the PPE; and

(v) The proper care, maintenance, useful life, and disposal of the PPE.

The National Environmental Training Association (NETA) and other rulemaking participants asserted that in order to have a successful training program, employers should set measurable training objectives and have their employees *demonstrate* that they have reached those objectives. For example, NETA testified (Tr. 272–286: 4/4) that in order for training to be successful, clear and measurable objectives must be set, and employees must demonstrate that the training objectives have been reached, by showing that they understand the information provided and that they can use the PPE properly.

OSHA agrees with these remarks and has stated in one of its own publications (OSHA 2254–1988):

* * * in order for the training to be as successful as possible, clear and measurable objectives should be thought out before the training begins. For an objective to be effective, it should identify as precisely as possible what the individuals will do to demonstrate that they have learned, or that the objective has been reached. They should also describe the important conditions under which the individual will demonstrate competence and define what constitutes acceptable performance.

Therefore, paragraph (f)(2) of the final rule requires that each affected employee demonstrate an understanding of the training specified in paragraph (f)(1), and the ability to use the PPE properly, before being allowed to perform work requiring the use of PPE.

Paragraph (f)(3) of the final rule requires retraining when changes in workplace conditions or changes in the types of PPE to be used render previous training obsolete, and when inadequacies in an affected employee's knowledge or use of assigned PPE indicate that the employee has not retained the understanding or skill required by paragraph (f)(2). This provision, which did not appear in the proposed rule, indicates clearly that employers have an ongoing responsibility to maintain employee proficiency in the use and care of their PPE.

OSHA received many comments regarding how employers would indicate their compliance with the proposed training requirement. Some commenters (e.g., Ex. 3: 41, 90) noted a statement in the NPRM (54 FR at 33841) that "the proposal contains no recordkeeping requirements." Those commenters agreed with that approach, expressing the belief that detailed recordkeeping would impose an unreasonable burden, and requested "clarification" that no recordkeeping for training would be required.

Further, Detroit Edison (Ex. 3: 62), referring to proposed paragraph (f), noted, "Documented proof of training is required by other regulation. Is documentation required? OSHA should present a clearer picture of this requirement or delete it."

In addition, United Technologies (Ex. 3: 96) inquired, "Will perceived improper use of PPE be deemed by OSHA evidence of inadequate training in the absence of training documentation?"

Also, McDonnell Douglas (Ex. 3: 129) stated, "Even though OSHA has stated to OMB that this NPR does not have any recordkeeping requirements, what would be required to prove the "training" has been performed?"

Members of the Midwest Consortium for Hazardous Waste Worker Training (Ex. 3: 49, 59, 98, 123) suggested that OSHA require employers to document the content of their training programs. For example, Murray State University (Ex. 3: 123) stated, "Training should be mainly hands-on with appropriate documentation."

In addition, several commenters (e.g. 3: 46, 75, 88, 116) stated that proposed paragraph (f) would already require employers to document training. Some of those commenters (Ex. 3: 46, 88) stated simply that, contrary to the statement in Section VII of the proposed

rule, OSHA had proposed to require recordkeeping, so the Agency had a responsibility to justify the burden and to properly estimate the cost of documentation. Other commenters (Ex. 3: 75, 116) stated that the documentation was needed to verify compliance with the training requirements, and that OSHA should not impose extensive recordkeeping requirements. For example, the Chemical Manufacturers Association (CMA) stated (Ex. 3: 75):

CMA agrees with OSHA's determination to omit recordkeeping from the proposed rule. While some form of verification should be maintained as an indication that training has taken place, specific documentation requirements would only add to the recordkeeping burden without increased safety benefits for employees.

In addition, CSX Transportation (Ex. 3: 116) remarked:

In Section 1910.132 a new training requirement exists that will require the establishment of training records for employees using PPE. While the standard does not specify any recordkeeping requirements, documentation for compliance purposes is clearly indicated.

As noted above, OSHA requested additional comments on the proposed training provision, including information on the recordkeeping needed to document compliance, in Issue 4 of the hearing notice (55 FR 3414, February 1, 1990). In particular, Issue 4 indicated that, based on NPRM comments (Ex. 3: 70, 86, 97), OSHA was considering training requirements similar to the HAZWOPER provisions promulgated in §1910.120(e). Section 1910.120(e)(6) requires employers to certify successful completion of training and to give graduates a written certificate. That provision further provides that persons who lack such certification shall be prohibited from engaging in hazardous waste operations.

In response to Issue 4, Jackson Products (Ex. 7: 8, pg. 2) stated:

Training of employees in the use of PPE should be the central focus of any rules OSHA is promulgating, as this issue has the highest potential for reducing worker injuries. Documentation of the training programs could follow the existing guidelines OSHA has developed for hazardous waste operations and employee right to know training, i.e., training log, employee signature sheet, etc.

In addition, BP America (Ex. 7: 39) stated, "we feel that the only criteria for successful completion of a training course can be that the trainee has mastered the information to the instructor's satisfaction. This can be documented in several ways including written exams and awarding of certificates."

As noted above, some Issue 4 commenters (Ex. 7: 13, 19, 25, 31, 35) opposed the adoption of the HAZWOPER training provisions in proposed paragraph (f). Regarding the applicability of the HAZWOPER recordkeeping requirements, the National Solid Wastes Management Association (NSWMA) stated (Ex. 7: 19, pg. 3):

Congress mandated additional regulations in the narrow field of the occupational safety and health of hazardous waste workers because hazardous waste operations and remediations involve, in OSHA's words, "unique" work environments. 54 Fed. Reg. 9312. Congress recognized that such operations involve potential exposure to a number of hazardous health risks unlike those encountered by employees in general industry activities. Thus, the OSHA standard prohibits work upon a hazardous waste site by anyone who is not properly OSHA-qualified and OSHA-certified. Certification may be granted only upon completion of initial training and continuing education courses within a comprehensive and exhaustive number of areas. See 29 CFR § 1910.120(e)(6). These comprehensive standards apply whenever and wherever hazardous waste workers handle hazardous substances. The occupational safety and health requirements in Section 1910.120 were, accordingly, crafted in response to the Congressional insistence that safety and health standards *more stringent* than those applied to general industry be fashioned.

As noted above, the NSWMA suggested that OSHA model the requirements of proposed §1910.132(f) on the Hazard Communication Standard. The NSWMA recognized that recordkeeping would be necessary for training, stating: "In a low-risk situation, where bump hats and eye shields may be the only devices needed, a simple written program of several pages would suffice." In addition, the NSWMA stated:

Companies should not be required under this suggested system to gain prior OSHA certification of individual programs. Rather, companies should be permitted to certify that they have developed and implemented programs that are consistent with OSHA approved standards.

OSHA acknowledges that the proposed training provision implicitly required some method for verifying compliance. The Agency believes that the discussion of recordkeeping in Issue 4 of the hearing notice provided adequate notice that OSHA might require employers to create some method of verifying their training activities. Accordingly, based on the rulemaking record and for the sake of clarity, the Agency is revising proposed paragraph (f) to state explicitly that employers must verify that they have provided their employees with the requisite training.

Regarding the information needed to verify compliance, OSHA agrees with the commenters who have stated that it would be inappropriate to require specific documentation of the training provided. Given the performance-oriented focus of this rulemaking, the Agency has determined that the generation and review of extensive documentation would be unnecessarily burdensome. The Agency also notes that the training needs of employees covered by paragraph (f) of this section (approximately 22 million) are too diverse to enable OSHA to specify the details required for all of their PPE training.

Based on the rulemaking record, OSHA has determined that employers can adequately verify compliance with §1910.132(f) of the final rule through a written certification. The Agency has determined that a certification record which identifies each employee trained, the date(s) of training, and which identifies the document as a certification of training in the use of PPE, will provide adequate assurance that the employer has provided the requisite training.

The Agency notes that OSHA has also required certification of training in the permit–required confined space standard, §1910.146(g)(4); the control of hazardous energy (lockout/tagout) standard, §1910.147(c)(7)(iv); and, in the Telecommunications standard, §1910.268(c).

OSHA also notes that such a document will not preclude a citation if the Agency determines that the employees have not, in fact, been adequately trained. OSHA believes that compliance with this requirement, while imposing a minimal burden, provides an important benefit because it enables the employer and OSHA to verify the status of training efforts. Therefore, OSHA is promulgating new §1910.132(f)(4).

The Paperwork Reduction Act (PRA) (44 U.S.C. Chapter 35) sets limits on the efforts of federal agencies to collect "information". The definition of "information" in the OMB regulations implementing the PRA (5 CFR 1320.7(j)) specifies that "Information does not generally include * * * certifications * * * provided that they entail no burden other than that necessary to identify the respondent, the date, the respondent's address, and the nature of the instrument."

OSHA has determined that the certification of training required by

paragraph (f)(4) constitutes a "certification" for the purposes of the PRA.Therefore, the certification would not be subject to the requirements of the Paperwork Reduction Act or of the implementing regulations (5 CFR Part 1320).

§1910.133 Eye and face protection.

Proposed §1910.133(a) contained general requirements for eye and face protection. Proposed paragraph (a)(1) required the employer to ensure that employees use appropriate eye or face protection when they are exposed to eye or face hazards from flying particles, molten metal, liquid chemicals, acid and caustic liquids, chemical gases or vapors, or potentially injurious light radiation.

Proposed paragraph (a)(1) also required that eye protection used by employees provide both front and side protection from flying objects. This portion of proposed paragraph (a)(1) resulted in many comments. Most rulemaking participants agreed with OSHA that eye protectors should provide both front and side protection from flying objects (e.g. Ex. 3: 28, 49, 59, 61, 83, 128; Tr. 53: 4/3) because studies (Ex. 2: 11) have indicated that most injuries have occurred (in those instances when eye protection was used) because flying objects went *around* the protection. However, several rulemaking participants disagreed with this requirement because they believed that OSHA was proposing that *all* eye protectors would have to provide side protection (e.g. Ex. 3: 41, 69). For example, a commenter from the Exxon Company (Ex. 3: 47, pp.1–2) said:

> Exxon is concerned that the proposal could be interpreted to require all safety glasses to be equipped with side shields. Exxon's position is that many situations exist where safety glasses without side shields are adequate. For such routine operations, OSHA should not ignore the fact that most employees will be more reluctant to wear safety glasses with side shields than glasses without side shields. The mandatory use of side shields on all safety glasses could deter the overall use of safety glasses on and off the job which would ultimately lead to an increase in the total number of eye injuries.
>
> We concur with OSHA that employees should be equipped with adequate eye protection to prevent injuries from flying objects. In those instances where our employees may be potentially exposed to flying objects, our safety program calls for the mandatory use of eye protection that provides both front and side protection.

Another commenter, from the American Optometric Association, remarked (Ex. 3: 60, pg. 2):

> While we recognize that mandatory side shields would afford additional protection in many instances, they may not be practical in all situations. In addition, they may tend to reduce compliance with the use of the protector in cases where peripheral hazard protection is not required. We would recommend that side shields be required *only* when the job evaluation indicates that a definite peripheral hazard exists.

OSHA intended that proposed paragraph (a)(2) require side protection only when flying object hazards were present. Therefore, the Agency has revised the provision concerning flying object hazards to state clearly that front and side protection are required when there is a hazard from flying objects.

OSHA agrees that there are situations when side protection is unnecessary, and that employers should be allowed to decide, based on a hazard assessment which complies with the requirements of §1910.132(d) of the final rule, if such protection is necessary for their employees.

While one rulemaking participant (Ex. 3: 66) believed that side shields should be permanently attached, other rulemaking participants stated that side protectors need not be permanent and that OSHA should permit detachable or clip-on side protectors. For example, a commenter from Liberty Optical (Ex. 3: 63) said:

> Clip-on side shields meet all the Z–87 performance standards that the permanent side shields meet and can be worn when necessary. To be able to wear proper protection where appropriate and be realistic in its use, will make the employee not look to side step it and, therefore, make it more effective and safer. If a blanket mandatory permanent side shield regulation to cover all industrial environments is implemented, it will reverse all gains made in recent years and will not accomplish its goal for a safer industrial environment.

OSHA agrees that side protection need not be permanent and that detachable side shields should be permitted as long as they meet the criteria specified in this section of the final rule. Permitting detachable side shields will provide employers the flexibility to use this kind of protection when necessary, based on conditions at the workplace.

The Agency has revised proposed paragraph (a)(1) accordingly, dividing the proposed paragraph into two provisions, §1910.133(a)(1) and (a)(2). Paragraph (a)(1) of the final rule states the general requirement to have each employee use eye or face PPE when exposed to eye or face hazards, while paragraph (a)(2) states that eye PPE must provide side protection, which may be detachable, when flying object hazards are present.

Proposed paragraph (a)(2) required that eye and face protection properly fit employees. Although the Agency did not receive any comments concerning the proper fit of eye and face protection, OSHA did receive comments addressing the proper fit of PPE, in general, and the need for properly fitting PPE for both male and female employees. This subject was discussed previously under §1910.132 of this preamble, and OSHA has included a requirement in §1910.132 of the final rule that *all* PPE properly fit employees. Therefore, proposed paragraph (a)(2) has not been included in the final rule, since it would be redundant.

OSHA proposed in paragraph (a)(3) that protectors with tinted or variable tinted lenses not be worn when an employee must pass from a brightly lighted area, such as outdoors, into a dimly lighted area, such as a warehouse. The Agency proposed this requirement because it believed that the provision might reduce the likelihood that extreme lighting changes would temporarily impair the vision of an employee.

This proposed requirement was the subject of Issue 3 of the hearing notice (55 FR 3412, February 1, 1990). The proposed paragraph and Issue 3 generated a substantial amount of comment and testimony. While a few rulemaking participants agreed with the proposed provision (e.g. Ex. 3: 28; Ex. 7: 2, 38), many opposed the provision and/or approach proposed by OSHA (e.g. Ex. 3: 55, 61, 68; Ex. 7: 7, 8, 15, 23; Tr. 193: 4/3; Tr. 150–156: 4/4; Tr. 169: 4/4). Some of the rulemaking participants stated that the proposed paragraph was too restrictive and vague. These rulemaking participants stated that the *employer* (or designated safety officer) should decide when the use of this type of eyewear may create a hazard. This approach is similar to that used in the ANSI standard for eye protection (ANSI Z87.1–1989; paragraph 6.5.2).

For example, a commenter from the American Optometric Association (Ex. 7: 11, pg. 2) stated:

> The use of photochromic lenses in industrial situations is dependent upon the visual demands of the task and the visual needs of the wearer. The decision on the need for and use of photochromic lenses can best be made by evaluation of the work place requirements by the employer in consultation with the employee's eye doctor. The development of a blanket policy restricting the use of photochromic lenses for certain job tasks is unwarranted. The individual visual needs and working conditions should dictate when photochromic lenses may be inappropriate.
>
> The American Optometric Association supports the ANSI Z87.1 position which provides employers the discretion to decide when photochromic lenses may be utilized.

Additionally, an ophthalmologist from the Mount Sinai Medical Center (Ex. 7: 14 pg. 2) remarked:

* * * the many beneficial features of photochromic lenses, particularly in safety glasses, justifies their continued unfettered use in the workplace. My concern is that this proposed government intervention will likely deter workers from using these photochromic lenses as safety devices and that increased numbers of eye injuries and workplace accidents will ultimately result.

A hearing participant from Corning, Inc. (Tr. 111–114: 4/4) testified:

Today, photochromic lenses are used throughout the world and over 500 million lenses have been sold. Roughly, more than 250 million pairs of eye glasses. Currently, more than 38 million photochromic lens blanks are sold each year. Corning has therefore literally hundreds of millions of man years of experience with the use of photochromic eyeglasses without any reported health of safety problem of the type to which the proposed regulation is addressed. I believe that proposal 1910.133 (a)(3) is too vague and is in any event unnecessary and overly restrictive. The use of photochromic lenses are subject to the ANSI Z87.1 standards including paragraph 6.5.2 and we believe this is the appropriate standard for dealing with any possible need for a limitation on photochromic usage.

That witness also asserted (Tr. 120: 4/4):

In daylight, outdoors, when the photochromic lenses darken to function as sunglasses they protect the eyes dark adaptation process. It is well known that those who wear sunglasses in sunlight adapt to darker environments up to twice as fast as those who do not. In the transient condition, that is, coming in from a brighter outdoor condition to a darker indoor condition, wearing photochromic lenses can actually provide better and more comfortable vision under a broad variety of work conditions. Visual function in the transition to and from bright light is superior when photochromic rather than clear lenses are used.

After evaluating the rulemaking record, OSHA has concluded that the proposed requirement was too restrictive. The Agency has determined that the employer, or the employer's representative (such as the company safety professional), will be in the best position to determine when tinted or variable tint lenses should or should not be used, based on awareness of workplace conditions. OSHA also notes that this approach is consistent with the current ANSI standard (ANSI Z87.1–1989-paragraph 6.5.2) which is (as discussed below) being incorporated by reference in the final rule. Accordingly, proposed paragraph (a)(3) has not been retained in the final rule.

Proposed paragraph (a)(4) required that employees who wear prescription lenses while engaged in operations that involve eye hazards shall wear eye protection that incorporates the prescription in their design, or shall be protected by eye protection that can be worn over prescription lenses without disturbing the proper position of the prescription or protective lenses.

The Agency did not receive any comments on this proposed provision and it is, therefore, contained in the final rule as proposed. However, since this section has been reorganized, the provision has been redesignated as §1910.133(a)(3) of the final rule.

Existing §1910.133 (a)(4) states that "every protector shall be distinctly marked to facilitate identification only of the manufacturer." OSHA had proposed to delete this provision because the Agency believed that compliance did not add to or detract from the safety of the protector.

Although a few commenters agreed with OSHA in principle (e.g. Ex. 3: 50, 92, 115), the vast majority of commenters stated that the marking requirement should not be deleted (e.g. Ex. 3: 75, 88, 92, 114, 126).

For example, a commenter from the Optical Laboratories Association (Ex. 3: 71, pg. 4) asserted:

The existing system of easily identifying the manufacturers of the components of eye PPE is embedded in the standard to assure accountability and is accepted throughout the industry. It should be retained.

In addition, a commenter from Monsanto (Ex. 3: 102, pg. 3) stated:

Since employees are permitted to provide their own eye protection and employers are held accountable to ensure that employees are wearing the proper eye protection, these markings provide employers a ready way of checking for whether or not employees are wearing the proper eye protection.

Also, CF Industries (Ex. 3: 74) commented:

The identification markings are necessary in the event of a manufacturing defect or material defect, so that the purchaser may receive an adjustment from the seller or manufacturer. Identification is also needed in case the manufacturer makes a product recall.

Dr. Joseph F. Novak (Ex. 3: 107–A) commented:

My suggestion is that OSHA approved safety eyewear be marked in a manner similar to that of the ANSI Z87.1–1989 Code.

In supporting the concept that OSHA should be consistent with the ANSI requirement for marking, a commenter from US West, Inc. (Ex. 3: 85, pp. 2–3) stated:

US WEST, Inc. recommends that the identifying marking, i.e. manufacturers monogram and "Z87", continue to be required (ANSI Z87.1–1989 8.10). US WEST, Inc. disagrees with OSHA's statement that" * * * marking to identify the manufacturers of eye and face protection does not add or delete from the safety afforded by the protector." Lenses meeting ANSI Z87 are easily identified by the manufacturers monogram. "Street" or "dress" spectacles not meeting ANSI Z87 are also easily identified by the absence of such markings. US WEST, Inc. has found non-Z87 replacement prescription lenses placed in employees Z87 frames, reducing the employees degree of protection.

Based on the above-discussed comments, OSHA included Issue 1 in the Hearing Notice, to elicit more information regarding the utility of compliance with existing §1910.133(a)(4). The comments and testimony received (Ex. 7: 2, 13, 31; Tr. 55, 133, 156: 4/3; Tr. 68, 148, 225: 4/4) uniformly supported retaining the marking requirement.

For example, one commenter from SIGNODE (Ex. 7: 6) stated:

There is agreement that marking of eye and face protection "does not add or detract from the safety afforded by the protector" however, the current etched lens marking provide the safety manager, management and supervision a means of verifying that the worker, employee, contractor or visitor is, in fact, wearing proper safety eyewear, not street wear.Based on the rulemaking record, OSHA has concluded that the requirement for marking of eye and face protectors should be retained. OSHA agrees with commenters that the marking of eye and face protectors provides easy recognition that the protectors meet specified criteria (ANSI Z87.1–1989); that marking will provide accountability, and traceability in cases of product recall; and that marking requirements should be consistent with the ANSI Z87.1–1989 standard, since this is the accepted and recognized practice throughout the industry. Accordingly, the requirement for marking of eye and face protectors is being retained in §1910.133(a)(4) of the final rule.

Proposed paragraph (a)(5) required that employees use equipment with filter lenses that have a shade number appropriate for the work being performed for protection from potentially injurious light radiation. OSHA also proposed a table in this paragraph which contained a list of appropriate shade numbers for various operations. The Agency did not receive any comments on this provision, and it is contained in the final rule with minor editorial changes.

Proposed paragraph (b) of §1910.133 contained "acceptable design" requirements for eye and face protection. In this provision, OSHA proposed that eye and face protection comply with the design requirements specified in ANSI Z87.1–1989, or be of a design which could be demonstrated to be equally effective.

Rulemaking participants supported the proposed adoption of the ANSI standard for eye and face protection (ANSI Z87.1–1989). However, a few commenters (e.g. Ex. 3: 101, 125) expressed concern that the Agency proposed to adopt only the "design requirements" of ANSI Z87.1. These commenters asserted that OSHA should adopt by reference all of the ANSI standard, not just the design requirements.

OSHA agrees that eye and face protective devices must meet all of the provisions contained in the ANSI standard. This requirement is stated explicitly in ANSI Z87.1–1989, Section 3. OSHA acknowledges that the proposal did not clearly express the Agency's intent to reference ANSI Z87.1–1989 in its entirety and is revising the proposed rule accordingly.

Other rulemaking participants (e.g. Ex. 3: 1, 62, 75, 102, 128) suggested that OSHA adopt by reference the "current" edition of all of the applicable ANSI standards (i.e., the ANSI standards for eye and face protection, head protection, and foot protection) rather than referencing a specific edition. These commenters stated that this approach would prevent a situation where the OSHA standards would be outdated when the ANSI standards are revised in the future.

OSHA notes that it would be improper for the Agency to reference consensus standards as suggested, because such action would illegally subdelegate authority over the content of OSHA standards to the committees responsible for updating the ANSI standards.

The Agency will accept eye and face protective devices as complying with this section if they are demonstrated to be as effective as those meeting the specific ANSI standard referenced by the final rule. For example, the final rule is incorporating by reference the 1989 edition of ANSI Z87.1 for eye and face protection. Eye and face protective devices meeting a subsequent edition of the same ANSI standard would be acceptable to the Agency (and a de minimis violation of the standard) if it could be demonstrated by the employer that they were as effective as those meeting the 1989 edition.

In particular, employers would need to establish either that there was no substantive difference between a subsequent edition of Z87.1 and the 1989 edition, or that PPE which satisfied subsequently modified test criteria provided protection equivalent to that provided by PPE which satisfied the 1989 edition. Proposed paragraph (b) of §1910.133 has been revised accordingly.

The incorporation by reference of ANSI Z87.1–1989 has been approved by the Office of the Federal Register, in accordance with the requirements of 5 U.S.C. 552(a) and 1 CFR part 51. Therefore, proposed paragraph (b) has been revised so that paragraph (b)(1) of the final rule reflects that approval and provides the requisite information regarding access to the text of ANSI Z87.1–1989.

As discussed above, OSHA has also determined that it is appropriate to permit the continued use of eye and face PPE purchased prior to the effective date of the final rule, as long as it complies with the ANSI standard (Z87.1–1968) referenced by existing §1910.133(a)(6). To this end, the Agency has redesignated proposed paragraph (b) as paragraph (b)(1) of the final rule and has added "grandfathering" text in paragraph (b)(2) of the final rule.

With respect to the subject of eye and face protection, Issue 5 of the Hearing Notice (55 FR 3412) requested comments and information concerning the use of contact lenses. Specifically, the Agency asked if it should expand its eye and face requirements to cover contact lenses.

Some commenters (e.g. Ex. 7: 13, 15, 16) stated that no additional regulations were necessary for the use of contact lenses. Other commenters (Ex. 7: 21, 26) believed that OSHA should address the issue of contact lenses in the final rule, and should clarify if it is permissible to wear contact lenses with eye protection.

Several commenters (e.g. Ex. 3: 107–D; Ex. 7: 5, 22) stated that wearing contact lenses with appropriate eye protection does not present any additional hazards.

Based on the rulemaking record, OSHA believes that contact lenses do not pose additional hazards to the wearer, and has determined that additional regulation addressing the use of contact lenses is unnecessary. The Agency wants to make it clear, however, that contact lenses are not eye protective devices. If eye hazards are present, appropriate eye protection must be worn instead of, or in conjunction with, contact lenses.

§1910.135 Head Protection

Proposed §1910.135 set requirements for the use of protective helmets and set criteria for acceptable equipment designs. Proposed paragraph (a) required employees to wear protective helmets (1) "when working in areas where there is a potential for injury to the head from falling or moving objects" and (2) "where they are near exposed electrical conductors which could be contacted by the protective helmets." Proposed paragraph (b) referenced American National Standard, ANSI Z89.1–1986, "Protective Headwear for Industrial Workers-Requirements".

The proposed language was based on existing §§1910.132(a) and 1910.135 and on ANSI Z89.1–1986. Existing §1910.132(a) requires that the PPE necessary to protect employees from workplace hazards be provided, used and maintained properly. That standard specifically includes head protection under its coverage. Existing §1910.135 facilitates compliance with existing §1910.132(a) regarding helmets worn for protection "from falling and flying objects and from limited electric shock and burn," by requiring that those helmets comply with the American National Standard Safety Requirements for Industrial Head Protection, Z89.1–1969. ANSI Z89.1–1986 is the most recent edition of the pertinent national consensus standard.

Proposed §1910.135(a)(1), unlike existing §1910.135, explicitly required the use of protective helmets. The proposed paragraph also made some editorial revisions to existing §1910.135. For example, the proposal replaced "flying" with "moving", because OSHA believed the term "moving" better described the means in which objects contact employees. OSHA used the terms "flying" and "moving" in the existing and proposed rules, respectively, in conjunction with the term "falling" to be consistent with ANSI Z89.1–1969.

A commenter (Ex. 7: 20) stated that OSHA should address lateral impact protection "since there are substantial injuries that occur from directions other than vertical impact* * *" In the course of this rulemaking, OSHA obtained a helmet (Ex. 46) capable of protecting employees against lateral as well as vertical impacts.

In addition, NIOSH testified (Tr. 30: 4/3) that, while most blows to the head come from the back, front or side, ANSI Z89.1 1986 addresses only protection for the top of the head. NIOSH further testified: "Currently helmets are being marketed that provide impact protection to most parts of the head. OSHA standards should encourage the use of these more protective helmets."

Some rulemaking participants (Ex. 3: 84, 96) expressed concern regarding the use of the term "moving" in the proposed paragraph. For example, the American Petroleum Institute (API) (Ex. 3: 84, pg. 4) stated:

> API is opposed to the wording of this paragraph. The ANSI Standard Z89.1–1986

referenced in 1910.135(b) contains helmet specifications "to protect the heads of industrial workers from impact or penetration by *falling objects** * *" OSHA must recognize that the ANSI standard does not provide design criteria for moving objects. If OSHA intends this section to also cover helmets protecting against *moving* objects, as proposed in 1910.135(a)(1), additional design criteria should be cited in 1910.135(b).

In addition, United Technologies (Ex. 3: 96, pg. 2) stated:

Under 1910.135 Head Protection, we find the requirement to provide head protection vague, and welcome additional clarification from OSHA with regard to potential for injury to the head from moving objects. We are concerned compliance personnel will interpret the requirement so broadly as to include any use of hoisting equipment. Although we can envision an occasional situation where there may be a hazard, most operations using a hoist would present no significant hazard.

Another commenter (Ex. 3: 40) suggested that OSHA revise proposed §1910.135(a)(1) so that the provision "Mandates that employers require their employees wear protective helmets when they are in an area where there is potential for injury to the head from falling, moving, *swinging, flying or airborne objects.*" The commenter did not state why it believed the recommended language was needed.

Also, commenters (Ex. 3: 72, 79) stated that proposed §1910.135(a)(1) should also require employees to wear head protection when working in confined spaces and commenters (Ex. 3: 79, 119) have stated that OSHA should require protection against impacts with fixed objects.. For example, Centel (Ex. 3: 72) noted that injuries may result from contact with low hanging structures and that Centel already requires its employees working in confined spaces to wear head protection.

In addition, the Tennessee Valley Authority (TVA) (Ex. 3: 79) stated:

We believe a statement should be added with provision for protection against impacts with fixed objects. We recommend a sentence should be added that addresses this hazard. We also suggest that in areas that are confined or congested and the employee is subject to impact with fixed objects, suitable protective helmets be worn. We recommend that bump caps should not be used in an industrial environment because there are too many possibilities of head injuries that could occur. We recommend maximum head protection at all times in this type of environment.

The current ANSI standard, Z89.1–1986, addresses only protection "from impact and penetration by falling objects and from high-voltage electric shock and burn." The Agency has determined that it would be inappropriate for §1910.135(a) to cover head protection that is not also covered by the ANSI standard referenced in §1910.135(b), unless OSHA provides criteria for assessing compliance. The Agency has determined that it is not in a position to set such criteria, so OSHA has deleted the term "moving" from §1910.135(a)(1) of the final rule and has not added the terms suggested by commenters.

The Agency believes that compliance with the ANSI criteria referenced through §1910.135(b) of the final rule will enable employers to protect their employees from a large proportion of potential head hazards. Head protection not covered by §1910.135 of the final rule, such as would be needed to protect employees from "moving" or "fixed" objects, is covered by the general requirements of §1910.132, as revised. OSHA anticipates that employers whose hazard assessments identify head hazards that are not abated through compliance with ANSI Z89.1–1986, will develop and implement other measures as necessary, to protect their employees.

Proposed §1910.135(a)(2) required that employees who are near exposed energized conductors which their heads could contact must wear helmets designed for protection from electrical hazards. Two commenters (Ex. 3: 36, 73) suggested that OSHA revise the proposed provision by adding requirements for proper maintenance of head protection. In particular, Public Service Electric and Gas Company (Ex. 3: 36) stated that proposed paragraph (a)(2) should also require: "Protective helmets shall be worn and cared for as recommended by the manufacturer. Protective helmets shall not be altered or defaced which would take away the impact and/or dielectric integrity of the helmet."

OSHA has determined that any employee protection which could result from compliance with the suggested language on maintenance will already be attained through compliance with existing and proposed §1910.132. This section contains requirements concerning defective and damaged equipment, §1910.132(e); and, training requirements pertaining to the maintenance of PPE, §1910.132(f)(1)(v).

Another commenter (Ex. 3: 81) stated that proposed paragraph (a)(2) was unclear, because it appeared "to require nonconductive helmets for electricians whenever they are "near exposed electrical conductors" even if there is no reasonable probability of contact." The commenter suggested that OSHA revise the proposed language to require the wearing of protective helmets "WHEN they are near exposed electrical conductors which *their heads could contact.*"

The Agency notes that the suggested language is consistent with the description of proposed paragraph (a)(2) in the preamble to the proposed rule (54 FR 33836). OSHA agrees that clarification of the proposed paragraph is appropriate and has revised the proposed paragraph accordingly.

Proposed §1910.135(b) required that the design of protective helmets comply with the design requirements of ANSI Z89.1–1986 or be of a design that provides equivalent protection. Existing §1910.135 references the requirements and specifications established in ANSI Z89.1–1969. As noted in the preamble to the NPRM (54 FR 33837), OSHA has determined that, except as regards electrical insulation for Class B helmets, the 1969 and 1986 editions of ANSI Z89.1 set essentially the same requirements. The Agency also has determined that Class B helmets currently in use already comply with the electrical insulation requirements of ANSI Z89.1–1986.

OSHA also proposed to allow protective helmets which, while not designed to the specifications of ANSI Z89.1–1986, were "demonstrated to be equally effective". The Agency believed that this performance-oriented approach would encourage innovation and the use of improved equipment.

A commenter (Ex. 3: 119) stated that the proposed language allowing protective helmets of a design which has been demonstrated to be equally effective "is not well defined." In addition, the commenter questioned the availability of the means and the personnel to determine if helmets not designed according to ANSI Z89.1–1986 were equally effective. The commenter suggested that OSHA delete the language in question and require compliance with ANSI Z89.1–1986.

Another commenter (Ex. 7: 20, pg. 3), in discussing the proposed language "demonstrated to be equally effective", inquired:

Does this mean or does it include possible
—prototype lab tests with field trials
—engineering or technical expert evaluation
—certification agency assessment
—appropriate standard and certification by foreign manufacturer, or certification or testing agency which could presumably satisfy the primary intent for protection of the reference standard.

To require a user to develop a new standard or a new certification process for a new product or design already proven elsewhere could void the flexibility intended in the "equivalency" clause.

OSHA believes that the performance criteria set out in ANSI Z89.1–1986, Section 7, indicate clearly how employers or the Agency can determine if helmets that do not otherwise comply with the consensus standard are "equally effective". OSHA also believes that the performance-oriented language of proposed paragraph (b) allows employers the appropriate flexibility to address their particular safety needs.

Another commenter (Ex. 3: 126) stated that "protective helmets should comply with the performance requirements as well as the design requirements of ANSI Standard Z89.1–1986."

In the course of evaluating these comments, OSHA noted that there are no provisions specifically designated as "design requirements" in ANSI Z89.1–1969 or ANSI Z89.1–1986. The 1986 edition, in particular, sets scope and purpose provisions; definitions; types and classes provisions; materials provisions; physical requirements; performance requirements; and test methods for protective helmets. The preamble discussion of proposed paragraph (b) (54 FR 33836–33837) referenced the physical requirements (e.g., the maximum weight), the performance requirements (e.g., impact resistance, penetration protection, flammability, water absorption resistance and electrical insulation) and the test methods (e.g., "stringent" test methods for testing of "Class B" helmets against high-voltage) of ANSI Z89.1–1986.

OSHA agrees, and intends, that head PPE meet all of the provisions contained in the ANSI standard. This requirement is stated explicitly in ANSI Z89.1–1986, Section 2. OSHA acknowledges that the proposal did not clearly express the Agency's intent to reference ANSI Z89.1–1986 in its entirety and is revising the proposed provision accordingly.

The incorporation by reference of ANSI Z89.1–1986 has been approved by the Office of the Federal Register, in accordance with the requirements of 5 U.S.C. 552(a) and 1 CFR part 51. Paragraph (b) of the final rule has been revised to reflect that approval and to provide the requisite information regarding access to the text of ANSI Z89.1–1986.

As discussed above, OSHA has determined that it is appropriate to permit the continued use of head PPE purchased prior to the effective date of the final rule, as long as it complies with the ANSI standard (Z89.1–1969) referenced by existing §1910.135. To this end, the Agency has redesignated proposed paragraph (b) as paragraph (b)(1) of the final rule and has added "grandfathering" text in paragraph (b)(2) of the final rule.

In the proposal (54 FR 33837), OSHA solicited comments and information concerning bump caps, head protection that was not addressed in existing or proposed §1910.135 and that would not satisfy the criteria of Z89.1–1986. In particular, the Agency requested information with respect to the appropriateness of addressing this type of head protection in the final rule. OSHA also solicited input regarding the need for regulation of bump caps in Issue 5 of the Hearing Notice (55 FR 3412). Some rulemaking participants (e.g. Ex. 3: 28, 40, 58) have suggested that OSHA establish requirements for bump caps. For example, Sandia National Laboratories (Ex. 3: 58) stated:

> Currently, there are no Federal standards, regulations, or guidance of any kind with which industry can make proper and adequate decisions on the use of bump caps.
>
> Bump caps are not new to the work place. Where the risk of head injury has been determined to be of low probability or result in minor contusions, scraps or cuts, bump caps have been provided. The old adage that "something is better than nothing" tends to prevail when industry is forced to make an educated guess. Is the adage true in the case of bump caps?
>
> In summary there is a need for Federal time and money to be spent on discovering the pro's and con's associated with bump caps and developing corresponding guidance for their use in the work place.

On the other hand, Kerr-McGee Corporation (Ex. 3: 119, pg. 3) stated :

> Kerr-McGee's use of bump caps is limited to areas where there is no potential for injury to the head from electrical contact or from falling or moving objects, but where a hazard may exist due to striking one's head against fixed, low-clearance objects.
>
> Kerr-McGee is not aware of any voluntary or consensus standards covering bump caps. If the degree of protection afforded by currently-produced bump caps is determined by scientific studies to be inadequate for their intended use as stated on the products, then OSHA should request ANSI to develop a standard. Otherwise, we do not see the need for additional specifications or standards.

Most rulemaking participants (e.g. Ex. 3: 2, 64, 65, 68; Ex. 7: 22; Tr. 140: 4/3; Tr. 160–61: 4/3) opposed adding requirements for bump caps to the final rule because they believe that if head protection is needed, then it would be safer to require head protection meeting ANSI Z89.1–1986. For example, a commenter from the American Trucking Association (Ex. 3: 64, pg. 5) remarked:

> For the trucking industry in general, bump caps are not practical. Although they are used in some operations for select job tasks, the motor carrier industry has found little benefit in reducing minor head injuries through their use. In fact, safety personnel from a cross section of the nation's motor carriers recently explained that bump caps can be more of a hinderance than a help; they frequently fall off, and in some instances, they can cause vision obstructions.

Another commenter, from the Union Carbide Corporation (Ex. 3: 68, pg. 3), said:

> * * * Union Carbide would not support a provision pertaining to "bump caps". Where there is sufficient hazard potential to indicate the need for bump caps, it is safer simply to require that hard hats be used.

A commenter from the Amoco Corporation (Ex. 7: 21, pg. 2) stated:

> We believe that the use of "bump caps" has no place in a company-sponsored safety program and therefore do not favor its inclusion in this proposal.

OSHA has concluded, based on review of the rulemaking record, that the available data do not support regulatory action regarding bump caps. Therefore, the Agency will neither restrict the use of bump caps nor set criteria for such use. OSHA will evaluate an employer's choice of head protection based on the e hazards to which employees may be exposed. Therefore, the employer's compliance with the requirement for a hazard assessment, in §1910.132(d), is of critical importance.

§1910.136 Foot Protection

Proposed paragraph (a) of this section required employers to ensure that employees wear protective footwear when working in areas where there is a danger of foot injuries due to falling and rolling objects, or objects piercing the sole. This proposed provision received a large amount of support from rulemaking participants (e.g. Ex. 3: 49, 59, 64, 67). Many of the rulemaking participants agreed with referencing the American National Standards Institute (ANSI) standard for personal protection, ANSI Z41–1983, "Protective Footwear," particularly since this standard, unlike the superseded 1967 edition, sets criteria for women's footwear and for puncture resistance. However, two commenters were concerned as to when this protection would be required. A commenter from the American Trucking Association (ATA) stated (Ex. 3: 64, pp. 4–5):

> * * * in some operations drivers may be exposed to falling or rolling freight hazards, or other hazards presented by nails or other sharp objects. In these cases, safety shoes, non-penetrable soles, or some other type of protective footwear are appropriate. On the other hand, there are thousands of drivers that never handle freight or come into exposure with falling or rolling freight, sharp objects, or any other number of hazards.

* * * The need to require the equipment must be determined on a case by case basis--taking into account the specific operations, and the specific tasks and hazards of the various job functions.

Another commenter, from the Aluminum Company of America (ALCOA), expressed a similar concern with respect to when foot protection is required (Ex. 3: 2):

Specialty shoes such as "electrical hazard" footwear or "conductive" shoes have special requirements that would not permit metal insoles to prevent the puncture. If this requirement is upheld, the current design standards and performance criteria for electrical hazard shoes could not be met.

OSHA notes that these concerns are addressed by §1910.132(d), as proposed and as promulgated. That provision requires the employer to perform a hazard assessment. From the hazard assessment, the employer can determine what PPE is needed. As to the example presented by the ATA, if it is determined through an appropriate hazard assessment that an employee is not exposed to foot hazards, the employer would not have to provide this type of protection. As discussed above, the hazard assessment provision allows employers the flexibility to choose the PPE that is appropriate for a particular workplace situation.

Regarding the ALCOA comment, OSHA notes that if it is determined through a hazard assessment that electrical workers are not exposed to the hazard of sharp objects puncturing the soles of shoes (which would be the case in many instances), the protective footwear would not have to provide this type of protection.

On the other hand, if it is determined through a hazard assessment that employees are exposed both to electrical and puncture hazards, the employer would be required to ensure that employees wear shoes which protect the employees from both hazards.

Both the 1983 and 1991 editions of ANSI Z41 set criteria for protection of feet from electrical hazards. While proposed §1910.136(b) required that footwear be designed to either comply with Z41–1983 or be demonstrated to provide equivalent protection, proposed §1910.136(a) did not explicitly require that employees wear foot protection against electrical hazards. The Agency had intended proposed paragraphs (a) and (b) to be consistent and to reflect the 1983 edition of ANSI Z41. While employers are already required to protect employees from electrical hazards under existing §1910.132, OSHA believes that guidance regarding foot protection against electrical hazards will be clearer and more useful if it appears in §1910.136. OSHA has revised proposed §1910.136(a) accordingly.

In paragraph (b) of §1910.136, OSHA proposed that the design of protective footwear comply with the requirements of ANSI Z41–1983, or be of a design which has been demonstrated to be equally effective.

Rulemaking participants (e.g. Ex. 3: 49, 59, 67, 72, 105, 118, 123) supported the adoption of the ANSI standard for foot protection (ANSI Z41). Further, several commenters (e.g. Ex. 3: 65, 67, 82, 84) suggested that OSHA adopt by reference the "updated" or "current" edition of ANSI Z41. For example, Footwear Industries of America (FIA) (Ex. 3: 67, pg. 2) remarked:

FIA therefore agrees with OSHA's proposal to update its personal protective equipment standard for foot protection to comply with the improvements made in the ANSI standard. The Agency should note, however, that the 1983 version of the ANSI Z41 standard may soon be replaced by an updated set of industry standards.

FIA suggests that OSHA may wish to await the 1990 version of ANSI Z41 rather than to incorporate a seven-year old, nearly outdated standard into 29 C.F.R. §1910.136.

The Agency notes that the 1991 edition of the ANSI standard for foot protection has, in fact, replaced the 1983 edition of ANSI Z41 referenced by OSHA in proposed §1910.136(b).

OSHA has determined that it is appropriate to reference the current 1991 edition of ANSI Z41 in §1910.136(b) of the final rule because that edition imposes essentially the same requirements as the 1983 edition, except that the 1991 edition provides more specific performance requirements for resistance to compressive forces and standardizes the puncture resistance testing method. OSHA believes, based on its review of the pertinent ANSI standards and of the protective footwear currently available, that compliance with the referenced requirements of ANSI Z41–1991 will not result in disallowing foot protection that would have complied with the requirements of ANSI Z41–1983.

As discussed above, OSHA has determined that it is appropriate to provide explicitly for the continued use of foot PPE purchased prior to the effective date of the final rule, as long as it complies with the ANSI standard (ANSI Z41.1–1967) referenced by existing §1910.136. Therefore, the Agency has redesignated proposed paragraph (b) as paragraph (b)(1) of the final rule, and has added "grandfathering" text in paragraph (b)(2) of the final rule.

A commenter from the Tennessee Valley Authority (Ex. 3: 79) observed that OSHA proposed to incorporate only the design requirements of the referenced ANSI standards and not the selection requirements, guidelines, and other general information contained in the documents. As explained above in the preamble, OSHA acknowledges that the proposal did not clearly express the Agency's intent to reference the ANSI standards in their entirety and is revising proposed paragraph (b) accordingly.

The incorporation by reference of the pertinent ANSI standards has been approved by the Office of the Federal Register, in accordance with the requirements of 5 U.S.C. 552(a) and 1 CFR part 51. Therefore, proposed paragraph (b) has been revised so that paragraphs (b)(1) and (b)(2) of the final rule reflect that approval and provide the requisite information regarding access to the text of those ANSI standards.

§1910.138 Hand protection.

Issue 5 of the hearing notice (55 FR 3414), requested testimony, comments and information regarding the need for regulation of additional types of PPE. Specifically, the Agency stated that it was considering the appropriateness of promulgating requirements for hand protection (gloves) and skin protection (chemical protective clothing).

The Agency's concern with respect to hand protection and chemical protective clothing arose from information contained in the record (e.g. Ex. 6: 2, 3, 4, 5), which indicates that a large number of employee injuries are occurring due to the lack of adequate protection from hand and skin hazards. Additionally, neither OSHA or ANSI currently have criteria for hand protection nor for chemical protective clothing.

While OSHA received some information pertaining to chemical protective clothing, most of the rulemaking participants who addressed Issue 5 focused their remarks on gloves. Those rulemaking participants suggested that OSHA provide performance criteria and test methods for gloves and provide better guidance for the selection of gloves. They stated that in many instances gloves are not being worn, and when gloves are worn, they are often the wrong type of glove for the application involved (e.g. Ex. 3: 114; Ex. 7: 33, 38, 42; Ex. 53; Tr. 213–236: 4/3; Tr. 13–20: 4/4).

For instance, a commenter from the United Steelworkers of America (Ex. 3: 114, pg. 2) said:

Protective clothing and gloves: OSHA should also set standards for these items since so many gloves do not work with some chemicals and last longer with other chemicals.

Also, a commenter from the Washington State Department of Transportation (Ex. 7: 33) stated:

I think that additional language regarding skin and hand protection needs to be added to this section so this type of PPE is not excluded from the selection process.

That commenter also submitted suggested language to address hand hazards, and the selection and fit of gloves.

Boeing (Ex. 7: 38, pg. 2) commented:

Boeing supports the position that additional guidelines related to body and hand protection are necessary in 1910.132. Such guidelines should provide information on the selection of hand and body PPE based on reported experience and industry needs. Such guidance would facilitate the acquisition and use of appropriate PPE and eliminate any uncertainty regarding proper application.

A hearing participant from the Occupational Health Foundation testified (Tr. 213: 4/3):

Based on our experience visiting plants and working with workers, we believe there's a critical need for language to really spell out the program requirements for effective use of gloves.

That participant also remarked (Tr. 215: 4/3):

In 1988, occupational skin disease accounted for about one-fourth of all reported occupational illnesses. Even with under-reporting, it's a very serious worker health problem.

In addition, a hearing participant from the International Chemical Workers Union testified (Tr. 15–16: 4/4):

I go into a lot of plants throughout the country and site visits and the first thing I do is I look at the OSHA 200 log. I see many cases of occupational dermatitis. My first assumption was these people are not wearing gloves. After further investigation once I'm in that facility, I find out that the workers are wearing gloves, but they're wearing the wrong glove for the application involved. So, this really needs to be addressed.

The Agency also received some useful information about the various types of gloves and types of hazards for which they should be used; the composition of the various types of gloves; and, other helpful information (Ex. 3: 27). There were also some informative studies submitted to the record concerning the hand and skin hazards posed by certain chemicals (Ex. 42).

After careful evaluation of the rulemaking record, OSHA has concluded that the high incidence of hand injuries, together with evidence that hand protection either is not being worn by employees or is being worn for the wrong type of hazards, warrants the inclusion of more detailed requirements for selection and wearing of hand protection.

Therefore, a new section, §1910.138, is being added to the final rule to address hand protection.

Paragraph (a) requires that employers select, and that employees use, appropriate hand protection. In addition, paragraph (a) identifies some of the types of hazards for which hand protection must be worn by employees. These include hand hazards and potential hand hazards from skin absorption of harmful substances; severe cuts or lacerations; severe abrasions; punctures; chemical burns; thermal burns; and harmful temperature extremes.

Paragraph (b) addresses the selection of the appropriate type of hand protection for the hazard or potential hazard that is present at the workplace. The purpose of this provision is to assure that employees are using the appropriate type of gloves for the tasks to be performed. For example, foundry workers generally must wear gloves that provide thermal protection, while meat cutters must wear gloves that protect against cuts. While the selection of the appropriate type of glove for a certain task or hazard may seem to be obvious, the rulemaking record indicates that many hand injuries have occurred because the wrong type of glove was used for a certain task.

Therefore, OSHA has determined that employers need more explicit guidance in determining what hand protection their employees need. The Agency anticipates that compliance with this provision will assure that employees use the appropriate type of hand protection for the assigned tasks and the identified hazards.

OSHA has also added information to Appendix B of the final rule regarding the selection of appropriate hand protection.

Third party certification

In the NPRM (54 FR 33835), OSHA solicited comments on whether or not the Agency should require third party certification of PPE. OSHA indicated that it would consider promulgating such a provision to ensure that PPE meets OSHA standards. In addition, Issue 2 of the hearing notice (55 FR 3413) solicited testimony, with supporting information, regarding the extent to which third party certification of PPE required by Subpart I would be appropriate.

The third party certification issue generated more response than any other subject covered by this rulemaking. Many of the participants in this rulemaking supported third party certification (e.g. Ex. 3: 3, 16, 27, 37, 83, 90, 92, 98, 114, 120, 123; Ex. 7: 3, 18, 20; Tr. 55: 4/3; Tr. 92–97: 4/3; Tr. 6–7: 4/4; Ex. 49).

In supporting third party certification, a commenter from MSA (Ex. 3: 18) stated:

In order to provide user companies with assurances that personal protective equipment meets the appropriate standards, we think it would be highly desirable for OSHA to require third-party certification of PPE. We think a program such as the one offered by the Safety Equipment Institute that provides independent testing and quality assurance audits is extremely valuable and adds minimum cost to safety equipment.

A commenter from ETL Testing Laboratories, Inc. (Ex. 3: 43) added:

Our experience supports the use of third-party certification as positive assurance that the products covered by a program do, in fact, meet the standards to which they are tested, and that follow-up inspections verify that they continue to meet the requirements. Third-party certification programs offer the user of personal protective equipment a positive pledge that the product has been designed and manufactured to provide the protection needed. It further simplifies the selection process by way of readily available lists of complying products and recognizable labels and marks on them.

Although we are not prepared to give detailed estimates of costs of third-party certification for the various products, the fees are not burdensome, even on small businesses. The equipment must be tested, whether it is in a program or not; therefore, that cost is present in either case. The administration of a simple yet effective program with follow-up factory inspection would probably not exceed $1,500–2,000 per year per plant based on some similar programs we operate. Obviously, there are many types of programs, and the fees will vary dependent on the level of services rendered.

In supporting third party certification, a commenter (Ex. 3: 103) from the Safety Equipment Institute (SEI) described that organization's certification program as follows:

SEI's program of periodic quality assurance audits and product testing is now widely accepted by industry and government. Over two hundred organizations and federal agencies require the SEI certification as a condition of procurement for PPE. SEI combines both compliance testing of product and periodic quality assurance audits of manufacturers' production facilities. These activities are performed under SEI direction by independent third parties to maintain an objective program.

A commenter from the Food & Allied Service Trades (Ex. 3: 128, p.4) asserted:

We feel that third party certification, akin to that currently required for respiratory protection, should be mandated by the proposed rule. Such certification would guarantee that equipment was thoroughly tested prior to its being relied on to provide safety for workers who may daily, or even occasionally, encounter hazardous situations.

A hearing participant from the Industrial Safety Equipment Association (ISEA) (Tr. 136–137: 4/3) testified:

Whether the third party certification is performed by private or governmental entity, ISEA supports its use as a means of confirming the quality of products made for the protection of workers. In the absence of government standards and certification of compliance, ISEA endorses third party certification of compliance with ANSI standard Z87.1, 1989, and Z89.1, 1986.

We believe that the additional cost involved for manufacturers of personal protective equipment to obtain certification is minimal, as is reflected by the number of eye and face protection devices and industrial helmets which are already certified by the Safety Equipment Institute.

Third party certification costs are averaged over the volume of units sold, and we believe end up as an insignificant cost increase.

Other rulemaking participants expressed concerns with the concept of third party certification. One concern expressed by several rulemaking participants (e.g. Ex. 3: 28, 79, 87, 105) was the belief that OSHA envisioned requiring employers, rather than manufacturers of the PPE, to obtain the third party certification. That was not the Agency's intent. OSHA notes that the manufacturer of the PPE, not the purchaser/user, is, in general, the party who is in the appropriate position to have products tested and evaluated. OSHA's intention regarding the duty of employers was to reaffirm the employer's responsibility to purchase and have employees use only PPE that would meet the requirements of the pertinent standards.

Rulemaking participants also expressed concern that it would be very difficult to have third party certification of prescription safety eyewear (e.g. Ex. 3: 60, 71, 93, 115; Ex. 7: 11, 34; Tr. 184–191: 4/3; Tr. 206: 4/4; Ex. 50). They asserted that third party certification would not be practical since the eyecare providers and prescription laboratories, generally small businesses, who produce prescription eyewear would be unable to bear the burden of third party certification. They also stated that each pair of prescription glasses is unique to the individual for whom it was prescribed. Those rulemaking participants explained that lenses are tested by the manufacturer to meet ANSI standards, and frames are tested to meet ANSI standards by the frame manufacturers. Those participants also expressed the belief that this testing meets the intent of third party certification. OSHA notes that the assurance provided by such procedures may be even better than that obtained through third party certification because *each* lens and frame is tested, rather than the representative sample of eyewear that would be tested through a third party certification program.

For example, a commenter from the Optical Laboratories Association (OLA), stated (Ex. 3: 71, pp.1–2):

It is the position of OLA that third-party certification of devices utilizing lenses made to individual prescription (Rx) is not feasible, and in fact would not guarantee the safety-level provided by the present system as prescribed by Z87. This is so because third-party certification of *all devices* would not be practicable, whereas under the present system *prescription lenses* are subject to a rigorous test and the fabricator of each lens certifies, by its trademark, that the lens meets the standard.

It is therefore submitted that the existing system of separate testing of the frame and lenses of spectacles containing prescription lenses meets OSHA's objectives and is practical. Further testing of the completed device after the lenses are inserted would not be feasible. While the test may not cause a device failure, it may damage the lenses and weaken the frame.

A commenter from Corning (Ex. 3: 115, pg. 4) said:

We do not believe that this [third party testing of prescription eyewear] is practical. Most industrial eyewear today [is] prescribed. * * * each prescription pair of glasses is unique to the individual for which it was prescribed and made. The common denominator is that prescription eyewear lenses are 100% tested to pass the industrial eyewear requirements for primary protection, i.e., impact resistance. Further, frames are tested and marked by the frame manufacturer to meet the requirements.

Other rulemaking participants opposed third party certification of PPE (e.g. Ex. 3: 65, 68, 99; Ex. 7: 1, 8, 39). For instance, the belief was expressed (Ex. 3: 119) that the present voluntary system is adequate, particularly in light of widespread concerns regarding product liability. In general, those opposed to third party certification believed it would add cost, without adding any appreciable safety benefit.

For example, a commenter from the American Gas Association (Ex. 3: 46, pg. 13) stated:

We urge OSHA not to adopt such a requirement. Such certification would increase unnecessarily the incremental cost of compliance while providing few, if any, benefits. Manufacturers who claim they are in compliance with the ANSI standard could be subject to liability in cases where products fail to meet that standard. The cost of third party compliance would be borne by the industry when the risk of liability should be sufficient to ensure compliance.

Another commenter, from the Pacific Maritime Association (Ex. 3: 80), remarked:

Third party certification of personal protective equipment by employers would be both costly to the manufacturer and, subsequently, the employer. Additionally, it is not clear in the proposal as to how this requirement would enhance the safety of the workforce. It would place an additional administrative and financial burden on both manufacturers and employers, which does not seem to be justified.

In response to the hearing notice, a commenter from the Motor Vehicle Manufacturers Association (MVMA) asserted (Ex. 7: 31, pg. 2):

MVMA strongly objects to the proposal of requiring third party certification for personal protective equipment. We believe that personal protective equipment which meets the requirements of various safety standards such as ANSI and the certification programs conducted by the Safety Equipment Institute are adequate to provide the assurance that the PPE will meet the performance specifications necessary to protect an employee. To require a third party certification will be redundant, costly and will not enhance the safety or performance of PPE.

In opposing third party certification, a commenter from Monsanto (Ex. 7: 16) said:

[W]e question whether third party certification will add any benefits in terms of protection for employees. It will certainly add to the cost of such equipment. We believe that the manufacturers' written statement that their equipment meets the requirements of the appropriate ANSI standard should be sufficient. Our perception is that this arrangement has worked well over the years and we see no benefit in changing it.

OSHA has carefully considered this issue and, after a thorough evaluation of all of the information contained in the record, has concluded for several reasons, that it would not be appropriate to require third party certification.

First, while OSHA has recognized that third party certification of PPE can increase confidence in and use of PPE, a requirement for such third party certification will not add to the inherent safety of the PPE tested and certified. Also, given the extent to which the PPE industry has already voluntarily adopted third party certification, the Agency believes that any benefit resulting from the addition of such a requirement would be minimal.

Furthermore, revised subpart I provides other means to determine if PPE meets the pertinent standard. In particular, compliance with revised

subpart I's performance-oriented requirements for hazard assessment, PPE selection, and training will result in appropriate selection, use and maintenance of PPE by affected employees. For example, the Agency expects that the training required in new §1910.132(f) will increase affected employee confidence in the assigned PPE and, as a consequence, increase the use of PPE.

Also, OSHA believes, given the limited benefit expected from third party certification, that it would be unreasonable to require that employers procure only PPE that has third party certification. Such a requirement would impose unnecessary burdens on PPE manufacturers who can establish by other means that their products comply with the pertinent OSHA standards.

In addition, the Agency believes that allocating the resources needed to implement and enforce a requirement for third party certification would unreasonably detract from OSHA's ability to enforce the other provisions of revised subpart I.

The Agency is also adding non-mandatory appendices A and B to provide additional guidance to employers and employees with regard to PPE for eye, face, head, foot, and hand hazards.

IV. Regulatory Impact, Regulatory Flexibility and Environmental Assessment of Revisions to Subpart I, Personal Protective Equipment

Introduction

In 1971, OSHA adopted its current standards for personal protective equipment (PPE) from national consensus standards under section 6(a) of the OSH Act. Since then, advances in PPE technology have resulted in greater occupational protection in workplaces where equipment innovations have been adopted. In this final rule, OSHA promulgates a nationwide standard for PPE that reflects these improved means of hazard prevention.

Executive Order 12866 (58 FR 51735) requires that a Regulatory Impact Analysis be prepared for any "significant regulatory action". A "significant" rule would have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities. In addition, the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) requires an analysis of whether a regulation will have a significant economic impact on a substantial number of small entities. Finally, section 6(f) of the Occupational Safety and Health Act provides that, where a party has challenged the validity of an OSHA standard in the Court of Appeals, the determinations of OSHA (such as findings regarding the nature and severity of workplace hazards and the feasibility of identified abatement measures) shall be conclusive if supported by substantial evidence in the record considered as a whole.

OSHA determined, based on the Agency's Preliminary Regulatory Impact Analysis [1] and its review of the rulemaking record, that the final rule for General Industry PPE is not a "significant regulatory action" for the purposes of review under Executive Order 12866. However, in order to satisfy the various statutory requirements placed upon the Agency and to further explain why OSHA has classified this regulatory action as "non-significant" for Executive Order 12866 purposes, OSHA presents this Final Regulatory Impact, Regulatory Flexibility and Environmental Impact Assessment.

Industry Profile

Based on a report prepared by Eastern Research Group under contract to the Department of Labor [2], OSHA has determined that the hazards addressed by the personal protective equipment standard are present in varying degrees in virtually all workplaces covered by the OSHA General Industry standards (29 CFR 1910). The extent of the rule's impact will vary by industry depending on the hazards, the types of occupational activity and current practices regarding PPE use.

Many types of PPE have been in widespread use in industry for many years. However, until recently very little statistical data existed to determine the number of employees who either are using PPE or who should be wearing PPE by virtue of the hazards to which they are exposed.

OSHA's inspection data document that approximately 3.5 percent of all planned safety inspections result in citations under the existing PPE standards. The inspection data identifies the standard industrial classification (SIC) of the establishment, size of plant workforce, union status, and information related to the inspection itself; less frequently reported are data on degree of hazard present in workplaces, the number of workers exposed to the hazard, or the type of PPE required.

In its Preliminary Regulatory Impact Analysis [1], OSHA examined injury statistics for affected industry sectors. Among the accident databases searched by OSHA were Work Injury Reports (WIR) published by the Bureau of Labor Statistics (BLS). These reports examine cases where a worker was injured and provide evidence that many workers are not wearing adequate personal protective equipment. Based on the BLS data, relatively few firms with serious recordable injury cases have performed a formal assessment of the potential hazards in their workplace. In addition, little training was offered to workers regarding the importance of using protective equipment in these firms.

To obtain accurate information on the need for personal protective equipment and the extent to which that need is being met, OSHA conducted a national survey in 1989 [3,4,5]. The survey sampled 5,361 establishments, representing 1.1 million establishments in 61 SIC groups. The survey identified the hazards related to industrial processes and the types of PPE required when working in or near these processes. The survey solicited information on PPE practices and safety procedures and assessed whether engineering controls such as protective guards or overhead nets were in place. Answers to survey questions were used to evaluate the appropriateness of PPE use. Survey questions also addressed PPE training and hazard assessment. (See the background document and appendices in this docket for more detailed information on the survey and supporting data related to this analysis.)

Table 1 shows the major industry groups covered by the PPE standard, the total number of affected establishments, total affected employment, number of production employees and number of employees exposed to PPE-related hazards. Of the 16.9 million production workers, the survey identified 11.7 million exposed workers within 1.1 million establishments who should be wearing some form of PPE. These numbers are lower than was indicated in the PRIA, due to a refinement in the analysis regarding affected population. Occupational categories identified by OSHA as having a significant degree of required PPE use include craft, operating, maintenance and material handling employees. These categories encompass most production employees and are most likely to be affected by this standard. However, as noted in the PRIA [1, p. II–2–4], OSHA has previously estimated over a million other workers may also be exposed to hazards

requiring PPE use in the rest of general industry [1].

TABLE 1—Number of Establishments and Employees in Industries Affected by the Personal Protective Equipment Standard

SICs	Industries	Total Establishments	Total Employees	Production Employees	Employees At Risk
20,21	Food & Tobacco	23,388	1,673,287	1,196,818	782,205
22	Textiles	6,439	727,651	596,846	255,815
23,31	Apparel & Leather	25,708	1,239,402	964,677	558,884
24	Lumber & Wood Products	37,063	739,296	597,764	405,054
25	Furniture & Fixtures	10,563	515,866	412,323	306,280
26	Paper & Allied Products	6,732	680,961	479,730	387,578
27	Printing & Publishing	60,836	1,499,451	680,370	462,259
28	Chemicals	12,411	1,023,169	497,054	402,925
29	Petroleum Refining	2,158	166,032	44,169	33,805
30	Rubber & Plastics	14,703	851,467	565,705	393,468
32	Stone, Glass, Concrete	15,351	550,779	400,987	282,065
33	Primary Metals	7,130	741,297	549,603	476,145
34	Fabricated Metals	34,605	1,401,605	921,660	638,577
35	Machinery & Computers	53,031	2,032,338	1,018,420	788,598
36	Electric & Electronics	17,836	2,063,033	1,204,266	810,492
37	Transportation Equipment	9,688	1,762,926	1,113,656	894,417
38,39	Misc. Manufacturing	24,860	1,091,140	599,624	410,532
41,42	Transportation	124,121	1,770,983	1,258,897	688,183
48	Communications	23,505	1,281,837	788,800	642,609
49	Utilities	17,741	934,650	334,492	266,440
501,55,75	Automotive Trade & Services	326,793	3,066,501	1,373,718	803,309
50,51,52	Wholesale & Retail Trade	189,947	2,056,173	963,641	822,312
7692	Welding Repair	6,653	31,800	24,622	20,317
13	Oil & Gas Extraction	26,957	396,519	117,579	92,602
078,08	Horticulture & Forestry	46,294	290,552	173,863	106,782
TOTAL		1,124,513	28,588,715	16,879,284	11,731,653

Source: U.S. D.O.L., OSHA, Office of Regulatory Analysis, based on the results of a 1989 nationwide survey.

From survey results OSHA developed a profile of the affected population by exposed bodily area (anatomical part), summarized in Table 2. As the table shows, almost 8.8 million workers are exposed to foot injury, while the potential for hand injury exists for 4.7 million workers. Other anatomical parts covered by this rule are eyes (2.8 million workers at risk), head (1.9 million workers) and face (381,000 workers).

[1] As was indicated in the PRIA, while all general industry workers are potentially affected by these standards, exposed workers are heavily concentrated in certain occupations and in certain industries. Building upon information provided for the PRIA and comments to the record, this final analysis focuses on those groups of workers and industries judged to have a heavy concentration of PPE use. In this analysis population at risk was determined by survey results indicating a hazard that required the use of PPE. The PRIA had used the term "population at risk" to refer to all workers in two "production worker" job categories in general industry [1, p. II–1–5]. It should be noted that this analysis in no way implies that other workers may not be exposed to hazards preventable by PPE, but simply that the great majority are found in certain specific job categories and industries.

TABLE 2—Number of Employees and Parts of the Body Requiring Personal Protective Equipment Among the Population at Risk

SICs	Industries	Production Employees	Total Exposed Population	Body Part Exposed*				
				Head	Eye	Face	Hand	Foot
20,21	Food & Tobacco	1,196,818	782,205	112,574	91,806	0	220,059	652,884
22	Textiles	596,846	255,815	36,685	104,918	3,877	134,689	129,498
23,31	Apparel & Leather	964,677	558,884	16,527	72,682	0	462,683	133,101
24	Lumber & Wood Products.	597,764	405,054	65,597	29,483	104,352	103,547	388,436
25	Furniture & Fixtures	412,323	306,280	26,231	41,767	26,130	127,295	234,696
26	Paper & Allied Products	479,730	387,578	35,146	132,898	4,576	156,569	326,256
27	Printing & Publishing	580,370	462,259	0	242,298	0	257,095	333,121
28	Chemicals	497,054	402,925	116,763	158,344	3,098	155,596	322,095
29	Petroleum Refining	44,169	33,805	14,562	11,918	476	16,136	15,948
30	Rubber & Plastics	565,705	393,468	47,984	57,839	20,048	124,766	313,688
32	Stone, Glass, Concrete	400,987	282,065	64,462	38,156	19,234	81,620	243,835
33	Primary Metals	549,603	476,145	95,001	95,727	120,272	214,995	394,255
34	Fabricated Metals	921,660	638,577	33,157	85,767	12,101	144,447	570,595
35	Machinery & Computers	1,018,420	788,598	59,583	146,365	2,246	329,603	631,485
36	Electric & Electronics	1,204,266	810,492	66,001	334,211	611	469,622	455,479
37	Transportation Equipment.	1,113,656	894,417	53,777	129,841	4,575	315,617	759,262
38,39	Misc. Manufacturing	599,624	410,532	35,815	124,151	9,092	203,543	284,091
41,42	Transportation	1,258,897	688,183	70,798	79,546	588	67,043	665,473
48	Communications	788,800	642,609	461,102	133,783	15,162	341,999	182,129
49	Utilities	334,492	266,440	126,995	106,879	24,321	96,394	246,691
501,55, 75	Automotive Trade & Services.	1,373,718	803,309	55,791	297,398	0	407,995	595,690
50,51,52	Wholesale & Retail Trade	963,641	822,312	255,319	154,863	4,842	134,153	742,635
7692	Welding Repair	24,622	20,317	797	11,108	172	10,492	15,278
13	Oil & Gas Extraction	117,579	92,602	49,872	51,451	0	51,804	76,391
078,08	Horticulture & Forestry	173,863	106,782	22,050	39,546	5,146	83,217	44,856
TOTAL		16,879,284	11,731,653	1,922,589	2,772,745	380,919	4,710,979	8,757,868

* "Exposed body part" total exceeds total exposed population because some employees are exposed to multiple hazards.
Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

Technological Feasibility and Costs of Compliance

Technological Feasibility

The existing and revised standards for subpart I require personal protective equipment wherever necessary by reason of the hazards of processes, environment or worker activity. New §1910.132(d) requires workplace hazard assessment and new §1910.132(f) requires employee training in the use of PPE. The revised standards for eye and face protection, protective headwear and foot protection update, prospectively, references to pertinent consensus standards. OSHA expects that employers will be able to comply with the new and revised requirements without difficulty, because the means of compliance are readily available and because the final rule "grandfathers" equipment that complies with the existing standards.

OSHA anticipates that the new requirements for hazard assessment, prohibition of defective and damaged equipment, and employee training can be implemented with available technical personnel and other resources. OSHA's survey probed the extent to which firms have already adopted the elements of a PPE program. Comments in the record were also evaluated in order to establish current industry practices.

On the basis of evidence in the record, including results from the OSHA PPE survey, OSHA has determined that the final PPE standard is both technologically and economically feasible.

Costs of Compliance

OSHA estimated compliance costs using data on current practices and exposed population from the PPE survey. Aggregating costs across industry sectors, OSHA estimates a total annual compliance cost of new provisions in the revised rule will result in a cost of $52.4 million. Total compliance costs by industry sector are presented in Table 3.

TABLE 3—Industry Compliance Costs for the Personal Protective Equipment Standard

SICs	Industries	Annualized Cost of Compliance with Training Requirement	Annualized Cost of Hazard Assessment	Total Annualized Cost of Compliance with Revisions to PPE Standard
20,21	Food & Tobacco	$2,672,097	$563,775	$3,235,871
22	Textiles	$1,533,441	$170,892	$1,704,333
23,31	Apparel & Leather	$2,582,549	$742,021	$3,324,570
24	Lumber & Wood Products	$1,676,192	$584,579	$2,260,771
25	Furniture & Fixtures	$1,250,063	$263,721	$1,513,783
26	Paper & Allied Products	$1,403,654	$149,625	$1,553,279
27	Printing & Publishing	$3,346,716	$1,083,078	$4,429,794
28	Chemicals	$1,059,463	$116,425	$1,175,888
29	Petroleum Refining	$44,768	$22,235	$67,003
30	Rubber & Plastics	$1,312,997	$339,299	$1,652,296
32	Stone, Glass, Concrete	$591,905	$237,192	$829,097
33	Primary Metals	$688,419	$142,911	$831,330
34	Fabricated Metals	$1,073,787	$610,317	$1,684,104
35	Machinery & Computers	$1,694,596	$914,849	$2,609,445
36	Electric & Electronics	$3,259,889	$349,067	$3,608,956
37	Transportation Equipment	$1,748,188	$152,397	$1,900,586
38,39	Misc. Manufacturing	$1,525,950	$297,213	$1,823,163
41,42	Transportation	$1,345,878	$1,873,465	$3,219,343
48	Communications	$302,276	$105,567	$407,843
49	Utilities	$466,182	$118,261	$584,444
501,55,75	Automotive Trade & Services	$3,873,396	$4,772,142	$8,645,538
50,51,52	Wholesale & Retail Trade	$1,757,275	$1,736,471	$3,493,746
7692	Welding Repair	$44,047	$50,749	$94,796
13	Oil & Gas Extraction	$927,521	$175,555	$1,103,077
078,08	Horticulture & Forestry	$282,269	$373,659	$655,928
TOTAL		$36,463,518	$15,945,464	$52,408,983

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis

OSHA's survey identified 433,149 establishments which need to take steps to come into compliance with the new provisions for hazard assessment. (Of 825,265 affected establishments, approximately 47 percent already had a hazard assessment program in place.) The cost to conduct hazard assessments was estimated to be $15.9 million per year, assuming a reassessment is conducted once every five years.

The new provision for PPE training would affect approximately 10.8 million employees estimated in need of PPE training, at an annual cost of $36.5 million.

Estimates for the cost of providing PPE training differ from those in Preliminary Regulatory Impact Analysis due to comments received and results from OSHA's PPE survey. This information indicated that the problem of PPE non-usage is considerably more widespread than originally estimated. Correspondingly, this indicated that the population requiring PPE training was larger than originally estimated.

Assessment of Hazards and Benefits

Injuries

OSHA believes that the risk of fatality and injury to workers is unacceptably high among sectors affected by the revised personal protective equipment standard. The revised PPE standard is designed to enhance compliance with existing requirements and ensure future compliance related to a heightened level of hazard awareness and training. These changes to the standard should help to eliminate or reduce accidents within industries subject to the rule.

The standard has performance-oriented provisions addressing eye, face, hand, head and foot hazards that allow employers to adopt the most up-to-date PPE for use in their establishment. The flexibility to substitute new materials and technologies should produce more comfortable and protective PPE. An increase in worker acceptance and use of PPE should translate into additional benefits. OSHA's expectation is that increased use of better equipment will prevent or lessen the severity of many incidents.

According to BLS statistics in *Occupational Injuries and Illnesses in the United States by Industry, 1989* [6], there were a total of 1.6 million lost-workday cases and 1.8 million non-lost-workday cases during the survey year. Eastern Research Group [7] analyzed survey-related data, which were used to extract the number of these injuries that were related to use (or nonuse) of PPE. In turn, BLS Work Injury Reports were analyzed to estimate what portion of those injuries related to inconsistent or inappropriate use of PPE, or lack of hazard identification. Injuries prevented in significantly affected industry sectors are shown in Table 4. Since injuries will be prevented in some other industry sectors as well, total estimates are conservative.

TABLE 4—Injuries Prevented Through Compliance With New PPE Requirements

SIC	Industry	Lost Workday Cases Prevented	Lost Workdays Prevented	Non-lost-workday Cases Prevented
20,21	Food & Tobacco	3,178	57,195	3,945
22	Textiles	710	12,780	1,405
23,31	Apparel & Leather	607	11,531	1,482
24	Lumber & Wood Products	1,850	35,151	2,375
25	Furniture & Fixtures	1,216	20,680	1,818
26	Paper & Allied Products	978	21,512	1,718
27	Printing & Publishing	755	14,340	1,361
28	Chemicals	783	14,870	1,082
29	Petroleum Refining	120	2,529	125
30	Rubber & Plastics	1,873	31,837	2,625
32	Stone, Glass, Concrete	989	19,782	1,578
33	Primary Metals	1,829	36,587	2,821
34	Fabricated Metals	3,506	63,114	6,097
35	Machinery & Computers	3,372	57,324	6,744
36	Electric & Electronics	1,343	24,173	2,578
37	Transportation Equipment	1,966	37,359	5,829
38,39	Misc. Manufactuing	1,044	19,374	1,610
41,42	Transportation	2,127	54,710	2,355
48	Communications	255	4,846	357
49	Utilities	740	13,318	867
501,55,75	Automotive Trade & Services	1,423	26,005	7,942
50,51,52	Wholesale & Retail Trade	6,243	109,743	7,005
7692	Welding Repair	90	1,424	91
13	Oil & Gas Extraction	389	11,680	404
078,08	Horticulture & Forestry	537	10,358	316
		37,924	712,223	64,530

Source: U.S. Department of Labor, Bureau of Labor Statistics and OSHA, Office of Regulatory Analysis

OSHA estimates that 712,000 lost workdays[2] and 65,000 non-lost workday cases will be realized from compliance with requirements for employee training and workplace hazard assessment. These benefits will be gained through selection of more appropriate PPE, increased awareness of hazards and improved consistency in use. These benefit estimates exceed those of the PRIA because OSHA has determined that current compliance with the PPE standards is poorer than was estimated in the PRIA. In addition, OSHA believes these requirements will enhance compliance with existing requirements, thereby preventing more injuries; however, the extent of these benefits are difficult to quantify.

OSHA also estimated the number of fatalities associated with the absence of personal protective equipment. From an analysis of BLS, NIOSH and OSHA accident data, OSHA estimates that 125 fatal head injuries occur annually. While most fatal head injuries are the result of crushing injuries, falls, explosions and other traumatic events beyond the scope of this standard, some are preventable with the use of head protection. Based on a review of OSHA accident abstracts and an understanding of the rule's scope and effectiveness, OSHA estimates that 4 head injury fatality cases are preventable each year through compliance with the new provisions of the standard.

Cost Savings

Based upon these estimated reduction in injuries, OSHA estimates that society will reap substantial economic benefits from prevented injuries. Lost work time injuries can be particularly expensive.

PPE is uniquely effective in preventing eye injuries, for example, which can be severely debilitating. Dr. Leonard Parver [9, pp. 28–29] of Georgetown University's ophthalmology department elaborated on this cost to employers:

> These injuries tend to be very devastating. They have severe impact on the patient in terms of vision, and the costs are phenomenal. We estimate the costs of hospitalizing these patients at $250 million per year. That's just for the hospital stay; that doesn't include lost work days and compensation costs. This is a very significant problem, and very, very preventable. We're not talking about reinventing the wheel here. We have the means of doing this. We have adequate eye protective gear. It's a matter of educating the workforce that this is necessary.

While employers typically bear only a fraction of the costs related to injuries, these costs can be substantial. Employers specifically will benefit from reduced lost production time, administrative time spent preparing insurance claims and accident reports and replacing injured workers. Based on a 1981 study by Levitt and coworkers [10], OSHA estimates the cost to employers from the average lost worktime injury is at least $4000[3]. This cost includes:

- Administrative cost of handling insurance company claims.
- Wages paid to other workers for the time not worked (work interrupted).
- Cost of scheduling and funding overtime necessitated by the accident.
- Cost to find and train a replacement worker.
- Extra wage cost to rehabilitate the returning worker at a reduced capacity.
- Cost to clean up, repair, or replace damage from the accident.
- Cost of wages for supervision associated with the accident.
- Cost for safety and clerical personnel to record and investigate the accident.

Other nonquantifiable costs associated with accidents, such as

[2] Recent research by Arthur Oleinick identifies a possible underestimation of lost workdays when reference periods are bounded by calendar years, as in the BLS survey. For elaboration of this point, see Oleinick [8].

[3] Levitt's wage rates were adjusted to reflect current wage conditions in general industry [11]. In light of the National Safety Council estimates presented later in this document, given the debilitating severity of many PPE accidents (eye, head), and the surge in workers compensation costs in recent years, an estimate of $4000 per injury is likely to be conservative.

increased anxiety among non-injured workers, the loss of employee goodwill towards the employer, and the impact on public perception of a company and its products were not considered in the Levitt study.

Based on the Levitt study and the estimated 37,924 lost workdays prevented, OSHA estimates that the rule will save firms over $150 million annually.

However, as noted above, the cost of workplace injuries is typically borne primarily by employees themselves. The National Safety Council recently calculated the societal cost per lost worktime injury at $27,000 [7,p. 35], by factoring in long-term wage losses, medical expenses, administrative expenses and miscellaneous employer costs. Applying this figure to OSHA's estimate of 37,924 lost workday injuries prevented annually, revisions to this rule should save society (employees, employers and third parties) over $1 billion annually.

These estimates of the economic benefits of the rule may be conservative, since the benefits analysis focuses on injuries prevented, not reduced severity of injuries. To the extent the rule results in nonlost workday injuries, as opposed to disabling lost workday injuries, the economic benefits may be greater yet. In sum, OSHA estimates the rule will save society over $1 billion annually, dwarfing the initial $52 million investment. Employers themselves should save over $150 million through full compliance with revisions to the PPE standard, approximately three times the estimated cost of compliance.

Economic Impact and Regulatory Flexibility Analysis

OSHA analyzed the potential economic impact of the revised PPE standard and has determined that none of the major industry groups subject to the standard would experience a significant economic burden as a result of compliance, even before cost savings to employers are factored in. Table 5 presents average compliance cost, revenue, profit, and economic impacts of the standard for establishments in affected industry groups. If all of the compliance costs are passed through to the consumer, OSHA estimates that the average price increase would be negligible, less than 0.001 percent, calculated as the ratio of total compliance cost to industry sales. The maximum price increase in any industry would be less than 0.005 percent. Given the minuscule price increases necessary to cover these safety investments, employers should be able to pass along compliance costs to their customers. However, even if all costs were absorbed by the affected firms, the average reduction in profits would be approximately 0.01 percent, the largest being 0.06 percent. OSHA, therefore, does not expect the revised standard to have a significant economic impact on affected firms or industries[4].

TABLE 5—Economic Impact of the PPE Standard on Affected Establishments (Gross Costs)

SIC	Industry	Number of Affected Establishments	Annual Compliance Cost	Average Cost per Establishment	Average Sales per Establishment	Average Pre-Tax Profits per Establishment	Cost as Percent of:	
							Revenue	Profit
20,21	Food & Tobacco	20,959	$3,235,871	$154	$35,979,353	$2,233,881	0.0004%	0.007%
22	Textiles	3,994	1,704,333	427	12,519,165	697,823	0.0034%	0.061%
23,31	Apparel & Leather	19,253	3,324,570	173	5,586,936	330,094	0.0031%	0.052%
24	Lumber & Wood Products	36,022	2,260,771	63	3,131,243	168,014	0.0020%	0.037%
25	Furniture & Fixtures	9,670	1,513,783	157	5,300,655	304,204	0.0030%	0.051%
26	Paper & Allied Products	5,425	1,553,279	286	26,331,141	1,459,848	0.0011%	0.020%
27	Printing & Publishing	38,618	4,429,794	115	4,681,511	348,979	0.0025%	0.033%
28	Chemicals	9,625	1,175,888	122	32,935,814	1,974,902	0.0004%	0.006%
29	Petroleum Refining	1,394	67,003	48	159,307,423	7,965,371	0.0000%	0.001%
30	Rubber & Plastics	12,222	1,652,296	135	9,587,427	599,044	0.0014%	0.023%
32	Stone, Glass, Concrete	12,754	829,097	65	6,671,737	390,362	0.0010%	0.017%
33	Primary Metals	6,114	831,330	136	23,060,401	1,210,615	0.0006%	0.011%
34	Fabricated Metals	28,179	1,684,104	60	6,444,462	372,424	0.0009%	0.016%
35	Machinery & Computers	41,692	2,609,445	63	11,274,470	763,560	0.0006%	0.008%
36	Electric & Electronics	12,777	3,608,956	282	13,186,533	772,544	0.0021%	0.037%
37	Transportation Equipment	8,081	1,900,586	235	56,312,311	3,036,469	0.0004%	0.008%
38,39	Misc. Manufacturing	17,197	1,823,163	106	10,197,872	687,010	0.0010%	0.015%
41,42	Transportation	91,583	3,219,343	35	2,502,991	721,995	0.0014%	0.005%
48	Communications	6,857	407,843	59	18,184,342	3,168,484	0.0003%	0.002%
49	Utilities	11,134	584,444	52	26,418,648	2,742,749	0.0002%	0.002%
501,55, 75	Automotive Trade & Services	255,506	8,645,538	34	1,896,375	67,478	0.0018%	0.050%
50,51,52	Wholesale & Retail Trade	121,753	3,493,746	29	6,001,894	264,946	0.0005%	0.011%
7692	Welding Repair	6,652	94,796	14	294,996	27,928	0.0048%	0.051%
13	Oil & Gas Extraction	9,129	1,103,077	121	36,323,403	3,601,331	0.0003%	0.003%
078,08	Horticulture & Forestry	35,675	655,928	18	526,658	42,007	0.0035%	0.044%
	TOTAL/WEIGHTED AVERAGE.	822,265	$52,408,983	$64	$7,233,605	$519,497	0.0009%	0.012%

Source: U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis

[4] In the Preliminary Regulatory Impact Analysis [1], OSHA analyzed the entire spectrum of affected industries, and had determined no significant economic impact would result on establishments on any industry, with substantially less impact in those establishments without heavy PPE use. This determination was reached even though the PRIA included costs not directly attributable to the proposal, resulting in a total cost estimate which was nearly twice the cost estimated in this final analysis. Accordingly, OSHA reaffirms that establishments in those industries will incur minimal economic impact.

In accordance with the Regulatory Flexibility Act of USC 601 *et seq.*), OSHA also analyzed the economic impact on small establishments (19 or fewer employees), looking particularly for signs that the rule would pose excessive burdens per employee, relative to impacts faced by larger entities. OSHA has determined that, in relation to compliance with the standard, equipment purchases and labor utilization will to a great extent depend positively on size of workforce; smaller firms are not expected to incur relatively higher costs per worker. As shown in Table 6, OSHA estimates that the average price impact for small establishments will be 0.002 percent, while profit impacts will not exceed 0.04 percent under the assumption that all compliance costs are absorbed by firms. These impacts are judged to be relatively minor; therefore, the PPE standard is economically feasible for small establishments.

TABLE 6—Economic Impact of the PPE Standard on Affected Small Establishments (19 or Fewer Employees) (Gross Costs)

SIC	Industry	Number of Affected Establishments	Annual Compliance Cost	Average Cost per Establishment	Average Sales per Establishment	Average Pre-Tax Profits per Establishment	Cost as Percent of:	
							Revenue	Profit
20,21	Food & Tobacco	10,095	$301,241	$30	$5,080,999	$380,574	0.0006%	0.01%
22	Textiles	1,204	77,500	64	3,081,265	159,437	0.0021%	0.04%
23,31	Apparel & Leather	9,134	230,385	25	994,572	46,206	0.0025%	0.05%
24	Lumber & Wood Products	23,190	537,285	23	550,727	23,541	0.0042%	0.10%
25	Furniture & Fixtures	5,476	165,026	30	854,790	38,885	0.0035%	0.08%
26	Paper & Allied Products	1,755	71,002	40	3,998,272	212,874	0.0010%	0.02%
27	Printing & Publishing	25,705	775,395	30	504,012	29,648	0.0060%	0.10%
28	Chemicals	5,743	87,504	15	4,017,910	233,815	0.0004%	0.01%
29	Petroleum Refining	892	19,860	22	17,849,435	892,472	0.0001%	0.00%
30	Rubber & Plastics	4,473	94,909	21	2,020,670	110,565	0.0011%	0.02%
32	Stone, Glass, Concrete	8,695	152,938	18	1,234,776	58,639	0.0014%	0.03%
33	Primary Metals	2,098	38,723	18	5,945,929	310,452	0.0003%	0.01%
34	Fabricated Metals	13,852	253,472	18	1,465,387	69,533	0.0012%	0.03%
35	Machinery & Computers	25,991	413,117	16	1,786,536	105,311	0.0009%	0.02%
36	Electric & Electronics	5,397	119,451	22	7,374,341	432,032	0.0003%	0.01%
37	Transportation Equipment	4,171	67,847	16	3,281,219	164,394	0.0005%	0.01%
38,39	Misc. Manufacturing	11,330	332,099	29	1,104,625	60,718	0.0027%	0.05%
41,42	Transportation	50,514	895,120	18	457,059	50,523	0.0039%	0.04%
48	Communications	4,432	101,226	23	2,187,022	381,072	0.0010%	0.01%
49	Utilities	6,262	61,913	10	1,998,589	197,519	0.0005%	0.01%
501,55, 75	Automotive Trade & Services	230,396	5,845,664	25	505,347	16,312	0.0050%	0.16%
50,51,52	Wholesale & Retail Trade	91,722	1,371,448	15	1,245,583	44,869	0.0012%	0.03%
7692	Welding Repair	6,078	53,146	9	105,240	8,543	0.0083%	0.10%
13	Oil & Gas Extraction	6,494	167,833	26	979,674	79,670	0.0026%	0.03%
078,08	Horticulture & Forestry	30,238	494,539	16	184,033	12,622	0.0089%	0.13%
	TOTAL/WEIGHTED AVERAGE.	585,337	$12,728,644	$22	$1,014,850	$54,419	0.0021%	0.04%

Source: U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis

Environmental Impact

The revisions to the PPE standard have been reviewed in accordance with the requirements of the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.), the regulations of the Council on Environmental Quality (40 CFR part 1500 through 1517), and the Department of Labor's NEPA procedures (29 CFR part 11). As a result of this review, OSHA has determined that the new PPE standard will have no significant environmental impact.

References

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2. Eastern Research Group. *Economic Analysis of the Revised General Industry Personal Protection Equipment Standard (CFR Part 1910.132 – 1910.140)*. Prepared for the U.S. Department of Labor, Occupational Safety and Health Administration under Contract No. J–9–F–0057. Arlington, MA. October 1988, as described in Exhibit 4–6.

3. PPE Survey Description. Exhibit 4–1.

4. Survey Instrument. Exhibit 4–2.

5. Tables of Weighted Survey Data. Exhibit 4–5.

6. Bureau of Labor Statistics. *Summary and Analysis of Injuries and Illnesses in the United States by Industry, 1989*. U.S. Department of Labor, Bulletin 2379, April 1991.

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9. "In the Blink of an Eye", *Occupational Hazards*, June 1991.

10. Levitt, Raymond, et al. *Improving Construction Safety Performance: The User's Role*. Stanford University Department of Civil Engineering. Technical Report No. 260. August 1981. Exhibit 3–20, Docket S–012A.

11. Eastern Research Group, Inc. *Industry Profile Study of a Standard for Control of Hazardous Energy Sources Including Lockout/Tagout Procedures*. Prepared for the U.S. Department of Labor, Occupational Safety and Health Administration, under Contract J–9–F–2–0047, Exhibit 3–15, Docket S–012A.

12. National Safety Council, *Accident Facts*, 1993 Edition.

V. Statutory Considerations

A. Introduction

OSHA has described the hazards that require the use of PPE and the measures required to protect affected employees from those hazards in Section I, *Background*, Section II, *Workplace hazards involved*; and Section III, *Summary and Explanation of the Final Rule*, above. The Agency is providing the following discussion of the statutory mandate for OSHA rulemaking activity to explain the legal basis for its determination that the revised PPE standard, as promulgated, is reasonably necessary to protect affected employees from significant risks of injury and death.

Section 2(b)(3) of the Occupational Safety and Health Act authorizes "the Secretary of Labor to set mandatory *occupational safety and health standards* applicable to businesses affecting interstate commerce", and section 5(a)(2) provides that "[e]ach employer shall comply with *occupational safety and health standards* promulgated under this Act" (emphasis added). Section 3(8) of the OSH Act (29 U.S.C. § 652(8)) provides that "the term 'occupational safety and health standard' means a standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment."

In two recent cases, reviewing courts have expressed concern that OSHA's interpretation of these provisions of the OSH Act, particularly of section 3(8) as it pertains to safety rulemaking, could lead to overly costly or under-protective safety standards. In *International Union, UAW v. OSHA*, 938 F.2d 1310 (D.C. Cir. 1991), the District of Columbia Circuit rejected substantive challenges to OSHA's lockout/tagout standard and denied a request that enforcement of that standard be stayed, but it also expressed concern that OSHA's interpretation of the OSH Act could lead to safety standards that are very costly and only minimally protective. In *National Grain & Feed Ass'n v. OSHA*, 866 F.2d 717 (5th Cir. 1989), the Fifth Circuit concluded that Congress gave OSHA considerable discretion in structuring the costs and benefits of safety standards but, concerned that the grain dust standard might be under-protective, directed OSHA to consider adding a provision that might further reduce significant risk of fire and explosion.

OSHA rulemakings involve a significant degree of agency expertise and policy-making discretion to which reviewing courts must defer. (See for example, *Building & Constr. Trades Dep't, AFL-CIO v. Brock*, 838 F.2d 1258, 1266 (D.C. Cir. 1988); *Industrial Union Dep't, AFL-CIO v. American Petroleum Inst.*, 448 U.S. 607, 655 n. 62 (1980).) At the same time, the agency's technical expertise and policy-making authority must be exercised within discernable parameters. The lockout/tagout and grain handling standard decisions sought clarification of the agency's view of the scope of its expertise and authority. In light of those decisions, the preamble to this safety standard states OSHA's views regarding the limits of its safety rulemaking authority and explains why the Agency is confident that its interpretive views have in the past avoided regulatory extremes and continue to do so in this rule.

Stated briefly, the OSH Act requires that, before promulgating any occupational safety standard, OSHA demonstrate based on substantial evidence in the record as a whole that: (1) the proposed standard will substantially reduce a significant risk of material harm; (2) compliance is technologically feasible in the sense that the protective measures being required already exist, can be brought into existence with available technology, or can be created with technology that can reasonably be developed; (3) compliance is economically feasible in the sense that industry can absorb or pass on the costs without major dislocation or threat of instability; and (4) the standard is cost effective in that it employs the least expensive protective measures capable of reducing or eliminating significant risk. Additionally, proposed safety standards must be compatible with prior agency action, must be responsive to significant comment in the record, and, to the extent allowed by statute, must be consistent with applicable Executive Orders. These elements limit OSHA's regulatory discretion for safety rulemaking and provide a decision-making framework for developing a rule.

B. Congress concluded that OSHA regulations are necessary to protect workers from occupational hazards and that employers should be required to reduce or eliminate significant workplace health and safety threats.

At section 2(a) of the OSH Act (29 U.S.C. § 651(a)), Congress announced its determination that occupational injury and illness should be eliminated as much as possible: "The Congress finds that occupational injury and illness arising out of work situations impose a substantial burden upon, and are a hindrance to, interstate commerce in terms of lost production, wage loss, medical expenses, and disability compensation payments." Congress therefore declared "it to be its purpose and policy * * * to assure so far as possible every working man and woman in the Nation safe * * * working conditions [29 U.S.C. § 651(b)]."

To that end, Congress instructed the Secretary of Labor to adopt existing federal and consensus standards during the first two years after the OSH Act became effective and, in the event of conflict among any such standards, to "promulgate the standard which assures the greatest protection of the safety or health of the affected employees [29 U.S.C. § 655(a)]." Congress also directed the Secretary to set mandatory occupational safety standards [29 U.S.C. § 651(b)(3)], based on a rulemaking record and substantial evidence [29 U.S.C. § 655(b)(2)], that are "reasonably necessary or appropriate to provide safe * * * employment and places of employment." When promulgating permanent safety or health standards that differ from existing national consensus standards, the Secretary must explain "why the rule as adopted will better effectuate the purposes of this Act than the national consensus standard [29 U.S.C. § 655(b)(8)]." Correspondingly, every employer must comply with OSHA standards and, in addition, "furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees [29 U.S.C. § 654(a)]."

"Congress understood that the Act would create substantial costs for employers, yet intended to impose such costs when necessary to create a safe and healthful working environment. Congress viewed the costs of health and safety as a cost of doing business* * *. Indeed, Congress thought that the *financial costs* of health and safety problems in the workplace were as large as or larger than the *financial costs* of eliminating these problems [*American Textile Mfrs. Inst. Inc. v. Donovan*, 452 U.S. 490, 519–522 (1981) (*ATMI*); emphasis was supplied in original]." "[T]he fundamental objective of the Act [is] to prevent occupational deaths and serious injuries [*Whirlpool Corp. v. Marshall*, 445 U.S. 1, 11 (1980)]." "We know the costs would be put into consumer goods but that is the price we should pay for the 80 million workers in America [S. Rep. No. 91–1282, 91st

Cong., 2d Sess. (1970); H.R. Rep. No. 91–1291, 91st Cong., 2d Sess. (1970), *reprinted in* Senate Committee on Labor and Public Welfare, *Legislative History of the Occupational Safety and Health Act of 1970*, (Committee Print 1971) ("Leg. Hist.") at 444 (Senator Yarborough)]." "Of course, it will cost a little more per item to produce a washing machine. Those of us who use washing machines will pay for the increased cost, but it is worth it, to stop the terrible death and injury rate in this country [*Id.* at 324; see also 510–511, 517]."

[T]he vitality of the Nation's economy will be enhanced by the greater productivity realized through saved lives and useful years of labor.

When one man is injured or disabled by an industrial accident or disease, it is he and his family who suffer the most immediate and personal loss. However, that tragic loss also affects each of us. As a result of occupational accidents and disease, over $1.5 billion in wages is lost each year [1970 dollars], and the annual loss to the gross national product is estimated to be over $8 billion. Vast resources that could be available for productive use are siphoned off to pay workmen's compensation and medical expenses* * *.

Only through a comprehensive approach can we hope to effect a significant reduction in these job death and casualty figures. [*Id.* at 518–19 (Senator Cranston)]

Congress considered uniform enforcement crucial because it would reduce or eliminate the disadvantage that a conscientious employer might experience where inter-industry or intra-industry competition is present. Moreover, "many employers -- particularly smaller ones -- simply cannot make the necessary investment in health and safety, and survive competitively, unless all are compelled to do so [Leg. Hist. at 144, 854, 1188, 1201]."

Thus, the statutory text and legislative history make clear that Congress conclusively determined that OSHA regulation is necessary to protect workers from occupational hazards and that employers should be required to reduce or eliminate significant workplace health and safety threats.

C. As construed by the courts and by OSHA, the OSH Act sets clear and reasonable limits for agency rulemaking action.

OSHA has long followed the teaching that section 3(8) of the OSH Act requires that, before it promulgates "*any* permanent health or safety standard, [it must] make a threshold finding that a place of employment is unsafe -- in the sense that significant risks are present and can be eliminated or lessened by a change in practices [*Industrial Union Dep't, AFL-CIO v. American Petroleum Inst.*, 448 U.S. 607, 642 (1980) (plurality) (*Benzene*); emphasis was supplied in original]." Thus, the national consensus and existing federal standards that Congress instructed OSHA to adopt summarily within two years of the OSH Act's inception provide reference points concerning the least an OSHA standard should achieve (29 U.S.C. §§ 655(a)). As a result, OSHA is precluded from regulating insignificant safety risks or from issuing safety standards that do not at least lessen risk in a significant way.

The OSH Act also limits OSHA's discretion to issue overly burdensome rules, as the agency also has long recognized that "any standard that was not economically or technologically feasible would *a fortiori* not be 'reasonably necessary or appropriate' under the Act. See *Industrial Union Dep't v. Hodgson*, [499 F.2d 467, 478 (D.C. Cir. 1974)] ('Congress does not appear to have intended to protect employees by putting their employers out of business.') [*American Textile Mfrs. Inst. Inc.*, 452 U.S. at 513 n. 31 (a standard is economically feasible even if it portends 'disaster for some marginal firms,' but it is economically infeasible if it 'threaten[s] massive dislocation to, or imperil[s] the existence of,' the industry)]."

By stating the test in terms of "threat" and "peril," the Supreme Court made clear in *ATMI* that economic infeasibility begins short of industry-wide bankruptcy. OSHA itself has placed the line considerably below this level. (See for example, *ATMI*, 452 U.S. at 527 n. 50; 43 FR 27, 360 (June 23, 1978). Proposed 200 μg/m3 PEL for cotton dust did not raise serious possibility of industry-wide bankruptcy, but impact on weaving sector would be severe, possibly requiring reconstruction of 90 percent of all weave rooms. OSHA concluded that the 200 μg/m3 level was not feasible for weaving and that 750 μg/m3 was all that could reasonably be required). See also 54 FR 29, 245–246 (July 11, 1989); *American Iron & Steel Institute*, 939 F.2d at 1003. OSHA raised engineering control level for lead in small nonferrous foundries to avoid the possibility of bankruptcy for about half of small foundries even though the industry as a whole could have survived the loss of small firms.)

All OSHA standards must also be cost-effective in the sense that the protective measures being required must be the least expensive measures capable of achieving the desired end (*ATMI*, at 514 n. 32; *Building and Constr. Trades Dep't AFL-CIO v. Brock*, 838 F.2d 1258, 1269 (D.C. Cir. 1988)). OSHA gives additional consideration to financial impact in setting the period of time that should be allowed for compliance, allowing as much as ten years for compliance phase-in. (See *United Steelworkers of Am. v. Marshall*, 647 F.2d 1189, 1278 (D.C. Cir. 1980), *cert. denied*, 453 U.S. 913 (1981).) Additionally, OSHA's enforcement policy takes account of financial hardship on an individualized basis. OSHA's Field Operations Manual provides that, based on an employer's economic situation, OSHA may extend the period within which a violation must be corrected after issuance of a citation (CPL. 2.45B, Chapter III, paragraph E6d(3)(a), Dec. 31, 1990).

To reach the necessary findings and conclusions, OSHA conducts rulemaking in accordance with the requirements of section 6 of the OSH Act. The rulemaking process enables the Agency to determine the qualitative and, if possible, the quantitative nature of the risk with (and without) regulation, the technological feasibility of compliance, the availability of capital to the industry and the extent to which that capital is required for other purposes, the industry's profit history, the industry's ability to absorb costs or pass them on to the consumer, the impact of higher costs on demand, and the impact on competition with substitutes and imports. (See *ATMI* at 2501–2503; *American Iron & Steel Institute* generally.) Section 6(f) of the OSH Act further provides that, if the validity of a standard is challenged, OSHA must support its conclusions with "substantial evidence in the record considered as a whole," a standard that courts have determined requires fairly close scrutiny of agency action and the explanation of that action. (See *Steelworkers*, 647 F.2d at 1206–1207.)

OSHA's powers are further circumscribed by the independent Occupational Safety and Health Review Commission, which provides a neutral forum for employer contests of citations issued by OSHA for noncompliance with health and safety standards (29 U.S.C. §§ 659–661; noted as an additional constraint in *Benzene* at 652 n. 59). OSHA must also respond rationally to similarities and differences among industries or industry sectors. (See *Building and Constr. Trades Dep't, AFL-CIO v. Brock*, 838 F.2d 1258, 1272–73 (D.C. Cir. 1988).)

OSHA rulemaking is thus constrained first by the need to demonstrate that the standard will substantially reduce a significant risk of material harm, and then by the requirement that

compliance is technologically capable of being done and not so expensive as to threaten economic instability or dislocation for the industry. Within these bounds, further constraints such as the need to find cost-effective measures and to respond rationally to all meaningful comment militate against regulatory extremes.

D. The revised PPE standard complies with the statutory criteria described above and is not subject to the additional constraints applicable to section 6(b)(5) standards.

Standards which regulate hazards that are frequently undetectable because they are subtle or develop slowly or after long latency periods, are frequently referred to as "health" standards. Standards that regulate hazards, like explosions or electrocution, that cause immediately noticeable physical harm, are called "safety" standards. (See *National Grain & Feed Ass'n v. OSHA (NGFA II)*, 866 F.2d 717, 731, 733 (5th Cir. 1989). As noted above, section 3(8) provides that *all* OSHA standards must be "reasonably necessary or appropriate." In addition, section 6(b)(5) requires that OSHA set health standards which limit significant risk "to the extent feasible." OSHA has determined that the revised PPE standard is a safety standard, because the revised PPE standard addresses hazards, such as molten metal, falling objects and electricity, that are immediately dangerous to life or health, not the longer term, less obvious hazards subject to section 6(b)(5).

The OSH Act and its legislative history clearly indicate that Congress intended for OSHA to distinguish between safety standards and health standards. For example in section 2(b)(6) of the OSH Act, Congress declared that the goal of assuring safe and healthful working conditions and preserving human resources would be achieved, in part:

> * * * by exploring ways to discover latent diseases, establishing causal connections between diseases and work in environmental conditions, and conducting other research relating to health problems, in recognition of the fact that occupational health standards present problems often different from those involved in occupational safety.

The legislative history makes this distinction even clearer:

> [The Secretary] should take into account that anyone working in toxic agents and physical agents which might be harmful may be subjected to such conditions for the rest of his working life, so that we can get at something which might not be toxic now, if he works in it a short time, but if he works in it the rest of his life might be very dangerous; and we want to make sure that such things are taken into consideration in establishing standards. [*Leg. Hist.* at 502–503 (Sen. Dominick), quoted in *Benzene* at 648–49]

Additionally, Representative Daniels distinguished between "insidious 'silent killers' such as toxic fumes, bases, acids, and chemicals" and "violent physical injury causing immediate visible physical harm" (*Leg. Hist.* at 1003), and Representative Udall contrasted insidious hazards like carcinogens with "the more visible and well-known question of industrial accidents and on-the-job injury" (*Leg. Hist.* at 1004). (See also, for example, S. Rep. No. 1282, 91st Cong., 2d Sess 2–3 (1970), U.S. Code Cong. & Admin. News 1970, pp. 5177, 5179, reprinted in Leg. Hist. at 142–43, discussing 1967 Surgeon General study that found that 65 percent of employees in industrial plants "were potentially exposed to harmful physical agents, *such as severe noise or vibration*, or to toxic materials"; Leg.Hist at 412; *id.* at 446; *id.* at 516; *id.* at 845; *International Union, UAW* at 1315.)

In reviewing OSHA rulemaking activity, the Supreme Court has held that section 6(b)(5) requires OSHA to set "the most protective standard consistent with feasibility" (*Benzene* at 643 n. 48). As Justice Stevens observed:

> The reason that Congress drafted a special section for these substances * * * was because Congress recognized that there were special problems in regulating health risks as opposed to safety risks. In the latter case, the risks are generally immediate and obvious, while in the former, the risks may not be evident until a worker has been exposed for long periods of time to particular substances. [*Benzene*, at 649 n. 54.]

Challenges to the grain dust and lockout/tagout standards included assertions that grain dust in explosive quantities and uncontrolled energy releases that could expose employees to crushing, cutting, burning or explosion hazards were harmful physical agents so that OSHA was required to apply the criteria of section 6(b)(5) when determining how to protect employees from those hazards. Reviewing courts have uniformly rejected such assertions. For example, the Court in *International Union, UAW v. OSHA*, 938 F.2d 1310 (D.C. Cir. 1991) rejected the view that section 6(b)(5) provided the statutory criteria for regulation of uncontrolled energy, holding that such a "reading would obliterate a distinction that Congress drew between 'health' and 'safety' risks." The Court also noted that the language of the OSH Act and the legislative history supported the OSHA position (*International Union, UAW* at 1314). Additionally, the Court stated: "We accord considerable weight to an agency's construction of a statutory scheme it is entrusted to administer, rejecting it only if unreasonable" (*International Union, UAW* at 1313, citing *Chevron U.S.A., Inc. v. NRDC*, 467 U.S. 837, 843 (1984)).

The Court reviewing the grain dust standard also deferred to OSHA's reasonable view that the Agency was not subject to the feasibility mandate of section 6(b)(5) in regulating explosive quantities of grain dust (*National Grain & Feed Association v. OSHA (NGFA II)*, 866 F.2d 717, 733 (5th Cir. 1989)). It therefore applied the criteria of section 3(8), requiring the Agency to establish that the standard is "reasonably necessary or appropriate" to protect employee safety.

As explained in Section I, *Background*, Section III, *Summary and Explanation of the Standard*, and in Section IV, *Summary of the Final Regulatory Impact Analysis and Regulatory Flexibility Analysis*, above, OSHA has determined that the non-use or misuse of appropriate PPE poses significant risks to employees and that the provisions of the final rule are reasonably necessary to protect affected employees from those risks. The Agency estimates that compliance with the revised PPE standard will cost $52.4 million annually and will reduce the risk of the identified hazards (preventing 4 fatalities and 102,000 injuries annually). This constitutes a substantial reduction of significant risk of material harm for the exposed population of approximately 22 million general industry employees. The Agency believes that compliance is technologically feasible because the rulemaking record indicates that the PPE required by the standard is already in general use throughout the industries covered by the standard. Additionally, OSHA believes that compliance is economically feasible, because, as documented in the Regulatory Impact Analysis, all regulated sectors can readily absorb or pass on compliance costs during the standard's first five years, and economic benefits will exceed compliance costs thereafter.

As detailed in Section IV, *Summary of the Final Regulatory Impact Analysis and Regulatory Flexibility Analysis* and the Table below, the standard's costs, benefits, and compliance requirements are consistent with those of other OSHA safety standards, such as the Hazardous Waste Operations and Emergency Response (HAZWOPER) standard.

Standard (CFR cite)	Final rule date (FR cite)	Number of deaths prevented annually	Number of injuries prevented annually	Annual cost first five yrs (mill)	Annual cost next five yrs (mill)
Grain handling (1910.272)	12–31–87 (52 FR 49622)	18	394	5.9 to 33.4	5.9 to 33.4
HAZWOPER (1910.120)	3–6–89 (54 FR 9311)	32	18,700	153	153
Excavations (Subpt P)	10–31–89 (54 FR 45,954)	74	800	306	306
Process Safety Mgmt (1910.119)	2–24–92 57 FR 6356	330	1,917	880.7	470.8
Permit-Required Confined Spaces (1910.146)	1–14–93 58 FR 4462	54	5,041	202.4	202.4

OSHA assessed employee risk by evaluating exposure to PPE-related hazards in a large range of industries. The *Summary of the Final Regulatory Impact Analysis and Regulatory Flexibility Analysis*, Section IV, above, presents OSHA's estimate of the costs and benefits of the revised PPE standard in terms of the Standard Industrial Classification (SIC) codes for the industries regulated.

The Agency acknowledges that some industries covered by the revised PPE standard have more documented PPE-related injuries or fatalities than do others. However, the record indicates that the hazards addressed by the standard exist throughout general industry. OSHA does not believe that the significance of the risk associated with exposure to PPE-related hazards within a given SIC classification is dependent on the number of incidents documented for that particular industry sector. OSHA has set the scope of the revised PPE standard to address those situations where employees are exposed to PPE-related hazards, regardless of the relative frequency of incidents. The Agency believes, based on analysis of the elements of the hazards identified, there is sufficient information for OSHA to determine that employees in the covered sectors face significant risks related to the non-use or misuse of PPE. Therefore, the Agency has determined that all employees within the scope of the revised PPE standard face a significant risk of material harm and that compliance with the revised PPE standard is reasonably necessary to protect affected employees from that risk, regardless of the number of injuries or fatalities reported for the SIC code to which the employer has been assigned.

In order to facilitate data analysis, OSHA has organized the pertinent injury and fatality information according to the SIC code for the particular industry sectors where incidents have been reported. Given the limitations of the OSHA database and the likelihood of misclassification (due, for example, to the difficulty of classifying contractors), the Agency does not believe that the risks associated with the use or misuse of PPE vary according to the SIC code to which employers have been assigned.

OSHA has considered and responded to all substantive comments regarding the proposed PPE standard on their merits in the Section III, *Summary and Explanation of the Standard*, earlier in this preamble. In particular, OSHA evaluated all suggested changes to the proposed rule in terms of their impact on worker safety, their feasibility, their cost effectiveness, and their consonance with the OSH Act.

VI. Federalism

This regulation has been reviewed in accordance with Executive Order No. 12612 (52 FR 41685, October 30, 1987), regarding Federalism. Section 18 of the Occupational Safety and Health Act (OSH Act) preempts state laws relating to issues on which Federal OSHA has promulgated occupational safety and health standards. Under the OSH Act, a State can avoid preemption in issues covered by Federal standards only if it submits, and obtains Federal approval of, a plan for the development of such standards and their enforcement. Occupational safety and health standards developed by such Plan States must, among other things, be at least as effective in providing safe and healthful employment and places of employment as the Federal standards. Where such standards are applicable to products distributed or used in interstate commerce they may not unduly burden commerce and must be justified by compelling local conditions.

The Federal standard for personal protective equipment used in general industry addresses hazards that are not unique to any one State or region of the country. Nonetheless, States with occupational safety and health plans approved under section 18 of the OSH Act will be able to develop their own State standards to deal with any special problems which might be encountered in a particular State. Moreover, because this standard is written in general, performance-oriented terms, there is considerable flexibility for State plans to require, and for affected employers to use, methods of compliance which are appropriate to the working conditions covered by the standard.

In brief, this final rule addresses a clear national problem related to occupational safety and health in general industry. Those States which have elected to participate under section 18 of the OSH Act are not preempted by this standard, and will be able to address any special conditions within the framework of the Federal Act, while ensuring that the State standards are at least as effective as that standard.

VII. State Plan States

The 25 States and territories with their own OSHA approved occupational safety and health plans must develop a comparable standard applicable to both the private and public (state and local government employees) sectors within six months of the publication date of a permanent final Federal rule or show OSHA why there is no need for action, e.g., because an existing state standard covering this area is already "at least as effective as" the new Federal standard.

These States and territories are Alaska, Arizona, California, Connecticut (plan covers only State and local government employees), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York (plan covers only State and local government employees), North Carolina, Puerto Rico, South Carolina, Oregon, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington and Wyoming.

After the effective date of the Federal final rule, until such time as a State standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate, in these States.

VIII. Recordkeeping

This final rule does not contain recordkeeping requirements.

List of Subjects in 29 CFR Part 1910

Eye protection; Face protection; Foot protection; Hand protection; Footwear; Hard hats; Head protection; Incorporation by reference; Occupational safety and health; Occupational Safety and Health Administration; Personal protective equipment; Safety glasses; Safety shoes.

Authority

This document has been prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Accordingly, pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 1–90 (55 FR 9033); and 29 CFR part 1911, 29 CFR part 1910 is amended as set forth below.

Signed at Washington D.C. this 25th day of March, 1994.

Joseph A. Dear,

Assistant Secretary of Labor.

PART 1910—[AMENDED]

Subpart I—Personal Protective Equipment

1. The authority citation for subpart I of part 1910 is revised to read as follows:

Authority: Sections 4, 6, and 8 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033), as applicable; and 29 CFR part 1911, as applicable.

2. New paragraphs (d) through (f) are added to §1910.132 to read as follows:

§1910.132 General requirements.

* * * * *

(d) *Hazard assessment and equipment selection.* (1) The employer shall assess the workplace to determine if hazards are present, or are likely to be present, which necessitate the use of personal protective equipment (PPE). If such hazards are present, or likely to be present, the employer shall:

(i) Select, and have each affected employee use, the types of PPE that will protect the affected employee from the hazards identified in the hazard assessment;

(ii) Communicate selection decisions to each affected employee; and,

(iii) Select PPE that properly fits each affected employee.

Note: Non-mandatory Appendix B contains an example of procedures that would comply with the requirement for a hazard assessment.

(2) The employer shall verify that the required workplace hazard assessment has been performed through a written certification that identifies the workplace evaluated; the person certifying that the evaluation has been performed; the date(s) of the hazard assessment; and, which identifies the document as a certification of hazard assessment.

(e) *Defective and damaged equipment.* Defective or damaged personal protective equipment shall not be used.

(f) *Training.* (1) The employer shall provide training to each employee who is required by this section to use PPE. Each such employee shall be trained to know at least the following:

(i) When PPE is necessary;

(ii) What PPE is necessary;

(iii) How to properly don, doff, adjust, and wear PPE;

(iv) The limitations of the PPE; and,

(v) The proper care, maintenance, useful life and disposal of the PPE.

(2) Each affected employee shall demonstrate an understanding of the training specified in paragraph (f)(1) of this section, and the ability to use PPE properly, before being allowed to perform work requiring the use of PPE.

(3) When the employer has reason to believe that any affected employee who has already been trained does not have the understanding and skill required by paragraph (f)(2) of this section, the employer shall retrain each such employee. Circumstances where retraining is required include, but are not limited to, situations where:

(i) Changes in the workplace render previous training obsolete; or

(ii) Changes in the types of PPE to be used render previous training obsolete; or

(iii) Inadequacies in an affected employee's knowledge or use of assigned PPE indicate that the employee has not retained the requisite understanding or skill.

(4) The employer shall verify that each affected employee has received and understood the required training through a written certification that contains the name of each employee trained, the date(s) of training, and that identifies the subject of the certification.

3. Section 1910.133 is revised to read as follows.

§1910.133 Eye and face protection.

(a) *General requirements.* (1) Each affected employee shall use appropriate eye or face protection when exposed to eye or face hazards from flying particles, molten metal, liquid chemicals, acids or caustic liquids, chemical gases or vapors, or potentially injurious light radiation.

(2) Each affected employee shall use eye protection that provides side protection when there is a hazard from flying objects. Detachable side protectors (e.g. clip-on or slide-on side shields) meeting the pertinent requirements of this section are acceptable.

(3) Each affected employee who wears prescription lenses while engaged in operations that involve eye hazards shall wear eye protection that incorporates the prescription in its design, or shall wear eye protection that can be worn over the prescription lenses without disturbing the proper position of the prescription lenses or the protective lenses.

(4) Eye and face PPE shall be distinctly marked to facilitate identification of the manufacturer.

(5) Each affected employee shall use equipment with filter lenses that have a shade number appropriate for the work being performed for protection from injurious light radiation. The following is a listing of appropriate shade numbers for various operations.

Filter Lenses for Protection Against Radiant Energy

Operations	Electric Size 1/32 in.	Arc Current	Minimum* Protective Shade
Shielded metal arc welding	Less than 3	Less than 60	7
	3-5	60-160	8
	5-8	160-250	10
	More than 8	250-550	11
Gas metal arc welding and flux cored arc welding		less than 60	7
		60-160	10
		160-250	10
		250-500	10
Gas Tungsten arc welding		less than 50	8
		50-150	8
		150-500	10
Air carbon Arc cutting	(Light)	less than 500	10
	(Heavy)	500-1000	11
Plasma arc welding		less than 20	6
		20-100	8
		100-400	10
		400-800	11
Plasma arc cutting	(light)**	less than 300	8
	(medium)**	300-400	9
	(heavy)**	400-800	10
Torch brazing			3
Torch soldering			2
Carbon arc welding			14

Filter Lenses for Protection Against Radiant Energy

Operations	Plate thickness—inches	Plate thickness—mm	Minimum* Protective Shade
Gas Welding:			
Light	Under 1/8	Under 3.2	4
Medium	1/8 to 1/2	3.2 to 12.7	5
Heavy	Over 1/2	Over 12.7	6
Oxygen cutting:			
Light	Under 1	Under 25	3
Medium	1 to 6	25 to 150	4
Heavy	Over 6	Over 150	5

* As a rule of thumb, start with a shade that is too dark to see the weld zone. Then go to a lighter shade which gives sufficient view of the weld zone without going below the minimum. In oxyfuel gas welding or cutting where the torch produces a high yellow light, it is desirable to use a filter lens that absorbs the yellow or sodium line in the visible light of the (spectrum) operation.

** These values apply where the actual arc is clearly seen. Experience has shown that lighter filters may be used when the arc is hidden by the workpiece.

(b) *Criteria for protective eye and face devices.* (1) Protective eye and face devices purchased after July 5, 1994 shall comply with ANSI Z87.1–1989, "American National Standard Practice for Occupational and Educational Eye and Face Protection," which is incorporated by reference, or shall be demonstrated by the employer to be equally effective. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American National Standards Institute. Copies may be inspected at the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Ave., N.W. room N2634, Washington, D.C. or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(2) Eye and face protective devices purchased before July 5, 1994 shall comply with the ANSI "USA standard for Occupational and Educational Eye and Face Protection," Z87.1–1968 or shall be demonstrated by the employer to be equally effective. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected at the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Ave., N.W. room N2634, Washington, D.C. or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

4. Sections 1910.135 and 1910.136 are revised to read as follows:

§1910.135 Head protection.

(a) *General requirements.* (1) Each affected employee shall wear protective helmets when working in areas where there is a potential for injury to the head from falling objects.

(2) Protective helmets designed to reduce electrical shock hazard shall be worn by each such affected employee when near exposed electrical conductors which could contact the head.

(b) *Criteria for protective helmets.* (1) Protective helmets purchased after July 5, 1994 shall comply with ANSI Z89.1–1986, "American National Standard for Personnel Protection—Protective Headwear for Industrial Workers-Requirements," which is incorporated by reference, or shall be demonstrated to be equally effective. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American National Standards Institute. Copies may be inspected at the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Ave., N.W. room N2634, Washington, D.C. or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(2) Protective helmets purchased before July 5, 1994 shall comply with the ANSI standard "American National Standard Safety Requirements for Industrial Head Protection," ANSI Z89.1–1969, or shall be demonstrated by the employer to be equally effective. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected at the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Ave., N.W. room N2634, Washington, D.C. or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

§1910.136 Foot protection.

(a) *General requirements.* Each affected employee shall wear protective footwear when working in areas where there is a danger of foot injuries due to falling and rolling objects, or objects piercing the sole, and where such employee's feet are exposed to electrical hazards.

(b) *Criteria for protective footwear.* (1) Protective footwear purchased after July 5, 1994 shall comply with ANSI Z41–1991, "American National Standard for Personal Protection—Protective Footwear," which is incorporated by reference, or shall be demonstrated by the employer to be equally effective. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American National Standards Institute. Copies may be inspected at the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Ave., N.W. room N2634, Washington, D.C. or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(2) Protective footwear purchased before July 5, 1994 shall comply with the ANSI standard "USA Standard for Men's Safety-Toe Footwear," Z41.1–1967, which is incorporated by reference, or shall be demonstrated by the employer to be equally effective. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected at the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Ave., N.W. room N2634, Washington, D.C. or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

5. A new §1910.138 is added to read as follows.

1910.138 Hand protection.

(a) *General requirements.* Employers shall select and require employees to use appropriate hand protection when employees' hands are exposed to hazards such as those from skin absorption of harmful substances; severe cuts or lacerations; severe abrasions; punctures; chemical burns; thermal burns; and harmful temperature extremes.

(b) *Selection.* Employers shall base the selection of the appropriate hand protection on an evaluation of the performance characteristics of the hand protection relative to the task(s) to be performed, conditions present, duration of use, and the hazards and potential hazards identified.

6. Appendices A and B to Subpart I are added to read as follows.

Appendix A to Subpart I—References for further information (Non-mandatory)

The documents in Appendix A provide information which may be helpful in understanding and implementing the standards in Subpart I.

1. Bureau of Labor Statistics (BLS). "Accidents Involving Eye Injuries." Report 597, Washington, D.C.: BLS, 1980.

2. Bureau of Labor Statistics (BLS). "Accidents Involving Face Injuries." Report 604, Washington, D.C.: BLS, 1980.

3. Bureau of Labor Statistics (BLS). "Accidents Involving Head Injuries." Report 605, Washington, D.C.: BLS, 1980.

4. Bureau of Labor Statistics (BLS). "Accidents Involving Foot Injuries." Report 626, Washington, D.C.: BLS, 1981.

5. National Safety Council. "Accident Facts", Annual edition, Chicago, IL: 1981.

6. Bureau of Labor Statistics (BLS). "Occupational Injuries and Illnesses in the United States by Industry," Annual edition, Washington, D.C.: BLS.

7. National Society to Prevent Blindness. "A Guide for Controlling Eye Injuries in Industry," Chicago, Il: 1982.

Appendix B to Subpart I—Non-mandatory Compliance Guidelines for Hazard Assessment and Personal Protective Equipment Selection

This Appendix is intended to provide compliance assistance for employers and employees in implementing requirements for a hazard assessment and the selection of personal protective equipment.

1. *Controlling hazards.* PPE devices alone should not be relied on to provide protection against hazards, but should be used in conjunction with guards, engineering controls, and sound manufacturing practices.

2. *Assessment and selection.* It is necessary to consider certain general guidelines for assessing the foot, head, eye and face, and hand hazard situations that exist in an occupational or educational operation or process, and to match the protective devices to the particular hazard. It should be the responsibility of the safety officer to exercise common sense and appropriate expertise to accomplish these tasks.

3. *Assessment guidelines.* In order to assess the need for PPE the following steps should be taken:

a. *Survey.* Conduct a walk-through survey of the areas in question. The purpose of the survey is to identify sources of hazards to workers and co-workers. Consideration should be given to the basic hazard categories:

(a) Impact
(b) Penetration
(c) Compression (roll-over)
(d) Chemical
(e) Heat
(f) Harmful dust
(g) Light (optical) radiation

b. *Sources.* During the walk-through survey the safety officer should observe: (a) sources of motion; i.e., machinery or processes where any movement of tools, machine elements or particles could exist, or movement of personnel that could result in collision with stationary objects; (b) sources of high temperatures that could result in burns, eye injury or ignition of protective equipment, etc.; (c) types of chemical exposures; (d) sources of harmful dust; (e) sources of light radiation, i.e., welding, brazing, cutting, furnaces, heat treating, high intensity lights, etc.; (f) sources of falling objects or potential for dropping objects; (g) sources of sharp objects which might pierce the feet or cut the hands; (h) sources of rolling or pinching

objects which could crush the feet; (i) layout of workplace and location of co-workers; and (j) any electrical hazards. In addition, injury/accident data should be reviewed to help identify problem areas.

c. *Organize data.* Following the walk-through survey, it is necessary to organize the data and information for use in the assessment of hazards. The objective is to prepare for an analysis of the hazards in the environment to enable proper selection of protective equipment.

d. *Analyze data.* Having gathered and organized data on a workplace, an estimate of the potential for injuries should be made. Each of the basic hazards (paragraph 3.a.) should be reviewed and a determination made as to the type, level of risk, and seriousness of potential injury from each of the hazards found in the area. The possibility of exposure to several hazards simultaneously should be considered.

4. *Selection guidelines.* After completion of the procedures in paragraph 3, the general procedure for selection of protective equipment is to: a) Become familiar with the potential hazards and the type of protective equipment that is available, and what it can do; i.e., splash protection, impact protection, etc.; b) compare the hazards associated with the environment; i.e., impact velocities, masses, projectile shape, radiation intensities, with the capabilities of the available protective equipment; c) select the protective equipment which ensures a level of protection greater than the minimum required to protect employees from the hazards; and d) fit the user with the protective device and give instructions on care and use of the PPE. It is very important that end users be made aware of all warning labels for and limitations of their PPE.

5. *Fitting the device.* Careful consideration must be given to comfort and fit. PPE that fits poorly will not afford the necessary protection. Continued wearing of the device is more likely if it fits the wearer comfortably. Protective devices are generally available in a variety of sizes. Care should be taken to ensure that the right size is selected.

6. *Devices with adjustable features.* Adjustments should be made on an individual basis for a comfortable fit that will maintain the protective device in the proper position. Particular care should be taken in fitting devices for eye protection against dust and chemical splash to ensure that the devices are sealed to the face. In addition, proper fitting of helmets is important to ensure that it will not fall off during work operations. In some cases a chin strap may be necessary to keep the helmet on an employee's head. (Chin straps should break at a reasonably low force, however, so as to prevent a strangulation hazard). Where manufacturer's instructions are available, they should be followed carefully.

7. *Reassessment of hazards.* It is the responsibility of the safety officer to reassess the workplace hazard situation as necessary, by identifying and evaluating new equipment and processes, reviewing accident records, and reevaluating the suitability of previously selected PPE.

8. *Selection chart guidelines for eye and face protection.* Some occupations (not a complete list) for which eye protection should be routinely considered are: carpenters, electricians, machinists, mechanics and repairers, millwrights, plumbers and pipe fitters, sheet metal workers and tinsmiths, assemblers, sanders, grinding machine operators, lathe and milling machine operators, sawyers, welders, laborers, chemical process operators and handlers, and timber cutting and logging workers. The following chart provides general guidance for the proper selection of eye and face protection to protect against hazards associated with the listed hazard "source" operations.

Eye and Face Protection Selection Chart

Source	Assessment of Hazard	Protection
IMPACT—Chipping, grinding machining, masonry work, woodworking, sawing, drilling, chiseling, powered fastening, riveting, and sanding..	Flying fragments, objects, large chips, particles sand, dirt, etc..	Spectacles with side protection, goggles, face shields. See notes (1), (3), (5), (6), (10). For severe exposure, use faceshield.
HEAT—Furnace operations, pouring, casting, hot dipping, and welding.	Hot sparks	Faceshields, goggles, spectacles with side protection. For severe exposure use faceshield. See notes (1), (2), (3).
	Splash from molten metals	Faceshields worn over goggles. See notes (1), (2), (3).
	High temperature exposure	Screen face shields, reflective face shields. See notes (1), (2), (3).
CHEMICALS—Acid and chemicals handling, degreasing plating..	Splash	Goggles, eyecup and cover types. For severe exposure, use face shield. See notes (3), (11).
	Irritating mists	Special-purpose goggles.
DUST— Woodworking, buffing, general dusty conditions.	Nuisance dust	Goggles, eyecup and cover types. See note (8).
LIGHT and/or RADIATION—.		
Welding: Electric arc	Optical radiation	Welding helmets or welding shields. Typical shades: 10-14. See notes (9), (12)
Welding: Gas	Optical radiation	Welding goggles or welding face shield. Typical shades: gas welding 4-8, cutting 3-6, brazing 3-4. See note (9)
Cutting, Torch brazing, Torch soldering	Optical radiation	Spectacles or welding face-shield. Typical shades, 1.5-3. See notes (3), (9)
Glare	Poor vision	Spectacles with shaded or special-purpose lenses, as suitable. See notes (9), (10).

Notes to Eye and Face Protection Selection Chart:

(1) Care should be taken to recognize the possibility of multiple and simultaneous exposure to a variety of hazards. Adequate protection against the highest level of each of the hazards should be provided. Protective devices do not provide unlimited protection.

(2) Operations involving heat may also involve light radiation. As required by the standard, protection from both hazards must be provided.

(3) Faceshields should only be worn over primary eye protection (spectacles or goggles).

(4) As required by the standard, filter lenses must meet the requirements for shade designations in §1910.133(a)(5). Tinted and shaded lenses are *not* filter lenses unless they are marked or identified as such.

(5) As required by the standard, persons whose vision requires the use of prescription (Rx) lenses must wear either protective devices fitted with prescription (Rx) lenses or protective devices designed to be worn over regular prescription (Rx) eyewear.

(6) Wearers of contact lenses must also wear appropriate eye and face protection devices in a hazardous environment. It should be recognized that dusty and/or chemical environments may represent an additional hazard to contact lens wearers.

(7) Caution should be exercised in the use of metal frame protective devices in electrical hazard areas.

(8) Atmospheric conditions and the restricted ventilation of the protector can cause lenses to fog. Frequent cleansing may be necessary.

(9) Welding helmets or faceshields should be used only over primary eye protection (spectacles or goggles).

(10) Non-sideshield spectacles are available for frontal protection only, but are not acceptable eye protection for the sources and operations listed for "impact."

(11) Ventilation should be adequate, but well protected from splash entry. Eye and face protection should be designed and used so that it provides both adequate ventilation and protects the wearer from splash entry.

(12) Protection from light radiation is directly related to filter lens density. See note (4) . Select the darkest shade that allows task performance.

9. *Selection guidelines for head protection.* All head protection (helmets) is designed to provide protection from impact and penetration hazards caused by falling objects. Head protection is also available which provides protection from electric shock and burn. When selecting head protection, knowledge of potential electrical hazards is important. Class A helmets, in addition to impact and penetration resistance, provide electrical protection from low-voltage conductors (they are proof tested to 2,200 volts). Class B helmets, in addition to impact and penetration resistance, provide electrical protection from high-voltage conductors (they are proof tested to 20,000 volts). Class C helmets provide impact and penetration resistance (they are usually made of aluminum which conducts electricity), and should not be used around electrical hazards.

Where falling object hazards are present, helmets must be worn. Some examples include: working below other workers who are using tools and materials which could fall; working around or under conveyor belts which are carrying parts or materials; working below machinery or processes which might cause material or objects to fall; and working on exposed energized conductors.

Some examples of occupations for which head protection should be routinely considered are: carpenters, electricians, linemen, mechanics and repairers, plumbers and pipe fitters, assemblers, packers, wrappers, sawyers, welders, laborers, freight handlers, timber cutting and logging, stock handlers, and warehouse laborers.

10. *Selection guidelines for foot protection.* Safety shoes and boots which meet the ANSI Z41–1991 Standard provide both impact and compression protection. Where necessary, safety shoes can be obtained which provide puncture protection. In some work situations, metatarsal protection should be provided, and in other special situations electrical conductive or insulating safety shoes would be appropriate.

Safety shoes or boots with impact protection would be required for carrying or handling materials such as packages, objects, parts or heavy tools, which could be dropped; and, for other activities where objects might fall onto the feet. Safety shoes or boots with compression protection would be required for work activities involving skid trucks (manual material handling carts) around bulk rolls (such as paper rolls) and around heavy pipes, all of which could potentially roll over an employee's feet. Safety shoes or boots with puncture protection would be required where sharp objects such as nails, wire, tacks, screws, large staples, scrap metal etc., could be stepped on by employees causing a foot injury.

Some occupations (not a complete list) for which foot protection should be routinely considered are: shipping and receiving clerks, stock clerks, carpenters, electricians, machinists, mechanics and repairers, plumbers and pipe fitters, structural metal workers, assemblers, drywall installers and lathers, packers, wrappers, craters, punch and stamping press operators, sawyers, welders, laborers, freight handlers, gardeners and grounds-keepers, timber cutting and logging workers, stock handlers and warehouse laborers.

11. *Selection guidelines for hand protection.* Gloves are often relied upon to prevent cuts, abrasions, burns, and skin contact with chemicals that are capable of causing local or systemic effects following dermal exposure. OSHA is unaware of any gloves that provide protection against *all* potential hand hazards, and commonly available glove materials provide only limited protection against many chemicals. Therefore, it is important to select the most appropriate glove for a particular application and to determine how long it can be worn, and whether it can be reused.

It is also important to know the performance characteristics of gloves relative to the specific hazard anticipated; e.g., chemical hazards, cut hazards, flame hazards, etc. These performance characteristics should be assessed by using standard test procedures. Before purchasing gloves, the employer should request documentation from the manufacturer that the gloves meet the appropriate test standard(s) for the hazard(s) anticipated.

Other factors to be considered for glove selection in general include:

(A) As long as the performance characteristics are acceptable, in certain circumstances, it may be more cost effective to regularly change cheaper gloves than to reuse more expensive types; and,

(B) The work activities of the employee should be studied to determine the degree of dexterity required, the duration, frequency, and degree of exposure of the hazard, and the physical stresses that will be applied.

With respect to selection of gloves for protection against chemical hazards:

(A) The toxic properties of the chemical(s) must be determined; in particular, the ability of the chemical to cause local effects on the skin and /or to pass through the skin and cause systemic effects;

(B) Generally, any "chemical resistant" glove can be used for dry powders;

(C) For mixtures and formulated products (unless specific test data are available), a glove should be selected on the basis of the chemical component with the shortest breakthrough time, since it is possible for solvents to carry active ingredients through polymeric materials; and,

(D) Employees must be able to remove the gloves in such a manner as to prevent skin contamination.

12. *Cleaning and maintenance.* It is important that all PPE be kept clean and properly maintained. Cleaning is particularly important for eye and face protection where dirty or fogged lenses could impair vision.

For the purposes of compliance with §1910.132 (a) and (b), PPE should be inspected, cleaned, and maintained at regular intervals so that the PPE provides the requisite protection.

It is also important to ensure that contaminated PPE which cannot be decontaminated is disposed of in a manner that protects employees from exposure to hazards.

[FR Doc 94–7581 Filed 4–5–94; 8:45 am]

BILLING CODE 4510–26–F

federal register

Wednesday
April 6, 1994

Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing; Federal Housing Commissioner

Notice of Funding Availability for Intermediaries to Administer Preservation Technical Assistance Grants; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing; Federal Housing Commissioner

[Docket No. N-94-3719; FR-3473-N-02]

NOFA for Intermediaries to Administer Preservation Technical Assistance Grants

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of funding availability.

SUMMARY: The Department requests applications from intermediaries seeking to administer grant funds as described in the body of this NOFA. An intermediary that applies to cover an area smaller than one State must seek to administer grants in a jurisdiction covering at least one HUD area office. Intermediaries will receive funding, to be used as processing fees, from a portion of the $45 million funding that is available for technical assistance grants to promote the ability of residents of eligible low-income housing to participate meaningfully in the preservation process established by the Emergency Low Income Housing Preservation Act of 1987 (ELIHPA) and the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA). The NOFA describes the technical assistance grants that will be made available through intermediaries and the selection criteria that will be used for those grants; however, this is not a request for applications for those direct technical assistance grants.

Of the available funds, $13.5 million will be available for Resident Capacity Grants and $31.5 million will be available for Predevelopment grants. Both of these grant categories are described in Appendix A of this NOFA. Dollar amounts have been made available by State, utilizing the Department's estimates of preservation activity. Any additional amounts made available from the termination of the September 3, 1992, NOFA, or by appropriation in future years, if any, will be divided proportionately between the grant categories.

In the body of this document is information concerning eligible intermediary applicants; the funding available by State; HUD's processing of the intermediary applications; grant applicants eligible for technical assistance; and the selection criteria for both the intermediary applicants and technical assistance grant applicants. Technical assistance applicants should be aware that the determination of which regulatory requirements apply to an applicant's purchase depends on the preservation program under which the owner has filed a Notice of Intent. Thus, applicants must comply with 24 CFR part 248 and with either ELIHPA or LIHPRHA, as appropriate. (Applicants should note that part 248, as codified in the April 1, 1993, revision of the Code of Federal Regulations (CFR) was amended subsequently in a rule published on July 13, 1993 (57 FR 3384), which reflects requirements of the Housing and Community Development Act of 1992.)

DATES: The deadline for submission of intermediary applications is June 6, 1994. Applications must be physically received in the Preservation Division, Department of Housing and Urban Development, room 6284, 451 Seventh Street, SW., Washington, DC 20410, by 5 p.m., EST, on the due date.

ADDRESSES: Application kits for intermediaries may be obtained from the Multifamily Preservation Division, Department of Housing and Urban Development, room 6284, 451 Seventh Street, SW., Washington, DC 20410; and from the Multifamily Housing Clearinghouse, P.O. Box 6424, Rockville, MD 20850, telephone 1-800-955-2232.

FOR FURTHER INFORMATION CONTACT: Kevin J. East, Director, Preservation Division, Department of Housing and Urban Development, room 6284, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 708-2300. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1-800-877-TDDY (1-800-877-8339) or 202-708-9300. (Except for the "800" number, telephone numbers are not toll-free).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been reviewed by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520). The OMB control number is 2502-0502.

Background

On July 13, 1993, the Department took the unusual step of publishing a draft Notice of Fund Availability (58 FR 37819), specifically inviting public comments on the Department's proposed methodology for implementing the provisions of section 312 of the Housing and Community Development Act of 1992 (Pub. L. 102-550, approved October 28, 1992) (1992 HCDA), which added sections 251-257 to the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (Pub. L. 101-625, section 601 of the National Affordable Housing Act (NAHA), approved November 28, 1990) (LIHPRHA). The comment period expired on August 28, 1993. The Department received a total of 26 comments. Two comments were from legal/advocacy organizations; eight were from low-income housing organizations that are involved in development of and advocacy for affordable housing; nine were from tenant organizations; three were from community development corporations; two were from community service organizations; one was from a local government agency; and one was from an individual housing consultant.

This NOFA implements sections 251, 252, 253, 255, 256, and 257 of LIHPRHA, as added by section 312 of the 1992 HCDA. This NOFA does not implement section 254 of LIHPRHA, which will be implemented soon through a separate NOFA. Therefore, the comments received on section 254 as a result of the draft NOFA published July 13, 1993, will not be addressed here, but will be considered in that separate NOFA.

The first section of this NOFA is a discussion of the public comments and modifications from the draft NOFA that were made in response to the public comments and as a result of additional HUD consideration. The actual NOFA follows the discussion of public comments and begins with the section designated "II. Purpose and Substantive Description."

I. Public Comments

A. Direct Technical Assistance Grants

1. Resident Notification

The proposed NOFA required each applicant for a technical assistance grant to notify the residents of the property of the application. Seventeen commenters requested that this requirement be clarified or strengthened. Six commenters requested that the notification be in writing, and be required to include a summary of the proposed plan for the property including items on the development team, budget, and proposed tasks. The Department has adopted this recommendation.

A number of commenters requested that the notification advise that residents themselves can also apply for grant funds and can endorse an eligible

organization of their choice. Several others said this information should be given, not by the applicant, but by the Department, possibly as part of current resident notification forms under 24 CFR part 248. The Department has decided to require, as part of the applicant's resident notification, a statement that residents may themselves become eligible grantees. One commenter said the notice must have a name and contact number for the intermediary and the applicant. The Department has implemented this requirement. The same commenter suggested that intermediaries be required to supply a copy of the application with translations. The Department has decided that this requirement would be too burdensome on the intermediary and too costly to the Department. In general, however, translation expenses would be considered a reimbursable expense under the grant.

Three commenters expressed concern that owners may thwart access to buildings to prevent distribution of notices and/or resident meetings. Therefore, HUD should require managers to provide addresses of tenants to intermediaries, and any costs to owners would be reimbursable. The Department agrees that this could be a problem in certain cases. If the applicant is having difficulties getting access to the building, it may contact the administering intermediary, who will have the authority to contact the owner for access to the property and the names and addresses of residents.

Twelve commenters requested, as part of resident notification, an advance notification of application submission for technical assistance, followed by a tenant comment period. Many of these commenters also requested the inclusion of a requirement that the applicants meet with the residents prior to application submission. The comments ranged from requiring a 15-day notice prior to application submission, to a 30-day comment period following a resident meeting, with a seven-day notification that the meeting itself will take place. One commenter said at least two resident meetings should be required, one informational and one for tenant comment. One commenter suggested that the tenant comment period could partially overlap with the administering intermediary's review of the application so there would be less delay in grant awards. Another said that the general requirement to notify all residents could be too burdensome in large projects, and when owners are not cooperative, the applicant could simply certify that a public meeting was held.

The Department seeks to maximize resident participation, where appropriate, without unduly delaying the grant award process. Therefore, the Department will require written notification that a resident meeting will take place. This notification shall include summary information on the grant proposal and an indication that the residents will be able to comment on the grant proposal subsequent to the resident meeting. The meeting shall occur at least 14 days prior to application submission and resident comments may be submitted to the intermediary and the applicant during that 14-day period. If there are substantive objections by the residents, the applicant must provide a response to the residents and to the intermediary before the grant can be awarded. If necessary, the applicant will meet again with the residents to resolve issues. In any case, if a majority of residents are opposed to the application, the application will be rejected.

2. Applicant Eligibility

Seven commenters were concerned with the requirement that, if the owner has not submitted a Notice of Intent to sell, the applicant must have a binding commitment from the owner to sell to the applicant. Several suggested that a letter of intent to sell should be adequate, others that a letter to work exclusively with the applicant should be sufficient. The wording "binding agreement to sell" is statutory; however, the Department agrees that it would be impractical to require a purchase and sale agreement before the applicant has become an eligible purchaser under the preservation program and/or has become a sponsor with the capacity to purchase, own, and manage the property. Therefore, the Department interprets the binding agreement to sell as an exclusive agreement to work with the applicant entity towards a sale unless it subsequently becomes clear that the applicant is not moving towards that goal in a reasonable and timely manner. If the owner seeks to work with another entity without the consent of the applicant, consultation with the intermediary on what constitutes a timely manner would be required.

Four commenters requested that HUD clarify what "seeking to purchase with a majority of resident support" means. One suggested it should be clear that the intention of the applicant is to become an eligible purchaser in the first six months of the sale period. Several thought applicants should be required to detail the method for securing support and adhere to that method. One thought that to require a majority-supported preferred priority purchase in order to receive later grant funds is not inconsistent with the statute. The application kit will require that each applicant detail its method for securing resident support, and this will be reviewed by the intermediary in deciding whether the plan to achieve a resident-supported purchase is reasonable and achievable. In general, applicants must adhere to their grant plans to receive further funding.

Seven commenters said documented resident opposition to a grantee should be sufficient to reject or terminate a grant; four of these commenters also requested that resident withdrawal of support for a grantee stop all funding. Two commented that HUD should be required to address the reasons for withdrawal of funding. One commented that residents should be able to appeal the selection of a Community-Based Nonprofit Organization (CBO) applicant, and that termination should be allowed for nonperformance.

The Department reiterates that termination of a grant for nonperformance has always been the Department's practice. The Department has included in the NOFA the provision that a majority of resident opposition to the applicant prior to approval of an application would be sufficient for the intermediary to reject the application. In addition, a majority of resident support for another eligible entity at any time would be sufficient for termination of the grant.

One commenter stated that Resident Capacity grants should only be given to groups that will not seek to purchase and recipients should be disqualified as a priority purchaser. Another, however, said that potential purchasers should not be categorically prohibited from receiving Resident Capacity grant funds. One commenter said the NOFA should maintain the Resident Capacity-applicant concept that RCs, Resident Groups and Community-Based Nonprofit Housing Developers (CBDs) are equally eligible.

The Department believes that the statute is clear on eligibility in this case. Nonprofit community-based housing developers may receive Resident Capacity grants in order to educate and organize the residents and resident organizations. However, in the case of competing applications for Resident Capacity grants, the intermediaries will give preference to resident groups and resident organizations.

A commenter said that grantees should be required to demonstrate fiscal standards or to use grant funds to

establish them. The Department has included this requirement in previous grant programs and will continue to include the requirement.

Four commenters suggested that the threshold for resident membership in resident groups should be raised to 10% of the units. One suggested that all recipients should have this support. Another suggested that a committee structure that involves residents by building or floor should be required. Another commenter, however, felt that the proposed NOFA set a realistically low threshold for demonstrating resident support at an early stage and that, instead, the requirement should be for ongoing progress toward gaining greater resident support. The Department has not increased the minimum unit threshold, but will, through its guidance to intermediaries, require direct assistance grantees to show continued effort towards gaining resident support.

One commenter stated that resident groups that are not yet Resident Councils should not be able to apply for Resident Capacity grants. Again, the statute is clear on this point—resident groups are eligible for these grants. Two commenters felt that Resident Capacity grant applicants should be required to identify persons carrying out activities and their qualifications. The Department has clarified this in the NOFA.

One commenter suggested that joint venture applications should be permitted from any eligible applicants. The Department has clarified this in the NOFA.

Five commenters wanted clarification that a Notice of Election to Proceed under the provision of section 604 of LIHPRHA (Form 9610) should count as a Notice of Intent for purposes of eligibility. The Department has made this clarification. Two others suggested that the Form 9610 should make a property eligible regardless of whether or not the owner is currently proceeding under the program.

The Department will not allow applications in properties when the owner is not proceeding under the program at this time. A Form 9610 will count as a Notice of Intent under this NOFA only if the owner has checked box B on that form and is proceeding under the program. Not many owners have submitted a Form 9610 electing to proceed through the LIHPRHA appraisal process, but have not subsequently submitted a Notice to the Department indicating their intent to proceed.

Three commenters suggested expanding the definition of eligible applicants. One suggested including Community Action Agencies, which have been servicing the low-income community in all areas for more than 25 years, and Community-Based Nonprofit Organizations. One felt Statewide organizations should be eligible for Resident Capacity grants. The third suggested that where there is no existing CBD (in rural or underserved areas), a new CBO should be able to align itself with an existing nonprofit that has two years of experience. Again, the Department believes the statute is clear: these are not eligible applicants.

One commenter sought clarification that if the owner is not selling, residents can receive a Resident Capacity grant. Two commenters sought further clarification that resident capacity grants are separate from Predevelopment grants and can be awarded concurrently and to separate organizations. The Department has made both of these clarifications.

One commenter felt the word "community" was vaguely defined in the NOFA, and that even if an organization has not been active throughout its entire region for some time, the organization should not be precluded from applying for a grant. The Department has repeated the statutory requirement in this case, and believes it is clear.

One commenter requested that HOPE 2 grantees not be required to wait for notification of termination of HOPE 2 grant before applying for a technical assistance (resident capacity or predevelopment) grant because there might be HUD delays. Because an owner cannot file a Notice of Intent (NOI) until HOPE 2 is terminated, the criterion for previous HOPE selectees should be an owner's filing of a NOI. The Department has adopted this suggestion.

One commenter requested that existing owner/sellers (including nonprofits) should not be able to apply for Resident Capacity grants. In general, this is the Department's requirement, with the exception of nonprofit general partners seeking to buy out their limited partners. Substantive objections from residents in the case of an application from a nonprofit general partner, however, will be considered by intermediaries.

One commenter was concerned that grantees under the 1992 NOFA may not be eligible to apply for additional funds under this NOFA because they are not Community-Based Nonprofit Housing Developers. The Department considers the statute clear and finds no reason to change the statutory requirement or the NOFA. Community-Based Nonprofit Organizations funded under the previous NOFA are not necessarily eligible under this NOFA.

3. Eligible Activities

Seven commenters sought clarification on eligible activities for Resident Capacity grants. Suggestions for additional eligible activities included: providing training on rights and opportunities under LIHPRHA; training on resident issues if an owner is not selling; hiring architect or other consultants to advise residents during the Preservation Capital Needs Assessment (PCNA)/appraisal process; hiring a tenant coordinator or a project manager; expense to cover phone and copying; and legal services to interpret preservation documentation. The Department has made these clarifications.

Seven commenters sought clarification on eligible activities for Predevelopment grants. Suggestions for additional eligible activities included: obtaining a financial feasibility analysis; preparing a Plan of Action or Resident Homeownership Plan; preparing a Transfer of Physical Assets package; tenant and board training on "development" and the preservation process; legal expenses; and hiring a project manager. The Department has made these clarifications.

Six commenters felt tenant-related expenses, such as child care, bus fare to meetings, and beverages at meetings, should be allowable. The Department has made this clarification. However these expenses are only allowable to the extent that they support residents in their ability to participate in resident meetings and in planning for the grant.

Two commenters suggested that newly formed resident groups should be required to ensure a democratic process developed in conjunction with the National Alliance of HUD Tenants, that residents should have oversight authority over recipients, and that tenant input should be a criterion in receiving additional funds. The Department decided that a requirement to work with a specific national organization would be too burdensome on the grantees. The Department is clarifying that residents should be notified of the progress of the grant, but requiring resident oversight will be too burdensome on the grantee and the intermediaries.

One commenter requested that HUD consider the administrative structure necessary for providing the grants, given that the nonprofit grantees may not end up being purchasers/sponsors. The Department considered this issue and believes the statutory intent is clear. The creation of an eligible Community-

Based Nonprofit Organization (CBO) purchaser is a requirement of a Community-Based Nonprofit Housing Developer (CBD) seeking a grant to purchase a property under LIHPRHA. The Department will work with intermediaries to ensure that grant fund release is not delayed due to the creation of a new entity. Funds for activities subsequent to a purchase offer may be released to the new entity. However, that new entity is expected to continue working with the Community-Based Nonprofit Housing Developer through the term of the grant.

A commenter suggested that the requirement that grantees be in conformance with appropriate program regulations and guidelines is too burdensome on grantees and, rather, should be a requirement of HUD or intermediaries as part of monitoring. The Department believes this requirement is not too burdensome. A grantee may use the grant to fund administrative activities in order to conform with the grant and the preservation programs.

Three commenters felt HUD should spell out a clear priority to maximize grant funds to tenant-controlled coalitions. Two others requested a requirement that all grantees obtain tenant group approval, to ensure maximum tenant control over the eventual purchaser. While the Department has clarified that resident organizations have preference for Resident Capacity grants, the Department believes that the other priorities listed by the commenters are contrary to statutory intent.

4. Conflicts of Interest

The Department received six comments on the proposed NOFA's conflict of interest requirements. One commenter believed that the requirements should be stronger. Another felt the requirement should involve disclosure rather than strict guidelines, so groups could continue to work with current consultants. Three commenters believed that the conflict of interest requirements should require grant recipients to certify that there is no violation of the Related Party rule, as defined in 24 CFR 248.101. Further, to prevent "straw" buyers, the Related Party Rule should: apply to entities other than individuals (e.g., corporations and partnerships); prohibit an identity of interest with a for-profit owner; not prohibit use of consultants and attorneys who are arms length; and require all related parties to make disclosures. One commenter felt the applicant should also disclose any intent to be involved in management, development, or provision of services for money, but that continued use of architects, management agents, development consultants, etc., should not be prohibited after acquisition. Another felt there should not be a blanket prohibition on a grantee contracting with owner consultants, as long as full disclosure is made and residents, through these disclosures, are able to have a say in personnel decisions. One commenter suggested a requirement that the applicant submit: Forms 2530 for the applicant and all board members; articles of incorporation; statements of officers and directors; financial statements for the last five years; and a listing of properties owned and operated in the last ten years. This commenter felt that conflicts with current management as well as the owner should be disclosed.

The Department has decided to tighten the proposed NOFA's conflict of interest requirements. The required certification will state that there has been no conflict of interest relationship during the previous five years, and it will include a requirement that the applicant not seek any financial benefit from project ownership. The Department has further clarified that nonprofit general partners seeking to buy out their limited partners are exempt from this rule. In addition, the NOFA will require disclosure to tenants and to the intermediary to include any relationship with owners, management, or any other parties to the sale. The Department will also require certification by the applicant that it will not interfere with the tenants' right to organize.

5. Funding

Six commenters requested that the Department allow funding for activities conducted prior to grant award. Two of these specifically made this suggestion to prevent lack of assistance where there are delays in funding that are not the fault of the grantee—suggesting funding of activities beginning at the earlier of award approval or 30 days after application submission, which is the date by which funds should have been awarded. One suggestion was to allow funding for activities conducted prior to the grant award and after NOI submission because this would be consistent with other HUD programs—specifically the Department's Section 202 (12 U.S.C. 1701q) program. Under the Section 202 program, previous expenses must be fully documented and fall within application budget.

The Department has decided to allow reimbursement of funds back to the time when the applicant became eligible for grant funds. For Resident Capacity grants this will be the time the owner files any Notice of Intent to Proceed. For Predevelopment grants this will be the time the owner has indicated an intent to sell the property. This decision was based in part on the increased resident notification period, which will inherently delay the time which grant funds are awarded and received by the recipient. While grantees may be reimbursed for eligible activities, they undertake these activities at their own risk. If a grant is not subsequently awarded, there will be no mechanism for compensating the applicant. To qualify for reimbursement, activities performed prior to the grant award must be eligible activities under the NOFA and must be clearly identified in the application submission package.

One commenter requested that residents be informed when grant is awarded. The Department has adopted this requirement.

The Department has rejected a suggestion that the grants be competitive with quarterly awards, rather than ongoing awards, in order to give residents more time to get applications and formally comment. The statute allows applications on a rolling basis, and requiring a grantee to wait several months for an award could hinder a resident-supported purchase for the property.

One commenter was concerned that $200,000 would not be enough to cover predevelopment costs for most projects. This funding limit is statutory, and the Department has no discretion to alter the limit.

Four commenters sought clarification on what terminating the current grant program means. In order to ensure continuity of the program, they suggest that: awardees under the September 3, 1992, NOFA should be able to apply for new funds as soon as old funds are obligated; grantees should not be able to receive grants over the total of this NOFA; and, because it is an ongoing process, grantees should not be required to expend all funds awarded in the 1992 NOFA. In this NOFA the Department is allowing applications from grantees with active grants under the September 3, 1992, NOFA; however, as awards are made by the intermediary, the previous awards shall be terminated. It is impractical for grantees to report to both the HUD field office and the intermediary on ongoing grant status. The total grant award from both NOFAs must not be greater than the total allowed in this NOFA.

There were ten comments on the Department's method for funding technical assistance grants on a State-

by-State basis. One concern was that basing fund allocation solely on active Notices of Intent, plus active Plans of Action, will be skewed, because this does not directly correlate with preservation sales activity. The Department should not include cases where owners have not yet indicated an intention to sell; rather, funding for predevelopment grants should be tied to the number of NOIs to sell plus binding sales commitments. Another suggested that the same allocation formula should not be used for both Resident Capacity and Predevelopment grants. Several commented that the formula should remain flexible to reflect actual activity levels in States, and suggested a hold-back so that funds could be reallocated according to actual participation levels. Several others suggested a reallocation method between States. The Department seriously considered using only Notices of Intent to Sell as the criteria for a State breakdown of funding. The Department cannot use binding commitments as an indicator, because it will not have these in advance of the State-by-State allocation. However, experience from the September 3, 1992, NOFA shows that an owner's Initial Notice of Intent is only a partial indication of what an owner will actually do. Therefore, the Department will not change its method for allocation by State. The Department has also decided not to maintain a holdback, but will reallocate funds between intermediaries if levels of grant activity justify a reallocation.

One commenter requested HUD to allocate unused funds from the 1992 NOFA using the 90/10 formula in the statute, rather than giving all unused funds to technical assistance grants. The Department has decided to allocate unused funds using the 90/10 formula. Another commenter sought clarification of the exact amount of funds available from 1992 NOFA and how these funds will be divided. Because the 1992 NOFA is active, and will be for several months, the Department cannot know exactly how much will be available once the 1992 NOFA is terminated.

6. Applicant Selection

Several commenters felt that the application review should include review of the financial viability of the property and an analysis of the development team, rather than a simple review of the applicant itself. One commenter was concerned that resident support would override strong underwriting criteria. The Department has chosen not to amend this selection criteria, but will also instruct intermediaries reviewing Predevelopment grant applications to conduct a review on the feasibility of the purchase, including a review of the development team.

One commenter requested that if any award is made by an intermediary or HUD, the procurement requirements of OMB Circular A–110 should be deemed to have been met. This would permit continuity of service for consultants who were identified by grantees prior to the availability of Federal funds. The Department finds it unnecessary to address this in the NOFA. However, if the organization is currently meeting the OMB requirements, the Department anticipates that the organization will continue to do so under another grant.

A commenter pointed out that the NOFA says grants are awarded within 30 days, and that this should be specified as 30 calendar days. Another commenter requested that the NOFA specify the appeals process to HUD. The Department has adopted both of these suggestions in this NOFA.

Several commenters recommended requiring intermediaries to explain why an application was not funded or why items within an application were not funded. The Department has adopted this recommendation.

One commenter suggested that applicant resident groups should be able to request the intermediary to provide expertise and assistance in grant activities. Because the Department does not wish to have intermediaries performing activities inconsistently across the country, it has not made this a requirement of intermediaries.

Eleven comments were received regarding the NOFA's guidance on competing applications. One area of concern was the time by which another application could be received. Several commenters suggested allowing an applicant 30 days to gain support, others suggested 20 days, another 14 days. Several commenters also suggested giving the intermediary additional review time should two applications be received. Several commenters felt the intermediary should attempt to resolve the situation or require that competing applicants meet and attempt to come to a resolution. Three commenters suggested that in the case of dual applicants, a clear priority should be for resident groups and resident councils over Community-Based Nonprofit Housing Developers.

The Department has decided if a second application is received within 30 days of receipt of the first application, the intermediary will have an additional 20 days to complete the review of both. If the applications are for a Resident Capacity grant, the intermediary will give funding preference to a resident group or a Resident Council over another applicant. If there are competing Predevelopment grant applicants and both are otherwise acceptable, the intermediary will send back the applications and give applicants an opportunity to meet, explain differences to tenants, and come to a resolution/compromise. If no compromise is reached the intermediary would fund the applicant that it found most capable of performing grant and nonprofit sponsor activities. The fact that a nonprofit developer is receiving a Predevelopment grant would not preclude a separate resident group from getting a Resident Capacity grant.

B. Selection of Intermediaries

1. Fee Structure

Twelve commenters were concerned that the proposed fee structure for intermediaries would not yield sufficient funds to cover the scope of services listed in the NOFA. The proposed NOFA contemplated a $5,000 start-up fee, plus 2 percent of the grant awards for the State or States in which the intermediary administered grants. Suggestions ranged from 4 to 5 percent of the grant awards. One commenter suggested that the minimum start-up fee should be $15,000 so smaller States will participate. Several others suggested that the fee should vary according to the level of activities that the intermediary is performing.

The Department considered seriously the appropriateness of the fee and awarding a different level of funding to intermediaries performing a higher level of activities. The Department has chosen a processing fee structure through which each intermediary will receive a $15,000 start-up fee and five percent of each technical assistance grant it administers, which will be allocated as the grants are disbursed. Each intermediary will also receive a flat fee of $500 for each grant application rejected. If a selected intermediary receives no grant applications, it will receive only the start-up fee.

2. Intermediary Selection

At least one commenter felt that the Department should give preference to local intermediaries, then State and regional intermediaries, over national intermediaries. The Department has decided to allow sub-State intermediaries in areas where there appears to be enough preservation activity to justify a sub-State intermediary. However, any sub-State intermediary must apply to administer grants in a geographic area covering at

least one HUD area office. In most States, any economies of scale would be lost if there was more than one intermediary. In its review of intermediaries the Department will review and rate all local intermediaries before reviewing State and regional intermediaries. However, the Department will consider the capacity, experience, and point scores of all local, State and regional intermediaries before making final intermediary selection. National intermediaries will be chosen for those areas for which no other acceptable intermediary has applied.

Concern from eleven commenters lead to suggestions that outside parties, particularly resident groups, should be able to comment on the applications and selections of intermediaries. Because the selection of intermediary grantees is competitive, the disclosure of grant applications would be in violation of section 12 of the Department of Housing and Urban Development Act (42 U.S.C. 3537a), and, therefore, the Department cannot implement this suggestion.

One commenter suggested that intermediaries be required to state in their proposals how they will deal with the problem of monitoring unincorporated entities to ensure that they act with proper fiscal standards. The same commenter agreed with the Department's preference for an intermediary handling both Resident Capacity and Predevelopment grants. As part of its overall evaluation of each intermediary's application, the Department will evaluate proposals to deal with the problem of monitoring fiscal standards.

One commenter requested that Community Action Agencies, which have been the leader in services to the low-income community in all areas for more than 25 years, be eligible intermediaries. The Department is adhering to the statutory definition of intermediary, but to the extent such an agency has the capacity to become an eligible applicant under the guidelines, a Community Action Agency could apply.

Several commenters suggested that intermediaries receive preference if they have a structured plan that maximizes resident participation in administrative policy issues. Another commenter requested that HUD require intermediaries to work with a tenant-based coalition, and if an intermediary cannot develop this support, HUD should administer the grants. The Department will not include this requirement because it would be too burdensome, particularly for national intermediaries. However, four commenters suggested giving preference to intermediaries with demonstrated resident/nonprofit accountability. The Department will give preference for such a demonstrated track record.

One commenter recommended deleting language that requires intermediaries to have a record of service in "multiple communities" because the language is vague and confusing. The requirement is statutory and therefore the language remains unchanged. The Department does not agree that it is confusing. The Department considers "a record of service * * * in multiple communities" to mean the intermediary has worked with various types of organizations within varied communities. Preferably these communities would include a cross-section of the geographic area for which the intermediary is applying to administer grants. The definition would exclude an intermediary that has worked solely in one community or neighborhood.

3. Intermediary Tasks

Seven commenters requested more detail in the NOFA of the Department's expectations to guide intermediaries, particularly in their monitoring activities, with standards and timeframes. Several sought clarification of the legal responsibilities of the intermediaries, others felt intermediary activities should be expanded and negotiated with HUD to include underwriting, monitoring, servicing, site visits, and technical assistance provision. One commenter sought clarification of whether an intermediary will act as a delegated processor with final grant authority, or whether it will function under some other model. One commenter disagreed with negotiating the level of activities, arguing that HUD should require specific tasks of all intermediaries to get all essential tasks covered. The Department has seriously considered this issue and has provided a greater level of detail of its expectations of the intermediaries.

The Department will not allow a variety of participation levels by intermediaries. However, if an intermediary seeks to perform a higher level of activities, such as technical assistance, it may apply to perform these activities under a separate HUD NOFA that will implement section 254 of LIHPRHA as added by section 312 of the Housing and Community Development Act of 1992. That NOFA is expected to be published soon.

One commenter stated that intermediaries, in general, should not have say over who is selected as a priority purchaser, which consultants are hired, what are the contract terms, etc. While the Department's regulations regarding priority purchasers are separate from this NOFA, the intermediaries will have review authority over consultants hired and terms of contracts under the technical assistance grants.

One commenter suggested that some technical assistance grantees may want closer oversight and assistance, and intermediaries should be required to provide to those grantees what is agreed upon in the grant. As discussed above, and in order to provide consistency nationwide, the grantees cannot request a higher level of service from the intermediaries.

4. Accountability

Three commenters suggested that resident groups should be able to formally monitor intermediaries prior to their receipt of further funding, and to include standards that encourage intermediaries to have accountability to residents and nonprofits without micromanagement by the intermediary. One of these commenters suggested that intermediaries should show evidence of a commitment to tenant organizing; another suggested a stronger conflict of interest proviso and performance benchmarks for the intermediary. However, a fourth commenter believed oversight of intermediaries should not be by tenant groups or other prospective grantees; rather, HUD should provide this oversight. This commenter recommended a selection of intermediaries when the track record indicates absence of abuse. As part of its monitoring of intermediaries, the Department will accept comments from outside parties on intermediary performance after intermediary grants are in place and active. However, the Department does not find it appropriate to include, nor does it desire to delay intermediary funding by including, resident groups directly in the monitoring process.

5. Other Comments

One commenter recommended that the benchmarks for Technical Assistance Grantees be made by the Department, rather than left up to the intermediary. The statute requires that HUD work with intermediaries to come up with the performance benchmarks for the Predevelopment Grant phases. The Department intends these benchmarks to be consistent across the country.

One commenter requested clarification that intermediaries, at their own risk, may incur costs from the date

they are selected, as opposed to the date of contract execution. The Department agrees with this request; however, no actual fees will be paid prior to the date of contract execution and the intermediary may not begin funding technical assistance grantees prior to such execution.

II. Purpose and Substantive Description

A. Authority and Background

The funding made available under this NOFA is authorized by section 312 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992) in order to provide assistance to resident groups and Community-Based Nonprofit Housing Developers (CBDs) involved in projects proceeding under the provisions of the Emergency Low-Income Housing Preservation Act of 1987 (Pub. L.100–242, section 201 of the Housing and Community Development Act of 1987, approved Feb. 5, 1988) (ELIHPA) or the Low Income Housing Preservation and Resident Homeownership Act of 1990 (Pub. L. 101–625, section 601 of the National Affordable Housing Act (NAHA), approved November 28, 1990) (LIHPRHA).

The origins of LIHPRHA are in ELIHPA. The purpose of ELIHPA was to preserve low-income affordability restrictions on certain HUD-insured or assisted multifamily projects. ELIHPA authorized the use of incentives to encourage owners to retain low-income affordability restrictions or to transfer the property to purchasers who would agree to retain those restrictions. The fundamental principles underlying ELIHPA were that the low-income housing should be preserved for the intended beneficiaries and that owners should be guaranteed a fair and reasonable return on their investments.

ELIHPA was intended to be a temporary measure that would allow Congress time to fashion a permanent program for the preservation of existing low-income housing projects. This permanent program is LIHPRHA, which replaced ELIHPA except to the extent that section 604 of NAHA provides a transition option for certain owners. In addition, section 226 of LIHPRHA establishes the Resident Homeownership Program, under which tenants may become homeowners of eligible low income housing. The Department's regulations implementing these statutory provisions are set out in 24 CFR part 248. (Applicants should note that part 248, as codified in the April 1, 1993, revision of the Code of Federal Regulations (CFR) was amended subsequently in a rule published on July 13, 1993 (57 FR 3384). Most requirements under this NOFA were imposed by title III of the Housing and Community Development Act of 1992 and are included in the July 13, 1993, amendments to part 248.)

B. Request for Applications

Eligible intermediaries are invited to apply to administer funds under the provisions of this NOFA (see Section V.A, "Obtaining Intermediary Applications" of this NOFA). The Department will announce the selected intermediaries and will publish the addresses of the intermediaries and the date on which applicants may apply to intermediaries for technical assistance grant funds. Selected intermediaries will also announce the availability of technical assistance grant funds as described in Section III of this NOFA.

C. Allocation and Funding

The purpose of this NOFA is to make available $45 million in funds to and through intermediaries for eligible resident and community organizations. The dollar amounts will be made available on a State-by-State basis for two types of grants: Resident Capacity grants and Predevelopment grants. The description of how funds will initially be divided by State is listed in Appendix B of this NOFA. The Department will rate local intermediaries, then State intermediaries, then regional intermediaries before making selections for each geographic area. Some States may be subdivided for purposes of the NOFA activities if there are a sufficient number of eligible low-income housing projects in the State to justify sub-State intermediaries. Local or sub-State intermediaries applying to perform grant administration activities must apply to perform activities covering at least the jurisdiction of one HUD area office. The Department will generally favor local or sub-State intermediaries over State intermediaries, and will favor State intermediaries over regional intermediaries.

However, before making the final intermediary selections, the Department will assess the overall capacity and experience of intermediary applicants. If no intermediary applicant applies to administer grants in a particular State or area, the Department will select a national intermediary to perform those activities in that State or area. If no acceptable application is received from a national intermediary, the Department's field offices will administer the Resident Capacity and Predevelopment grants for all areas not covered by local, State, or regional intermediaries.

The Preservation Technical Assistance Grant program that is currently being administered by the Department, in accordance with a NOFA published on September 3, 1992, at 57 FR 40570 (as amended at 57 FR 56929 (December 1, 1992) and 58 FR 8766 (February 17, 1993)), will be terminated at intermediary selection. A portion of the unreserved funds from that earlier NOFA will be made available under this NOFA through the intermediaries. Grantees active under the September 3, 1992, NOFA will continue under that grant program unless they apply for and receive funds under this NOFA.

The two forms of technical assistance grants that will be made available through intermediaries are Resident Capacity grants and Predevelopment grants. These are described in Appendix A to this NOFA. Of the $45 million available from FY 1993 and 1994 appropriations, $13.5 million is available for Resident Capacity grants and $31.5 million is available for Predevelopment grants. Of any additional funds made available under this program, 30 percent will be set aside for Resident Capacity grants and 70 percent for Predevelopment grants. The dollar amounts available to the individual resident and community organizations shall be limited to $30,000 for Resident Capacity grants and $200,000 for Predevelopment grants. The Predevelopment grants will be funded in at least two phases. The performance benchmarks for these phases will be negotiated between the Department and selected intermediaries prior to technical assistance application submission.

III. Intermediaries

A. Eligible Intermediaries

(1) *General Definition*

An eligible intermediary applicant is a local, State, regional, or national nonprofit or quasi-public organization or a State or local housing agency that has as a central purpose of its organization the preservation of low-income housing and the prevention of displacement of low- and moderate-income residents. An eligible intermediary must not receive direct Federal appropriations for operating support. All intermediaries must have a record of service to low-income individuals or community-based nonprofit housing developers in multiple communities, and must meet the standards of fiscal responsibilities established in OMB Circulars A–110

and A–122 or, if a State or local agency, 24 CFR 85 and OMB Circular 87. In addition, intermediaries must have experience with the allocation or administration of grant or loan funds. (Copies of OMB circulars are available from E.O.P. Publications, room 2200, New Executive Office Building, Washington, DC 20503, telephone (202) 395–7332. (This is not a toll-free number.) There is a limit of two free copies.)

(2) *Intermediary Categories*

(a) *A national nonprofit applicant* must also have been in existence for at least five years and be classified as an exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986.

(b) *A regional, State or local nonprofit applicant* must also have been in existence for at least three years and either be classified as an exempt organization under section 501(c)(3) of the Internal Revenue Code of 1986 or be recognized otherwise as a tax-exempt entity.

(c) *A State or local agency.* This category includes public housing agencies and State housing finance agencies.

B. Fees

Each selected intermediary will receive processing fees. The fees will include a start-up fee of $15,000 and an additional fee of five percent of each technical assistance grant the intermediary administers, which will be allocated as the grants are disbursed. These fees are based on the intermediary performing the following activities: Announcing the availability of grant funds; producing and distributing application kits; accepting, reviewing and approving and/or rejecting grant applications; executing grant agreements; disbursing grant funds; monitoring the grantees' activities under the grant award; monitoring compliance with the grant agreement through the term of the grant; and maintaining documentation of grant activities for the Department's monitoring of the intermediary.

Intermediaries will be legally responsible to the Department for approving eligible applicants, activities, and budgets, and shall maintain all correspondence with and documentation regarding the technical assistance grantees for not less than five years. All intermediaries will receive the start-up fee when the intermediary contract is executed. Intermediaries will draw down five percent of each technical assistance grant award at the time those awards are disbursed, not to exceed five percent of the total funds available to the jurisdiction. If an intermediary reviews and rejects a technical assistance application, it will receive an administrative fee of $500. If an intermediary receives no technical assistance grant applications, it will receive only its start-up fee. On occasion, the Department will review grant activity to determine if reallocation of funds between geographic regions is necessary.

C. Eligible Tasks

Intermediaries may apply for one or both parts of the intermediary tasks described in this NOFA. The two distinct tasks are:

- Administering Resident Capacity grants; and
- Administering predevelopment grants. Through its application, an intermediary must describe the specific jurisdiction in which it proposes to perform such tasks.

There will be no duplication of geographic coverage for any administrative task. In States where there is sufficient preservation activity to justify sub-State intermediaries, State or regional intermediaries may apply to perform activities in areas that include the jurisdiction of one or more HUD field offices. In no case will a field office jurisdiction be subdivided for purposes of intermediary selection for grant administration. To assure maximum geographic coverage by intermediaries, HUD may negotiate geographic coverage with intermediaries as part of intermediary selection.

Specific tasks for all intermediaries will include the following:

- Advertising fund availability for the jurisdiction overseen.
- Producing and distributing grant application kits. (A sample kit will be provided by the Department.)
- Accepting grant applications.
- Reviewing and approving or rejecting grant applications.
- Executing grant agreements. (A draft grant agreement will be provided by the Department.)
- Vouchering for funds through the Department.
- Disbursing grant funds.
- Monitoring activities under the grant, including compliance under the grant agreement, throughout the term of the grant.
- Reporting to the Department at least quarterly on the status of applications, grant awards, grantee activities, and funds expended.
- Maintaining grant documentation for HUD monitoring and audits.

D. Ineligible Intermediary Activities

Intermediaries may not receive payment, directly or indirectly, from the proceeds of grants they have approved. In addition, intermediaries may not provide other services to grant recipients with respect to the specific properties for which the grant has been awarded.

E. Selection Criteria

1. Threshold

Intermediaries must meet minimum criteria described in Section III.A, "Eligible Intermediaries," of this NOFA. If in its review the Department determines that the applicant does not meet the threshold criteria, the application will be rejected. If the application does meet the threshold criteria, then the Department will select intermediaries through a rating and ranking competition described in Section III.E(2) of this NOFA.

2. Preferences and Factors for Award

The intermediary applications will be rated and ranked on a point system, with the maximum point score of 100. The Department will first rate and rank any local or sub-State intermediary applications, then all State intermediary applications, and then regional applications. In general, the Department will give preference to local intermediaries, as discussed in Section II.C, "Allocation and Funding", of this NOFA; however, capacity, experience, and overall points for these intermediaries will be considered before selection. The Department may establish a threshold score on capacity and experience that local applicants must meet in order to qualify for funding.

After selecting local, State, and regional intermediaries, the Department will rate and rank all national intermediary applications to select an intermediary in States or regions for which no other eligible intermediary, acceptable to the Secretary, has submitted a proposal to participate. If no such national intermediary applies to perform NOFA activities, the Department, through its field offices, will administer technical assistance grant funds for all areas without an acceptable intermediary. The Department will consider joint venture applications as long as one eligible intermediary is identified in the application as the primary applicant. The rating points will be allocated based on the categories below:

(a) *Preservation Experience.* (30 points) The Secretary shall give rating points to applications from eligible intermediaries based on expertise or

experience with ELIHPA and LIHPRHA. Maximum points will be given to applicants with significant demonstrated expertise or experience with ELIHPA or LIHPRHA.

(b) *Range of Activities.* (10 points) These points will be given to organizations applying to administer both the Resident Capacity grants and the Predevelopment grants, rather than applying to administer just one of those grant programs.

(c) *Direct Experience.* (30 points) Rating points will be given to intermediaries based on their direct experience in performing the tasks for which they have applied. This would include administration of grants to resident organizations, administration of grants to nonprofit organizations and State or local agencies, and monitoring of nonprofit grantees. The Department will not assign preference to intermediaries with experience in administering Federal grants, but may exclude applicants that have failed to perform under prior contracts of a similar nature.

(d) *Organizational Capacity.* (30 points) Each applicant will be rated on its organizational capacity to implement its plan to administer grants. Each applicant should submit evidence that its organization can implement the proposed activities in an efficient manner, based on demonstrated organizational capacity and staff expertise.

IV. Responsibilities of Intermediaries

A. General

Intermediaries will be responsible for performing the tasks listed in Section III.C, "Eligible Tasks," of this NOFA. The technical assistance grant program that the intermediaries will be administering is described in detail in Appendix A to this NOFA.

B. Timeframes

Once funding availability is advertised by the intermediary for its jurisdiction, technical assistance applications will be submitted to the intermediaries on an ongoing basis. If the applications are acceptable, grants must be awarded no later than 30 calendar days after a complete application is received by the intermediary. If the application is found to be substantially complete (i.e., there are no missing exhibits), but technically deficient (i.e., an exhibit does not adequately meet the application requirements), the intermediary shall send the applicant a deficiency letter and allow 14 days for resubmission of deficient exhibits. The intermediary will have an additional 30 days to review and approve an application, following receipt of application revisions. If the application is not substantially complete, it will be rejected.

C. Technical Assistance Grant Selection Criteria

1. Resident Capacity Grants

All Resident Capacity applicants will receive an application kit, which will be produced and distributed by the intermediary. A sample application kit will be provided to the intermediaries from the Department. Applications will be accepted on an ongoing basis, and all acceptable applications will be approved unless there are no funds available for Resident Capacity grants. Intermediaries must review and approve or reject applications for Resident Capacity grants based on the following threshold criteria:

(a) The applicant meets the eligible applicant criteria listed in paragraph A of Appendix A to this NOFA.

(b) The applicant is applying for funds for eligible activities listed in paragraph D(1) of Appendix A to this NOFA.

(c) The applicant has notified the residents of its application in accordance with paragraph B of Appendix A to this NOFA.

(d) The plan for promoting the ability of residents to participate meaningfully in the preservation process is reasonable and feasible.

(e) The budget submitted with the application reflects reasonable costs directly associated with the grant activities.

(f) The estimate of time necessary to achieve completion of activities and delivery of products is reasonable and realistic and within the time frames set forth in the applicable program regulation.

2. Predevelopment Grants

All Predevelopment grant applicants will receive an application kit that will have been produced and distributed by the intermediary. A sample application kit will be provided to the intermediaries from the Department. Applications will be accepted on an ongoing basis, and all acceptable applications will be approved unless there are no funds available for Predevelopment grants. Intermediaries must review and approve or reject applications for Predevelopment grants based on the following threshold criteria:

(a) The applicant meets the eligible applicant criteria listed in paragraph A of Appendix A to this NOFA;

(b) The applicant is applying for eligible activities listed in paragraph D(2) of Appendix A to this NOFA;

(c) The applicant has notified the residents of its application in accordance with paragraph B of Appendix A to this NOFA;

(d) The plan for promoting and achieving a resident supported purchase of the property must be reasonable and feasible and in conformance with the appropriate program regulations and guidelines. This will include an evaluation of the experience and capacity of the applicant's development team;

(e) The budget submitted with the application reflects reasonable costs directly associated with the grant activities that would result in the development of a feasible purchase; and

(f) The estimate of time necessary to achieve completion of activities and delivery of products is reasonable and realistic and within the time frames set forth in the applicable program regulation.

3. Competing Grant Applications

If a second technical assistance application is received within 30 days of receipt of the first application for any property, and if that application is for the same grant category, the intermediary shall have an additional 20 days to review both applications. The total review time for any grant cannot exceed 50 days. If the competing applications are for Resident Capacity grants, resident groups and Resident Councils shall have priority over other applicants. If the competing applications are for Predevelopment grants, and both are found technically acceptable, the Intermediary will return the applications with instructions that the applicants meet together and with the residents to reach a resolution for a final application. If no compromise is reached, the intermediary will approve the applicant that the intermediary finds most capable of performing grant and nonprofit sponsor activities. In addition, in the case of any application, if there is an indication that a majority of the residents oppose the applicant's selection, that application shall be denied.

4. Decision Not To Fund

In any denial of award letter, the intermediary shall be required to explain the reasons for its determination. In addition, if the intermediary makes a determination that results in a reduction of proposed grant funds, that determination shall also be explained in writing.

5. Appeals

If an application for either a Resident Capacity grant or a Predevelopment grant is denied, the applicant will have the right to appeal that denial to the Department. The appeal must be made within 45 days of application rejection to: Multifamily Preservation Division, Department of Housing and Urban Development, 451 7th Street, NW., room 6284, Washington DC, 20410. The Department will make a binding determination within 45 days of the appeal.

6. Award Notification

If an applicant is awarded and accepts a Resident Capacity or Predevelopment grant, the applicant must inform the residents of the property about the award, by posting a notice or through a resident meeting or both, within three weeks of the applicant's acceptance of the award.

V. Intermediary Application Process

A. Obtaining Intermediary Applications

Intermediary application kits are available from the Multifamily Preservation Division, Department of Housing and Urban Development, room 6284, 451 7th Street, SW., Washington, DC 20410; telephone (202) 708–2300; and the Multifamily Housing Clearinghouse, P.O. Box 6424, Rockville, MD 20850, telephone 1–800–955–2232.

B. Submitting Applications

Applications will be submitted to the Multifamily Preservation Division Department of Housing and Urban Development, 451 7th Street, SW., room 6284, Washington, DC 20410. Applications must be received no later than June 6, 1994. No facsimiled (FAXed) applications will be accepted. Any application received after 5:00 p.m., E.D.T., on the due date will not be accepted for processing and will be returned to the applicant. Any corrections to deficient applications made in accordance with Section V.E of this NOFA may be transmitted by facsimile; however, the original subsequently must be submitted by mail.

C. Submission Requirements

An intermediary must provide the following:

(1) A completed application, including the following, as applicable:

(a) OMB Standard Form 424;

(b) Identification of proposed geographic area in which it will perform intermediary activities;

(c) Information about how the applicant meets the Factors for Award listed in Section III.E(2) of this NOFA;

(d) Information about the applicant, including its history, its staff and their qualifications, and its experience;

(e) Summary of plan to advertise grant availability, distribute applications, review applications, disburse funds, and monitor activities under the grant;

(f) Evidence of tax exempt status, if applicable;

(g) Certification that the intermediary will not receive payment, directly or indirectly, from the proceeds of the grants it has approved;

(h) Certification that assistance provided under this NOFA will not be used to supplant or duplicate other resources for the proposed activities. For purposes of this paragraph, "other resources" means resources provided from any source other than under this NOFA;

(i) Other disclosures, certifications, and assurances (including Drug-Free Workplace and Anti-Lobbying certifications), as required under the law and this NOFA; and

(j) Other information and materials as may be described in the application kit.

D. Intermediary Selection Process

The selection process for intermediaries consists of a threshold screening to determine whether the application meets the technical requirements for application submission contained in this NOFA and the application kit. If the application meets the technical requirements, it will be reviewed and ranked by the Preservation Division in HUD Headquarters according to the selection criteria in Section III.E of this NOFA. Within 60 days from the application deadline, the Preservation Division will notify an intermediary of its selection or rejection. Selected intermediaries will be required to sign a grant agreement. If no intermediary is selected for a particular State, the HUD field offices will administer the grants directly.

E. Corrections to Deficient Applications

If an application submitted by an intermediary is found to be deficient in a nonsubstantive manner, the Department will inform the applicant of such deficiency within 15 days after the application deadline and the applicant will have seven days to submit revisions to its application. Nonsubstantive deficiencies are those that are not integral to the application's review, such as a certification. If an application is substantively deficient at the time of application deadline, the application will be rejected.

F. Application Selection Timeframe

The Department will complete its review and selection process within 60 days of the deadline date for intermediaries. Once intermediaries are selected and agreements are executed, intermediaries will have 30 days to make grant funds available to eligible technical assistance applicants. Grants from technical assistance applicants will be accepted on a rolling basis by the intermediaries administering such grants.

G. Intermediary Information

The Department will publish in the **Federal Register** the list of selected Intermediaries within 30 days of the date that the Department's intermediary selection process is completed. That publication will include information for potential technical assistance applicants on how to obtain application kits and will list contact names at the Intermediary organizations selected to administer the grants.

VI. Other Matters

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(b) of the HUD regulations, the policies and procedures contained in this notice relate only to technical assistance and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this notice 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 notice is not subject to review under the Order. Specifically, the funds available under this NOFA will be used to select intermediaries that will administer technical assistance grants to eligible recipients. The grants to eligible recipients will be for technical assistance activities related to the preservation of low-income housing.

Family Executive Order

The General Counsel, as the Designated Official under Executive order 12606, The Family, has determined that this notice 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 notice, as those policies and programs relate to family concerns.

Section 102 of the HUD Reform Act: Documentation and Public Access Requirements; Applicant/Recipient Disclosures

Documentation and Public Access Requirements

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b) for further information on these documentation and public access requirements.)

Disclosures

HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period generally less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR part 12, subpart C, for further information on these disclosure requirements.)

Section 103 HUD Reform Act

HUD's regulation (24 CFR part 4) implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) (Reform Act) applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of selection of successful applicants.

Both HUD and intermediary employees involved in the review of applications and in the making of funding decisions are limited by 24 CFR part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (voice/TDD). (This is not a toll-free number.) The Office of Ethics can provide information of a general nature, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

Section 112 of the Reform Act

Section 112 of the HUD Reform Act added a new section 13 to the Department of Housing and Urban Development Act (42 U.S.C. 3537b). Section 13 contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by regulations codified in part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read the regulations, particularly the examples contained in Appendix A of part 86.

Any questions about the rule should be directed to the Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–3000. Telephone: (202) 708–3815 (voice/TDD). (This is not a toll-free number.) Forms necessary for compliance with the rule may be obtained from the local HUD office.

Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment") and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

Authority: 42 U.S.C. 4101 *et seq.*; 42 U.S.C. 3535(d).

Dated: March 29, 1994.

Jeanne K. Engel,

General Deputy Assistant Secretary for Housing—Federal Housing Commissioner.

Appendix A: Technical Assistance Applications

A. Eligible Applicants

(1) *General Definition.* An eligible applicant must notify residents of all occupied units that it is applying for a grant. That notification shall meet the specifications of paragraph B below. An eligible applicant is one of the entities described in the following paragraphs (a) through (c) that complies with the applicable criteria:

(a) *Resident Group.* Resident Groups are eligible for Resident Capacity grants only. For an applicant to be considered a resident group, the following must be submitted:

(i) Evidence that the greater of 5% of the occupied units or 10 units of the subject property have heads of households that are members;

(ii) A copy of a notice announcing an organizational meeting to discuss resident participation in decisions affecting the project;

(iii) A copy of the agenda of the organizational meeting referred to in item (ii) of this paragraph; and

(iv) A list of attendees of the organizational meeting referred to in item (ii) of this paragraph.

(b) *Resident Council.* (RC) For an applicant to be considered an RC, it must meet the definition of "resident council" as set out in § 248.101. Specifically, an RC is any incorporated nonprofit organization or association in which membership is available to all the tenants, and only the tenants, of a particular project and:

(i) Is representative of the residents of the project;

(ii) Adopts written procedures providing for the election of officers on a regular basis; and

(iii) Has a democratically elected governing board, elected by the residents of the project.

(c) *Community-Based Nonprofit Housing Developer.* (CBD) For an applicant to be considered a CBD it must submit evidence that it:

(i) Is classified as tax exempt under section 501(c)(3) of the Internal Revenue Code of 1986;

(ii) Has been in existence for at least two years, and has at least two years of housing and community development experience, prior to the date of grant application;

(iii) Has a record of service to low- and moderate-income people in the community in which the project is located;

(iv) Is organized at the neighborhood, city, county or a multi-county level;

(v) In the case of an organization seeking to acquire eligible housing under LIHPRHA, agrees to form a purchasing entity that conforms to the definition of a community-based nonprofit organization (CBO) in §248.101;

(vi) Agrees to use its best efforts to secure majority tenant consent to the acquisition of the project for which grant assistance is requested. Evidence of "best efforts" shall include a plan in the application which details method for securing such support. In addition, continued evidence of "best efforts," such as additional resident meetings and notices, is required as a grantee moves towards a purchase.

(2) *Resident Capacity Grant Applicants.* Applicants for Resident Capacity grants must meet the eligibility criteria listed in paragraph A of this Appendix. In addition, these grants may be made only with respect to eligible low-income housing, as defined in §248.101, for which the owner has filed a Notice of Intent under ELIHPA, an Initial Notice of Intent under LIHPRHA, or a Notice of Election to Proceed under section 604 of NAHA and is proceeding under the LIHPRHA appraisal process.

(3) *Predevelopment Grant Applicants.* Predevelopment grant applicants must be RCs or CBDs meeting the criteria listed in paragraph A of this Appendix. These grants may be made only to organizations seeking to purchase the property with a majority of resident support for the purchase. These grants may be made only with respect to eligible low-income housing projects for which: (i) the owner has filed an initial or second Notice of Intent to transfer the housing to a qualified purchaser under LIHPRHA, or has filed any Notice of Intent under LIHPRHA or ELIHPA and the owner has entered into a binding agreement to sell the housing to the applicant organization, or (ii) the owner has filed a Notice of Election to Proceed under section 604 of NAHA and is proceeding under the LIHPRHA appraisal process and has entered into a binding agreement to sell the housing to the applicant organization. This binding agreement shall not necessarily be a formal sales contract; rather, it may state that the owner will neither work with nor accept a purchase offer from any other entity during the term of the grant, as long as the grantee is progressing towards a purchase offer, plan of action or resident homeownership plan, and acquisition in a reasonable period of time.

(4) *Conflict of Interest.* Each applicant must certify that its organization is not a "Related Party", as set forth in 24 CFR 248.101, and that no individual that has, or has had within the last five years, a personal or professional relationship with the owner entity will receive financial benefit from the grant funds. This certification shall prohibit using mutual consultants, attorneys, etc. It shall not explicitly prohibit using architects or engineers that have worked with the owner or in the property in the past, as long as there is no ongoing professional relationship with the owner that could be perceived as a conflict of interest. A nonprofit general partner of an eligible property that is attempting to buy out its limited distribution partners is exempt from this part of the conflict of interest requirement. A certification shall also require disclosure, to the intermediary and the tenants of any relationship with ownership, management, or any other parties to a sale, and will state that the applicant will not seek any financial benefit from project ownership or operations other than those disclosed.

B. Resident Notification

Each applicant will be required to notify residents of the property of its application prior to submitting the application package to the intermediary. That notification shall be in writing, be distributed to each resident of the property, and include a summary of the applicant's plan for the property. The notification shall also include a statement that residents can themselves become eligible applicants under the Preservation Technical Assistance grant program. In addition, the applicant must meet with the residents of the property at least two weeks prior to application submission, and give the residents at least two weeks notification of such meeting. In the meeting the applicant must provide the following information to the residents:

- A summary of the grant proposal;
- A list of members of the board of directors, if known;
- A list of the proposed development team and management company, if known;
- A list of all proposed consultants and attorneys;
- Disclosure of any relationship with ownership, management, or any other parties related to the owner or, if applicable, related to the sale; and
- Information on how the residents may comment to the intermediary on the applicant's proposal and that residents shall have 14 days to submit comments to the applicant and to the intermediary on the proposal. This information shall include a name and contact number for the intermediary and a name and phone number for a contact person in the applicant organization.

If the applicant is unable to make this notification due to lack of access to the property or lack of resident addresses, the applicant may contact the Intermediary for assistance. The intermediary may contact the owner to request access or resident addresses for the applicant. If the owner is uncooperative, the intermediary may contact the HUD field office for assistance. If residents make substantive comments to the intermediary, the applicant will be required to address these comments prior to any grant award from the intermediary.

C. Ineligible Technical Assistance Applicants

(1) Entities that have applications pending for funds under the HOPE 2 program are not eligible to apply for funding under this NOFA (because the owner would have already elected to proceed under the distinct requirements applicable to HOPE 2 grants and is precluded from concurrently filing the prerequisite Notice of Intent under LIHPRHA or ELIHPA). An entity that is receiving HOPE 2 funding for preservation-eligible property is ineligible to apply under this NOFA for a grant for that property until the HOPE 2 grant has been terminated due to HUD's acceptance of the owner's filing of a Notice of Intent under ELIHPA or LIHPRHA.

(2) Entities that have been awarded grants under the Preservation NOFA (entitled "Technical Assistance Planning Grants for Resident Groups, Community Groups, and Community-Based Nonprofit Organizations and Resident Councils") issued September 3, 1992 (57 FR 40570), may not receive funds under this NOFA for any properties for which those grants were funded either until all funds awarded to the grantee under the 1992 NOFA have been expended, or until the grant under the September 3, 1992, NOFA has been terminated as a result of a new grant approval under this NOFA. The total funds received from the September 3, 1992, NOFA plus the total grant award for this NOFA may not exceed the funding limits of this NOFA. A grantee under the September 3, 1992, NOFA is eligible for funds under this NOFA only if it also meets the eligibility criteria of this NOFA and meets the notification requirements of Paragraph B above.

D. Eligible Technical Assistance Grant Activities

(1) *Resident Capacity Grants.* Resident Capacity grants may be used to cover expenses for the following activities:

- Resident outreach and coordination;
- Legal services to incorporate the resident organization or RC, establish a board of directors, write by-laws, or establish nonprofit status;
- Accounting services for budgeting, planning, and creation of accounting systems that are in compliance with OMB Circular A-110 or A-122;
- Conducting resident meetings and democratic elections;
- Training residents and developing resident leadership; and
- Hiring an architect or engineer to advise the residents during the Preservation Capital Needs Assessment and or the appraisal stage of the Preservation process.
- Other technical assistance related to developing the capacity of the residents of the organization to meaningfully participate in decisions related to the project.

(2) *Predevelopment Grants.* Predevelopment grants may be used to cover

consultant costs, and grantee staff and overhead costs related to the following activities:

- Legal services to organize a purchasing entity;
- Accounting services for budgeting, planning, and creation of accounting systems that are in compliance with OMB Circular A-110 or A-122;
- Preparing bona fide offers including contracts and other documents to purchase the property;
- Training residents, resident council staff and board members on the Preservation process and in skills related to the operation and management of the project;
- Developing and negotiating management contracts, related contract monitoring, and management procedures;
- Engineering studies, such as site, water, and soil analysis, mechanical inspections; and estimations of the cost of rehabilitation and of meeting local building and zoning codes, in anticipation of purchasing a property, as necessary to supplement the capital needs assessment developed by HUD (see the Final Guidelines for Determining Appraisals of Preservation Value Under LIHPRHA, 57 FR 1970 (May 8, 1992));
- Securing financing and preparation of mortgage documents, transfer documents, and other documentation incident to closing a purchase offer;
- Preparing feasibility analyses, market studies and management plans;
- If applicable, creating a Community-Based Nonprofit Organization that conforms to the definition of such organization under 24 CFR § 248.101;
- Preparing a Plan of Action, Resident Homeownership Plan, and related documents, such as a Transfer of Physical Assets in accordance with 24 CFR §§ 248.213, 135, and 173; and
- Other activities related to promoting the ability of eligible applicants to acquire, rehabilitate and competently own and manage eligible housing.

E. Ineligible Grant Activities

Examples of activities that are not eligible to be funded for technical assistance grantees include:

- Earnest money deposits as part of a purchase offer made under 24 CFR 248.157, 248.161, 248.173, and 248.175;
- Purchase of land or buildings or any improvements to land or buildings;
- Activities not directly related to the eligible activities listed in paragraph D of this Appendix A;
- Entertainment, including associated costs such as food and beverages, except that refreshments served at resident meetings shall be allowable to the extent they facilitate resident participation in planning for the grant;
- Payments of fees for lobbying services;
- Activities funded from other sources;
- Activities completed prior to the time an applicant becomes eligible for a grant; and
- Activities performed by the administering intermediary.

Appendix B: Activity Level and State Allocation

The allocation of funds by State will be determined according to the level of activity in that State as of the closing date for intermediaries to submit applications to become intermediaries. If additional grant funds are made available, the State allocations will be revised according to the activity levels at the time the new funding is made available. The total funding under this NOFA has been divided by the number of active Notices of Intent submitted by owners for properties in the State. Regional and national intermediaries may utilize funds for their entire geographical areas on a first come first serve basis, rather than maintaining the State allocations in funding grants. Sub-State intermediaries will be considered in the States of California, Texas, and Washington. The following is a breakdown of dollar amounts by state based on activity level by State as of November 30, 1993. This will be updated prior to actual release of funds based on activity levels at the time of intermediary selection, but provides a good estimate of expected funds available by State. In addition, the Department will periodically assess activity levels and, if necessary, reallocate funds among intermediaries.

Resident Capacity Grants

Alabama: $131,250
Alaska: $37,500
Arizona: $150,000
Arkansas: $150,000
California: $3,693,750
Colorado: $75,000
Connecticut: $187,500
Delaware: $0
District of Columbia: $37,500
Florida: $168,750
Georgia: $93,750
Hawaii: $131,250
Idaho: $243,750
Illinois: $243,750
Indiana: $375,000
Iowa: $243,750
Kansas: $18,750
Kentucky: $112,500
Louisiana: $168,750
Maine: $18,750
Maryland: $281,250
Massachusetts: $750,000
Michigan: $262,500
Minnesota: $375,000
Mississippi: $187,500
Missouri: $168,750
Montana: $93,750
Nebraska: $187,500
Nevada: $0
New Hampshire: $18,750
New Jersey: $225,000
New Mexico: $18,750
New York: $225,000
North Carolina: $150,000
North Dakota: $56,250
Ohio: $131,250
Oklahoma: $0
Oregon: $581,250
Pennsylvania: $262,500
Puerto Rico: $75,000
Rhode Island: $300,000
South Carolina: $93,750
South Dakota: $75,000
Tennessee: $187,500
Texas: $543,750
Utah: $56,250
Vermont: $18,750
Virginia: $206,250
Virgin Islands: $0
Washington: $1,143,750
West Virginia: $0
Wisconsin: $543,750
Wyoming: $0

Predevelopment Grants

Alabama: $306,250
Alaska: $87,500
Arizona: $350,000
Arkansas: $350,000
California: $8,618,750
Colorado: $175,000
Connecticut: $437,500
Delaware: $0
District of Columbia: $87,500
Florida: $393,750
Georgia: $218,750
Hawaii: $306,250
Idaho: $568,750
Illinois: $568,750
Indiana: $875,000
Iowa: $568,750
Kansas: $43,750
Kentucky: $262,500
Louisiana: $363,750
Maine: $43,750
Maryland: $656,250
Massachusetts: $1,750,000
Michigan: $612,500
Minnesota: $875,000
Mississippi: $437,500
Missouri: $393,750
Montana: $218,750
Nebraska: $437,500
Nevada: $0
New Hampshire: $43,750
New Jersey: $525,000
New Mexico: $43,750
New York: $525,000
North Carolina: $350,000
North Dakota: $131,250
Ohio: $306,250
Oklahoma: $0
Oregon: $1,356,250
Pennsylvania: $612,500
Puerto Rico: $175,000
Rhode Island: $700,000
South Carolina: $218,750
South Dakota: $175,000
Tennessee: $437,500
Texas: $1,268,750
Utah: $131,250
Vermont: $43,750
Virginia: $481,250
Virgin Islands: $0
Washington: $2,668,750
West Virginia: $0
Wisconsin: $1,268,750
Wyoming: $0

[FR Doc. 94-8065 Filed 4-5-94; 8:45 am]

BILLING CODE 4210-27-P

federal register

Wednesday
April 6, 1994

Part VI

Department of Health and Human Services

Public Health Service

Family Planning Nurse Practitioner Training Program; Grant Availability; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

RIN 0905–ZA29

Announcement of Availability of Grants for Family Planning Nurse Practitioner Training Program

AGENCY: Office of Family Planning, OPA, PHS.

ACTION: Notice.

SUMMARY: The Office of Family Planning (OFP) of the Office of Population Affairs requests applications for grants under the Family Planning Services Training Program authorized under section 1003 of the Public Health Service (PHS) Act (42 U.S.C. 300a–1(a)). Funds are available to train nurse practitioners in order to maintain the high level of performance of family planning service projects funded under Title X of the PHS Act. The training programs to be funded will provide skill-based knowledge for registered professional nurses employed in Title X clinics and will enable Title X service grantees to improve the delivery of family planning services to persons from low-income families and other persons desiring such services.

ADDRESSES: Application kits may be obtained from and applications must be submitted to: Grants Management Office, Office of Population Affairs, East-West Towers, suite N1115, 5600 Fishers Lane, Rockville, MD 20857.

DATES: Applications must be postmarked or received at the above address no later than June 6, 1994. Private metered postmarks will not be acceptable as proof of timely mailing. Applications which are postmarked or delivered to the Grants Management Office later than June 6, 1994 will be judged late and will not be accepted for review. Applications which do not conform to the requirements of this program announcement or meet the applicable requirements of 42 CFR part 59, subpart C will not be accepted for review. Applicants will be so notified, and the applications will be returned.

FOR FURTHER INFORMATION CONTACT: Mr. Sam Taylor, Acting Director, Office of Family Planning at (301) 594–4008 is available for assistance on scientific, technical and program aspects, or Mrs. Barbara N. Rosenberg, Grants Management Officer at (301) 594–4012 is available for business management issues. Staff are available to answer questions and provide limited technical assistance in the preparation of grant applications.

SUPPLEMENTARY INFORMATION: Title X of the PHS Act, 42 U.S.C. 300, *et seq.*, authorizes the Secretary of Health and Human Services to award grants for projects to provide training for family planning services personnel. (Catalog of Federal Domestic Assistance Number 93.260). This notice announces the availability of approximately $1.8 million in funding and solicits applications for grants for the five nurse practitioner training projects described below:

(1) One grant with a range of $270,000–$360,000 to train nurse practitioners from the following regions:

Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont);

Region II (New Jersey, New York, Puerto Rico and the Virgin Islands);

Region III (Delaware, Maryland, Pennsylvania, Virginia, West Virginia and the District of Columbia).

(2) One grant with a funding range of $245,000–$325,000 to train nurse practitioners from the following region:

Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, N. Carolina, S. Carolina and Tennessee).

(3) One grant with a funding range of $200,000–$275,000 to train nurse practitioners from the following region:

Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin).

(4) One grant with a funding range of $300,000–$395,000 to train nurse practitioners from the following regions:

Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas);

Region VII (Iowa, Kansas, Missouri, Nebraska).

(5) One grant with a funding range of $350,000–$455,000 to train nurse practitioners from the following regions:

Region VIII (Colorado, Montana, N. Dakota, S. Dakota, Utah, Wyoming);

Region IX (Arizona, California, Hawaii, Nevada, American Samoa, Federated States of Micronesia, Republic of Marshall Islands, Commonwealth of the Northern Mariana Islands, Republic of Palau and Guam);

Region X (Alaska, Idaho, Oregon, Washington).

Statutory and Regulatory Background

Title X of the Public Health Service Act, enacted by Public Law 91–572, authorizes grants for projects to provide family planning services to persons from low-income families and others. Section 1001 of the Act, as amended, authorizes grants "to assist in the establishment and operation of voluntary family planning projects which shall offer a broad range of acceptable and effective family planning methods and services (including natural family planning methods, infertility services, and services for adolescents)." Section 1003 of the Act, as amended, authorizes the Secretary to make grants to entities to provide the training for personnel to carry out the family planning services programs. The regulations set out at 42 CFR part 59, subpart C, govern grants for family planning service training. Prospective applicants should refer to the regulations in their entirety.

Role and Operation of the Training Program

The nurse practitioner is an integral part of the family planning system and performs a critical role in the delivery of high quality family planning and women's health services. Nurse practitioner training programs are focused on the preparation of registered professional nurses to function in an advanced nursing role as obstetric-gynecologic or women's health nurse practitioners.

Successful applicants will be required to work closely with Central and Regional Office staffs and a network of agencies, including Title X service delivery providers and nurse practitioner training advisory committees. Title X service grantees from the regions serve on the nurse practitioner training advisory committees. Successful applicants will be required to review and consider policy and program goals of both the Title X family planning training and services programs, solicit advice from the regional training advisory committee, and consult with Title X service delivery providers about training priorities, course content, and curriculum.

The nurse practitioner training curriculum must focus on preparation of obstetric-gynecologic or women's health care nurse practitioners [hereafter referred to as nurse practitioner(s)] for advanced nursing practice. The nurse practitioner training curriculum must include content sufficient to prepare graduates to perform the full range of services required for nurse practitioners in the Title X family planning services program. The nurse practitioner training program graduate should acquire, through the training program, special knowledge and skills in health promotion and maintenance, disease prevention, psychosocial and physical assessment, and management of health-illness needs in the primary care of women, provided predominantly in an ambulatory setting. The nurse practitioner will provide such care in collaboration with the physician as well

as with other members of the health-care team.

The design of the nurse practitioner training program, including the curriculum, must be consistent with national and regional Title X goals. The program must be eligible for accreditation as a nurse practitioner program by a national nursing accrediting body and must meet national or State recognition requirements as a provider of continuing education through a national nursing organization or one of its constituents. Graduates of the nurse practitioner training program must be eligible for State and/or national certification and meet State requirements for licensure or recognition.

The application should set out how the nurse practitioner training program will address the national health objectives relating to family planning that are discussed in section 5 of the PHS document, Healthy People 2000, discussed below. Specific attention should be given to training which would enable nurse practitioners to work more effectively to: Reduce teen pregnancy; reduce unintended pregnancy among all women; reduce the initiation of sexual activity by teenagers; increase the effectiveness of contraception, including barrier contraception, among all women; implement pre-conception care; and reduce sexually transmitted diseases, including HIV.

Successful applicants will be responsible for the overall management of a nurse practitioner training program within the geographic area for which the grant is made. This responsibility includes:

- Developing an annual nurse practitioner training plan, which reflects national Title X program goals and regional priorities and the training needs of local Title X services grantees;
- Developing and implementing a high quality curriculum for a certificate nurse practitioner program specific to the education and role of the nurse practitioner;
- Developing criteria for selection of candidates for nurse practitioner training, including prerequisite qualifications. Such criteria should reflect a sensitivity to the unique needs to grantees or trainees for certain types of training, priority for recruitment of minority nurse practitioner trainees, priority for training nurses serving in rural areas or Health Professional Shortage Areas (HPSA's), or other relevant factors;
- Developing a process to review applications submitted by nurse practitioner training applicants from Title X service grantees. The nurse practitioner training program will make the final decision about candidates' suitability for training applying the criteria discussed above;
- Maintaining data on nurse practitioner training characteristics sufficient to allow evaluation by credentialing bodies, and by the Office of Population Affairs, and to allow self-evaluation by the nurse practitioner training grantee;
- Developing and implementing nurse practitioner training plans and continuing professional education programs which include measurable objectives;
- Monitoring the preceptorship phase of the nurse practitioner training program based upon written criteria;
- Sharing materials developed with other training programs so as to avoid unnecessary duplication of effort. All materials developed with Title X funds must be made available at cost to other Title X projects upon request;
- Facilitating nurse practitioner trainee receipt of continuing education units where appropriate; and
- Planning an annual continuing education conference and attending at least one national training meeting annually.

Application Requirements

Applications must be submitted on the forms supplied (PHS–5161–1) (OMB Approval No. 0937–0189) and in the manner prescribed in the application kits available from the Office of Grants Management Applicants are required to submit an application signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award. Applicants are required to submit an original application and two copies.

Accepted applications will be subjected to a competitive review process. The results of this review will assist the Deputy Assistant Secretary for Population Affairs in considering competing applications and in making the final funding decisions.

Any public or private nonprofit organization or agency is eligible to apply for a grant. The application must meet the standards of the nursing profession which allow approval from the State Board of Nurse Examiners, continuing education approval bodies, if required, and national accrediting and certifying agencies. It is not required that an entity applying for a grant be physically located in the region or regions the proposed project will serve.

A copy of the legislation and regulations governing this program will be sent to applicants as part of the application kit package. Applicants should use the legislation, regulations and other information included in this announcement to guide them in developing their applications. Applications should be limited to 50 doubled-spaced pages, not including appendices providing curriculum vitae, curriculum, or statements of organizational capabilities. Awards will be made only to those applicants who have met all applicable requirements.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity which involves the establishment and pursuit of goals designed to prevent disease and promote health. This announcement is related to the priority areas of Family Planning and Educational and Community-Based Program. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–0325 (Telephone (202)·783–3238).

Grant Award

Eligible applications will be reviewed and assessed against the following criteria:

(1) The extent to which the proposed nurse practitioner training program will increase the delivery of services to Title X clients, particularly persons from low-income families. (15 points)

(2) The extent to which the proposed nurse practitioner training program proposes to fulfill the family planning services delivery needs of the area to be served, including: (a) The extent to which the nurse practitioner training curriculum and objectives will improve the family planning service delivery skills of family planning registered nurses; (15 points) and (b) The extent to which the nurse practitioner training program proposes appropriate strategies to recruit and train nurse practitioners to provide family planning services in rural areas and HPSAs. (15 points)

(3) The capacity of the applicant to make rapid and effective use of the nurse practitioner training grant. (5 points)

(4) The administrative and management capacity and competence of the applicant. (15 points)

(5) The competence of the project staff in relation to the services to be provided. (10 points)

(6) The degree to which the project plan adequately provides for the requirements set forth in 42 CFR 50.205, including the applicant's presentation of the project's objectives, the methods for achieving project objectives, the ability to involve providers and the regional office, and the results or benefits expected. (25 points)

In making grant award decisions the Deputy Assistant Secretary for Population Affairs (DASPA) will fund those projects which will in his judgment best promote the purposes of section 1003 of the Act, within the limits of funds available for such projects.

Grants will be approved for project periods of up to 5 years and will be funded in annual increments (budget periods). Funding for all approved budget periods beyond the first year of the grant is contingent upon satisfactory progress of the project, efficient and effective use of grant funds provided, and availability of funds.

Review Under Executive Order 12372

Applications under this announcement are subject to the review requirements of Executive Order 12372, State Review of Applications for Federal Financial Assistance, as implemented by 45 CFR part 100. As soon as possible, the applicant should discuss the project with the State Single Point of Contact (SPOC) for each State in the area to be served. The application kit contains the currently available listing of the SPOCs which have elected to be informed of the submission of applications. For those States not represented on the listing, further inquiries should be made by the applicant regarding the submission to the relevant SPOC. The SPOCs comment(s) should be forwarded to the Grants Management Office, Office of Population Affairs, East-West Towers, suite N1115, Rockville, MD 20857. Such comments must be received by the Office of Population Affairs by August 4, 1994 to be considered.

When final funding decisions have been made, each applicant will be notified by letter of the outcome of their application. The official document notifying an applicant that a project application has been approved for funding is the Notice of Grant Award, which specifies to the grantee the amount of money awarded, the purposes of the grant, and terms and conditions of the grant award.

Dated: February 22, 1994.

Gerald J. Bennett,

Acting Deputy Assistant Secretary for Population Affairs.

[FR Doc. 94–8153 Filed 4–5–94; 8:45 am]

BILLING CODE 4160–17–M

federal register

Wednesday
April 6, 1994

Part VII

Department of Health and Human Services

Public Health Service

General Family Planning Training Projects; Grant Availability; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

RIN 0905–ZA30

Announcement of Availability of Grants for General Family Planning Training Projects

AGENCY: Office of Family Planning, OPA, PHS.

ACTION: Notice.

SUMMARY: The Office of Family Planning (OFP) of the Office of Population Affairs requests applications for grants under the Family Planning Service Training Program authorized under section 1003 of the Public Health Service (PHS) Act (42 U.S.C. 300a–1(a)). Funds are available to train family planning personnel in order to maintain the high level of performance of family planning services projects funded under Title X of the PHS Act. Training is provided at general training centers in the ten Department of Health & Human Services' (DHHS) regions.

ADDRESS: Application kits may be obtained from and applications must be submitted to: Grants Management Office, Office of Population Affairs, East-West Towers, suite N1115, Rockville, MD 20857.

DATES: Applications must be postmarked or received at the above address no later than June 6, 1994. Private metered postmarks will not be acceptable as proof of timely mailing. Applications which are postmarked or delivered to the Grants Management Office later than June 6, 1994 will be judged late and will not be accepted for review. Applications which do not conform to the requirements of the program announcement or meet the applicable requirements of 42 CFR part 59, subpart C will not be accepted for review. Applicants will be notified, and applications will be returned.

FOR FURTHER INFORMATION CONTACT: Mr. Sam Taylor, Acting Director, Office of Family Planning at (301) 594–4008 is available for assistance on scientific, technical and program aspects, or Mrs. Barbara N. Rosenberg, Grants Management Officer at (301) 594–4012 is available for business management issues. Staff are available to answer questions and provide limited technical assistance in the preparation of grant applications.

SUPPLEMENTARY INFORMATION: Title X of the PHS Act, 42 U.S.C. 300, *et seq.*, authorizes the Secretary of Health and Human Services to award grants for projects to provide training for family planning service personnel. (Catalog of Federal Domestic Assistance Number 93.260). This notice announces the availability of approximately $2.7 million in funding and solicits applications for ten general training projects to assist in the establishment and operation of regional training centers. Grants will be funded within certain ranges, as set out below. The funding ranges for the regions are determined based on the assessment of the Deputy Assistant Secretary for Population Affairs (DASPA) of the regions' relative need for training funds; funding of individual grants within each funding range will be based on the DASPA's assessment of such factors as the training needs within the region and the cost and availability of personnel for funding.

The training projects are as follows:

One general training grant for DHHS Region I (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont). A funding range of $181,500–$200,600 is available for this grant.

One general training grant for DHHS Region II (New Jersey, New York, Puerto Rico, and the Virgin Islands). A funding range of $288,500–$318,900 is available for this grant.

One general training grant for DHHS Region III (Delaware, Maryland, Pennsylvania, Virginia, West Virginia and the District of Columbia). A funding range of $299,500–$331,000 is available for this grant.

One general training grant for DHHS Region IV (Alabama, Florida, Georgia, Kentucky, Mississippi, N. Carolina, S. Carolina and Tennessee). A funding range of $350,300–$387,200 is available for this grant.

One general training grant for DHHS Region V (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin). A funding range of $315,400–$348,600 is available for this grant.

One general training grant for DHHS Region VI (Arkansas, Louisiana, New Mexico, Oklahoma, Texas). A funding range of $269,800–$298,200 is available for this grant.

One general training grant for DHHS Region VII (Iowa, Kansas, Missouri, Nebraska). A funding range of $168,400–$186,100 is available for this grant.

One general training grant for DHHS Region VIII (Colorado, Montana, N. Dakota, S. Dakota, Utah, Wyoming). A funding range of $169,300–$187,100 is available for this grant.

One general training grant for DHHS Region IX (Arizona, California, Hawaii, Nevada, American Samoa, Federated States of Micronesia, Republic of Marshall Islands, Commonwealth of the Northern Mariana Islands, Republic of Palau and Guam). A funding range of $252,200–$278,700 is available for this grant.

One general training grant for DHHS Region X (Alaska, Idaho, Oregon, Washington). A funding range of $154,900–$171,200 is available for this grant.

Statutory and Regulatory Background

Title X of the PHS Act, enacted by Public Law 91–572, authorizes grants for projects to provide family planning services to persons from low-income families and others. Section 1001 of the Act, as amended, authorizes grants "to assist in the establishment and operation of voluntary family planning projects which shall offer a broad range of acceptable and effective family planning methods and services, (including natural family planning methods, infertility services, and services for adolescents)." Section 1003 of the Act, as amended, authorizes the Secretary to make grants to entities to provide the training for personnel to carry out the family planning services programs.

The regulations set out at 42 CFR part 59, subpart C, govern grants for family planning services training. Prospective applicants should refer to the regulations in their entirety.

Role and Operation of the Training Program

Under the regulations, "training" means job-specific skill development. Continuing education activities that are innovative or non-traditional are encouraged. The development or use of self-paced, self-instructional or mediated training materials which utilize technological advancements in the learning field are also acceptable.

The purpose of the general training program is to provide short-term training, continuing education, inservice education and staff development for personnel to improve or maintain at a high level the performance of Title X family planning services providers.

Successful applicants will be required to work closely with a network of other PHS agencies, including the central and regional office staffs, Title X service delivery providers, and regional training advisory committees which provide representation from all service grantees. Successful applicants will be required to review and consider policy and program goals of the Title X family planning program, solicit advice from the regional training advisory committee, and consult with Title X

service delivery providers about training priorities, course content, and curriculum. Because of outcomes from the community planning process and emphasis on community involvement, successful applicants should also stress mechanisms that solicit input from the "customer," both clinician and client.

In developing their curricula and training schedules, general training programs supported under this announcement should be sensitive to the importance of supporting the program priorities of the Title X services program, which include:

• Expansion of current clinic sites and development of new clinics in high need areas;

• Outreach to low-income women, adolescents and persons at high risk of unintended pregnancy or infection with STD (including HIV) not now receiving family planning services;

• Increased emphasis on services to adolescents, including enhanced counseling as well as new service arrangements for providing services to teens;

• Increased focus on quality and comprehensiveness of services, including treatment of STD's, screening for cervical cancer and prevention of breast cancer, substance abuse counseling, and counseling on avoidance of high risk behavior which may place clients at risk for STD and HIV, and

• Increased emphasis on training and retention of Family Planning nurse practitioners, particularly minority nurse practitioners and those working in clinics serving high risk populations.

Training programs should also be sensitive to the need to focus training on emerging priorities, such as the revised Title X Guidelines (when issued), the requirements of the Americans With Disabilities Act, health care reform, changes in delivery of traditional family planning in nontraditional sites and program data reporting requirements currently under revision.

The application should set out how the general training program will address the national health objectives relating to family planning that are discussed in section 5 of the PHS document, Healthy People 2000. In the context of Healthy People 2000, attention should be given to training which would enable trainees to: Work more effectively to reduce teen pregnancy; reduce unintended pregnancy among all women; reduce the initiation of sexual activity by teenagers; increase the effectiveness of contraception, including barrier contraception, among all women; implement pre-conception care; and reduce sexually transmitted diseases, including HIV.

Successful applicants will be responsible for the overall management of a general training program within the geographic area for which the grant is made. This responsibility includes:

• Developing an annual training plan, which reflects national and regional goals and the training needs of local Title X service grantees;

• Developing criteria for selection of staff for training, including prerequisite qualifications. Such criteria should reflect a sensitivity to the unique needs of grantees for certain types of training, priority for trainees serving rural areas or Health Professional Shortage Areas (HPSAs), or other relevant factors;

• Developing a process to review training applications submitted by Title X services grantee personnel. Training grantees will make the final decision about candidates' suitability for training, applying the criteria discussed above;

• Maintaining data on general training characteristics sufficient to allow evaluation by central and regional offices, and self-evaluation by the training grantees;

• Developing and implementing general training plans and continuing professional education programs which include measurable objectives;

• Sharing materials developing with other training programs so as to avoid unnecessary duplication of effort. All materials developed with Title X funds must be made available at cost to other Title X projects upon request;

• Facilitating trainees' receipt of continuing education units where appropriate, and

• Planning an annual continuing education conference and attending at least one national training meeting annually.

Application Requirements

Applications must be submitted on the forms supplied (PHS–5161–1) (OMB Approval No. 0937–0189) and in the manner prescribed in the application kits available from the Office of Grants Management. Applicants are required to submit an application signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award. Applicants are required to submit an original application and two copies.

Accepted applications will be subjected to a competitive review process. The results of this review will assist the Deputy Assistant Secretary for Population Affairs in considering competing applications and in making the final funding decisions.

Any public or private nonprofit organization or agency is eligible to apply for a grant. It is not required that an entity applying for a grant be physically located in the region to be served by the proposed project.

A copy of the legislation and regulations governing this program will be sent to applicants as part of the application kit package. Applicants should use the legislation, regulations and information included in this announcement to guide them in developing their applications. Applications should be limited to 50 doubled-spaced pages, not including appendices providing curriculum vitae or statements of organizational capabilities. Awards will be made only to those applicants who have met all applicable requirements.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity which involves the establishment and pursuit of goals designed to prevent disease and promote health. This announcement is related to the priority areas of Family Planning and Educational and Community-Based Programs. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–0325. (Telephone (202) 783–3238.)

Grant Award

Eligible competing grant applications will be reviewed and assessed against the following criteria:

1. The extent to which the proposed training program will increase the delivery of services to Title X clients, particularly persons from low-income families. (15 points)

2. The extent to which the proposed training program has the potential to fulfill the training needs of the family planning services grantees in the areas to be served, which may include among other things:

a. Development of a capability within family planning services projects to provide pre- and in-service training to their own staffs;

b. Improvement of the family planning service delivery skills of family planning and health services personnel; and

c. Improvement in the utilization and career development of paraprofessional

and paramedical manpower in family planning services.

Total consideration for a, b, and c. (15 points)

3. The extent to which the training program proposes appropriate strategies to improve the provision of family planning services in rural areas and HPSAs. (15 points)

4. The capacity of the applicant to make rapid and effective use of the training grant. (10 points)

5. The administrative and management capability and competence of the applicant. (15 points)

6. The competence of the project staff and/or trainers in relation to the services to be provided. (15 points)

7. The degree to which the project plan adequately provides for the requirements set forth in 42 CFR 59.205, including the applicant's presentation of the project's objectives, the methods for achieving project objectives, the ability to involve providers and the regional office, and the results or benefits expected. (15 points)

In making grant award decisions the Deputy Assistant Secretary for Population Affairs (DASPA) will fund those projects which will in his judgment best promote the purposes of section 1003 of the Act, within the limits of funds available for such projects.

Grants will be approved for project periods of up to 5 years. Grants are funded in annual increments (budget periods). Funding for all approved budget periods beyond the first year of the grant is contingent upon satisfactory progress of the project, efficient and effective use of grant funds provided, and availability of funds.

Review Under Executive Order 12372

Applicants under this announcement are subject to the review requirements of Executive Order 12372, State Review of Applications for Federal Financial Assistance, as implemented by 45 CFR part 100. As soon as possible, the applicant should discuss the project with the State Single Point of Contact (SPOC) for each State in the area to be served. The application kit contains the currently available listing of the SPOCs which have elected to be informed of the submission of applications. For those States not represented on the listing, further inquiries should be made by the applicant regarding the submission to the relevant SPOC. The SPOC's comment(s) should be forwarded to the Grants Management Office, Office of Population Affairs, East-West Towers, suite N1115, 5600 Fishers Lane, Rockville, MD 20857. Such comments must be received by the Office of Population Affairs by June 6, 1994 to be considered.

When final funding decisions have been made, each applicant will be notified by letter of the outcome. The official document notifying an applicant that a project application has been approved for funding is the Notice of Grant Award, which specifies to the grantee the amount of money awarded, the purposes of the grant, and terms and conditions of the grant award.

Dated: February 22, 1994.

Gerald J. Bennett,

Acting Deputy Assistant Secretary for Population Affairs.

[FR Doc. 94–8154 Filed 4–5–94; 8:45 am]

BILLING CODE 4160–17–M

federal register

Wednesday
April 6, 1994

Part VIII

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 15, et al.
Federal Acquisition Regulation, et al.; Proposed Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 15

[FAR Case 92-17]

Federal Acquisition Regulation; Overhead Should-cost Reviews

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

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to add specific guidance on overhead-should cost reviews. This regulatory action was not subject to Office of Management and Budget review pursuant to Executive Order No. 12866 dated September 30, 1993.

DATES: Comments should be submitted on or before June 6, 1994 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., room 4037, Washington, DC 20405.

Please cite FAR case 92-17 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Olson at (202) 501-3221 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAR case 92-17.

SUPPLEMENTARY INFORMATION:

A. Background

The General Accounting Office (GAO) report dated October 30, 1991, entitled "Economy and Efficiency Audits Can Help Reduce Overhead Costs", recommends that regulations be revised to provide guidance for the use of overhead should-cost reviews.

B. Regulatory Flexibility Act

The proposed rule is not expected to 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.*, because contracts awarded to small entities normally are not subject to program or overhead should-cost reviews. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 92-17), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 15

Government procurement.

Dated: March 30, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR part 15 be amended as set forth below:

PART 15—CONTRACTING BY NEGOTIATION

1. The authority citation for 48 CFR part 15 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. The heading of section 15.810 is revised and the text is removed, and sections 15.810-1 thru 15.810-3 are added to read as follows:

15.810 Should-cost review.

15.810-1 General.

(a) Should-cost reviews are a specialized form of cost analysis. Should-cost reviews differ from traditional evaluation methods. During traditional reviews, local contract audit and contract administration personnel primarily base their evaluation of forecasted costs on an analysis of historical costs and trends. In contrast, should-cost reviews do not assume that a contractor's historical costs reflect efficient and economical operation. Instead, these reviews evaluate the economy and efficiency of the contractor's existing work force, methods, materials, facilities, operating systems, and management. These reviews are accomplished by a multi-functional team of Government contracting, contract administration, pricing, audit, and engineering representatives. The objective of should-cost reviews is to promote both short and long-range improvements in the contractor's economy and efficiency in order to reduce the cost of performance of Government contracts. In addition, by providing rationale for any recommendations and quantifying their impact on cost, the Government will be better able to develop realistic objectives for negotiation.

(b) There are two types of should-cost reviews—program should-cost review (see 15.810-2) and overhead should-cost review (see 15.810-3). An overhead should-cost review may be performed independently, or in conjunction with a program should-cost review. The scope of a should-cost review can range from a large-scale review examining the contractor's entire operation (including plant-wide overhead and selected major subcontractors) to a small-scale tailored review examining specific portions of a contractor's operation.

15.810-2 Program should-cost review.

(a) Program should-cost review is used to evaluate significant elements of direct costs, such as material and labor, and associated indirect costs, usually incurred in the production of major systems. When a program should-cost review is conducted relative to a contractor proposal, a separate audit report on the proposal is required.

(b) A program should-cost review should be considered, particularly in the case of a major system acquisition (see part 34), when—

(1) Some initial production has already taken place;

(2) The contract will be awarded on a sole-source basis;

(3) There are future year production requirements for substantial quantities of like items;

(4) The items being acquired have a history of increasing costs;

(5) The work is sufficiently defined to permit an effective analysis and major changes are unlikely;

(6) Sufficient time is available to plan and conduct the should-cost review adequately; and

(7) Personnel with the required skills are available or can be assigned for the duration of the should-cost review.

(c) The contracting officer should decide which elements of the contractor's operation have the greatest potential for cost savings and assign the available personnel resources accordingly. While the particular elements to be analyzed are a function of the contract work task, elements such as manufacturing, pricing and accounting, management and organization, and subcontract and

vendor management are normally reviewed in a should-cost review.

(d) In acquisitions for which a program should-cost review is conducted, a separate program should-cost review team report, prepared in accordance with agency procedures, is required. Field pricing reports are required only to the extent that they contribute to the combined team position. The contracting officer shall consider the findings and recommendations contained in the program should-cost review team report when negotiating the contract price. After completing the negotiation, the contracting officer shall provide the administrative contracting officer (ACO) a report of any identified uneconomical or inefficient practices, together with a report of correction or disposition agreements reached with the contractor. The contracting officer shall establish a follow-up plan to monitor the correction of the uneconomical or inefficient practices.

(e) When a program should-cost review is planned, the contracting officer should state this fact in the acquisition plan (see part 7, subpart 7.1) and in the solicitation.

15.810–3 Overhead should-cost review.

(a) An overhead should-cost review is used to evaluate indirect costs, such as fringe benefits, shipping and receiving, facilities and equipment, depreciation, plant maintenance and security, taxes, and general and administrative activities. It is normally used to evaluate and negotiate a forward pricing rate agreement (FPRA) with the contractor. When an overhead should-cost review is conducted, a separate audit report is required.

(b) The following factors should be considered when selecting contractor sites for overhead should-cost reviews:

(1) Dollar amount of Government business;

(2) Level of Government participation;

(3) Level of noncompetitive Government contracts;

(4) Volume of proposal activity;

(5) Major system or program;

(6) Mergers, acquisitions, takeovers; and

(7) Other conditions, e.g., changes in accounting systems, management, or business activity.

(c) The objective of the overhead should-cost review is to evaluate significant indirect cost elements in-depth, identify inefficient and uneconomical practices, and recommend corrective action. If it is conducted in conjunction with a program should-cost review, a separate overhead should-cost review report is not required. However, the findings and recommendations of the overhead should-cost team, or any separate overhead should-cost review report, shall be provided to the ACO. The ACO should use this information to form the basis for the Government position in negotiating a FPRA with the contractor. The ACO shall establish a follow-up plan to monitor the correction of the uneconomical or inefficient practices.

[FR Doc. 94–8142 Filed 4–5–94; 8:45 am]

BILLING CODE 6820–34–M

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48 CFR Parts 15 and 52

[FAR Case 92–10]

Federal Acquisition Regulation; Nonprofit Institutions Clause Prescription

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

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to revise the prescriptions for use of the clauses Termination of Defined Benefit Pension Plans, and Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions, and to clarify the language in the clauses. This regulatory action was not subject to Office of Management and Budget review pursuant to Executive Order No. 12866 dated September 30, 1993.

DATES: Comments should be submitted on or before June 6, 1994 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., room 4037, Washington, DC 20405.

Please cite FAR case 92–10 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Jeremy F. Olson at (202) 501–3221 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 92–10.

SUPPLEMENTARY INFORMATION:

A. Background

The wording of the prescriptions at 15.804–8 (e) and (f) currently implies that the clauses at 52.215–27, Termination of Defined Benefit Pension Plans, and 52.215–39, Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions, should also be used in solicitations and contracts with noncommercial organizations. The clauses refer to the cost principles applicable to commercial organizations in FAR subpart 31.2, whereas OMB Circulars A–21, A–87, and A–122 contain the cost principles governing contracts with noncommercial organizations. In addition, the prescriptions currently contain dissimilar criteria concerning the use of the clauses in preaward or postaward cost situations. The proposed revisions to the prescriptions at 15.804–8 (e) and (f) will correct these inconsistencies and clarify when the clauses at 52.215–27 and 52.215–39 should be used. Additional revisions to the clauses clarify the requirements specified in them.

B. Regulatory Flexibility Act

The proposed rule is not expected to 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.*, because most contracts awarded to small businesses are awarded on a competitive, fixed-price basis and the cost principles do not apply. An analysis of data available for fiscal years 1989 through 1991 reveals that, in the Department of Defense, the number of contract actions awarded to small businesses which required the submission of cost or pricing data averaged less than 1 percent of the total number of small business actions during the three-year period. In addition, for other than small business entities, any impact on such entities is considered to flow from the respective cost principles contained in the governing OMB Circular (*i.e.*, A–21, Cost Principles for Educational Institutions; A–87, Cost Principles for State and Local Governments; and A–122, Cost Principles for Nonprofit Organizations). An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 92–10), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the

public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 15 and 52

Government procurement.

Dated: March 30, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR parts 15 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 15 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 15—CONTRACTING BY NEGOTIATION

2. Section 15.804–8 is amended by revising paragraphs (e) and (f) to read as follows:

15.804–8 Contract clauses.

* * * * *

(e) *Termination of Defined Benefit Pension Plans.* The contracting officer shall insert the clause at 52.215–27, Termination of Defined Benefit Pension Plans, in solicitations and contracts for which it is anticipated that certified cost or pricing data will be required or for which any preaward or postaward cost determinations will be subject to (FAR) 48 CFR part 31.

(f) *Postretirement Benefit Funds.* The contracting officer shall insert the clause at 52.215–39, Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB), in solicitations and contracts for which it is anticipated that certified cost or pricing data will be required or for which any preaward or postaward cost determinations will be subject to (FAR) 48 CFR part 31.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 52.215–27 is revised to read as follows:

52.215–27 Termination of Defined Benefit Pension Plans.

As prescribed in 15.804–8(e), insert the following clause:

Termination of Defined Benefit Pension Plans (Date)

The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate a defined benefit pension plan or otherwise recapture such pension fund assets. If pension fund assets revert to the Contractor or are constructively received by it under a termination or otherwise, the Contractor shall make a refund or give a credit to the Government for its equitable share of the gross amount withdrawn. The Government's equitable share shall reflect the Government's participation in pension costs through those contracts for which certified (see section 15.804 of the Federal Acquisition Regulation (FAR)) cost or pricing data were submitted or which are subject to FAR part 31. The Contractor shall include the substance of this clause in all subcontracts under this contract which meet the applicability requirements of FAR 15.804–8(e).

(End of clause)

4. Section 52.215–39 is revised to read as follows:

52.215–39 Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB).

As prescribed in 15.804–8(f), insert the following clause:

Reversion or Adjustment of Plans for Postretirement Benefits Other Than Pensions (PRB) (Date)

The Contractor shall promptly notify the Contracting Officer in writing when it determines that it will terminate or reduce a PRB plan. If PRB fund assets revert, or inure, to the Contractor or are constructively received by it under a plan termination, reduction, or otherwise, the Contractor shall made a refund or give a credit to the Government for its equitable share of any amount of previously funded PRB costs which revert or inure to the Contractor. Such equitable share shall reflect the Government's previous participation in PRB costs through those contracts for which certified (see section 15.804 of the Federal Acquisition Regulation (FAR)) cost or pricing data were submitted or which are subject to FAR part 31. The Contractor shall include the substance of this clause in all subcontracts under this contract which meet the applicability requirements of FAR 15.804–8(f).

(End of clause)

[FR Doc. 94–8143 Filed 4–5–94; 8:45 am]

BILLING CODE 6820–34–M

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48 CFR Parts 19 and 52

[FAR Case 92–19]

Federal Acquisition Regulation; Subcontracting Plans

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

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing amending the Federal Acquisition Regulation (FAR) to expand the circumstances when subcontracting plans may be required and negotiated with more than the apparently successful offeror and to prescribe an Alternate II to the clause Small Business and Small Disadvantaged Business Subcontracting Plan to be used when contracting by negotiation and subcontracting plans are required with initial proposals. The intent of this proposal is to ensure that small and small disadvantaged business concerns are being afforded the maximum practical subcontracting opportunities consistent with statutory requirements and acquisition objectives. This regulatory action was not subject to Office of Management and Budget review pursuant to Executive Order 12866, dated September 30, 1993.

DATES: Comments should be submitted on or before June 6, 1994, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., room 4037, Washington, DC 20405.

Please cite FAR case 92–19 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Scott at (202) 501–0168 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 92–19.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

The proposed rule is not expected to 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.*, because subcontracting plans are not required from small business concerns. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 92–19), in correspondence.

B. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) is deemed to apply because the proposed rule contains information collection requirements. Accordingly, a request for approval of revised burden estimates for Office of Management and Budget (OMB) Clearance Number 9000–0006 is being submitted to OMB under 44 U.S.C. 3501, *et seq.* Public comments

concerning this request are invited through a notice document in this **Federal Register** issue.

List of Subjects in 48 CFR Parts 19 and 52

Government procurement.

Dated: March 28, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR parts 19 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 19 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

2. Section 19.705–2 is amended by revising paragraph (d) to read as follows:

19.705–2 Determining the need for a subcontracting plan.

* * * * *

(d) In solicitations for negotiated acquisitions, the contracting officer may require the submission of subcontracting plans with initial offers, or at any other time prior to award. In determining when subcontracting plans should be required, as well as when and with whom plans should be negotiated, the contracting officer shall consider the integrity of the competitive process, the goal of affording maximum practicable opportunity for small and small disadvantaged business concerns to participate, and the burden placed on offerors.

3. Section 19.708 is amended in the first sentence of paragraph (b)(1) by removing the words "has been" and inserting "is"; and at the end of the paragraph by adding a sentence to read as follows:

19.708 Solicitation provisions and contract clauses.

* * * * *

(b)(1) * * * When contracting by negotiation, and subcontracting plans are required with initial proposals as provided for in 19.705–2(d), the contracting officer shall use the clause with its Alternate II.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 52.219–9 is amended by revising the date in the clause heading and adding Alternate II following Alternate I to read as follows:

52.219–9 Small Business and Small Disadvantaged Business Subcontracting Plan.

* * * * *

Small Business and Small Disadvantaged Business Subcontracting Plan (Date)

* * * * *

Alternate II (DATE). As prescribed in 19.708(b)(1), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) Proposals submitted in response to this solicitation shall include a subcontracting plan, which separately addresses subcontracting with small business concerns and with small disadvantaged business concerns. If the offeror is submitting an individual contract plan, the plan must separately address subcontracting with small business concerns and with small disadvantaged business concerns with a separate part for the basic contract and separate parts for each option (if any). The plan shall be included in and made a part of the resultant contract. The subcontracting plan shall be negotiated within the time specified by the Contracting Officer. Failure to submit and negotiate a subcontracting plan shall make the offeror ineligible for award of a contract.

[FR Doc. 94–8148 Filed 4–5–94; 8:45 am]

BILLING CODE 6820–34–M

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48 CFR Parts 25 and 52

[FAR Case 92–48]

Federal Acquisition Regulation; Fluctuating Exchange Rates

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

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to provide guidance on the use of foreign currency. A corresponding provision is proposed regarding evaluation of foreign currency offers. This regulatory action was not subject to Office of Management and Budget review pursuant to Executive Order 12866, dated September 30, 1993.

DATES: Comments should be submitted on or before June 6, 1994, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., room 4037, Washington, DC 20405.

Please cite FAR case 92–48 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Peter O'Such at (202) 501–1759 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 92–48.

SUPPLEMENTARY INFORMATION:

A. Background

This case was opened based on Department of Defense Inspector General Report Number 92–090, May 14, 1992, Impact of Fluctuating Foreign Exchange Rates on Contract Prices, which found that regulatory guidance does not adequately address consideration of foreign currency exchange rate fluctuation.

B. Regulatory Flexibility Act

The proposed rule is not expected to 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.*, because this rule pertains to contracts entered into and performed overseas, and with rare exceptions, will affect only foreign concerns. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 601. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.*

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 25 and 52

Government procurement.

Dated: March 28, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR parts 25 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 25 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 25—FOREIGN ACQUISITION

2. In part 25, subpart 25.5, the heading is revised to read as follows:

Subpart 25.5—Use of Foreign Currency

3. Section 25.501 is revised to read as follows:

25.501 Policy.

(a) Unless a specific currency is required by international agreement or by the Trade Agreements Act (see 25.405(d)), contracting officers shall determine whether solicitations for contracts to be entered into and performed outside the United States will require submission of offers either in U.S. currency or in a specified foreign currency. In unusual circumstances, the contracting officer may permit submission of offers in other than a specified currency.

(b) To ensure a fair evaluation of offers, solicitations should generally require all offers to be priced in the same currency. However, if submission of offers in other than a specified currency is permitted, the contracting officer shall convert the offered prices to U.S. currency for evaluation purposes. The contracting officer shall use the current market exchange rate from a commonly used commercially available source in effect on date of bid opening or due date for receipt of final offers.

(c) If contracts are priced in foreign currency, agencies must ensure that adequate funds are available to cover currency fluctuations in order to avoid a violation of the Anti-Deficiency Act.

4. Section 25.502 is added to read as follows:

25.502 Solicitation provision.

The contracting officer shall insert the provision at 52.225–OO, Evaluation of Foreign Currency Offers, in solicitations if the use of other than a specified currency is permitted. The contracting officer shall insert the source of the rate to be used in the evaluation of offers.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. Section 52.225–OO is added to read as follows:

52.225–OO Evaluation of Foreign Currency Offers.

As prescribed in 25.502, insert the following provision:

Evaluation of Foreign Currency Offers (Date)

If offers are received in more than one currency, offers shall be evaluated by converting the foreign currency to United States currency using (*Insert source of rate*) in effect on the date of bid opening or due date for receipt of final offers.

(End of Provision)

[FR Doc. 94–8144 Filed 4–5–94; 8:45 am]

BILLING CODE 6820–34–M

48 CFR Parts 28 and 52

[FAR Case 92–14]

Federal Acquisition Regulation; Insurance—Liability to Third Persons

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

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to delete the prescriptive language in the Federal Acquisition Regulation (FAR), particularly at "Solicitation provision and contract clause on liability insurance under cost-reimbursement contracts". This regulatory action was not subject to Office of Management and Budget review pursuant to Executive Order No. 12866 dated September 30, 1993.

DATES: Comments should be submitted on or before June 6, 1994 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, room 4037, Washington, DC 20405.

Please cite FAR case 92–14 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb at (202) 501–4547 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAR case 92–14.

SUPPLEMENTARY INFORMATION:

A. Background

The FAR language proposed for deletion at 28.311–1 applies only to cost-reimbursement contracts for research and development awarded to state agencies or charitable institutions that claim partial or total immunity from tort liability. For these entities, Alternates I and II of 52.228–7, Insurance—Liability to Third Persons, limit the contract's insurance requirements and the Government's obligation to indemnify for third party liability. The Councils believe that the current language is obsolete.

B. Regulatory Flexibility Act

The proposed rule is not expected to 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.*, because the language proposed for deletion applies only to cost-reimbursement contracts for research and development that are awarded to entities which, by virtue of their status as either an agency of the state or as a charitable institution, claim partial or total immunity from tort liability under such contracts. These entities are believed to be few in number. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 92–14), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 28 and 52

Government procurement.

Dated: March 30, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR parts 28 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 28 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 28—BONDS AND INSURANCE

28.311–1 [Removed and redesignated]

2. Section 28.311–1 is removed.

28.311–2 [Redesignated and amended]

3. Section 28.311–2 is redesignated as section 28.311–1 and amended by removing the last two sentences.

28.311–3 [Redesignated]

4. Section 28.311–3 is redesignated as section 28.311–2.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.228–6 [Removed and reserved]

5. Section 52.228–6 is removed and reserved.

52.228–7 [Amended]

6. Section 52.228–7 is amended in the introductory paragraph by removing the

citation "28.311–2" and inserting in its place "28.311–1"; in paragraph (a)(1) of the clause by removing the words "or in paragraph (h) of this clause (if the clause has a paragraph (h))."; in paragraph (c) introductory text by removing the words "Except as provided in paragraph (h) of this clause (if the clause has a paragraph (h)), the" and inserting in its place the word "The"; and by removing Alternates I and II at the end of the clause.

52.245–7 [Amended]

7. Section 52.245–7 is amended in the first sentence of paragraph (j) by removing the words "in the clause at FAR 52.228–6, Insurance—Liability to Third Persons, or".

52.245–10 [Amended]

8. Section 52.245–10 is amended in the first sentence of paragraph (f) by removing the words "in the clause at FAR 52.228–6, Insurance—Liability to Third Persons or".

[FR Doc. 94–8145 Filed 4–5–94; 8:45 am]

BILLING CODE 6820–34–M

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48 CFR Part 31

[FAR Case 92–604]

Federal Acquisition Regulation; Nonallowability of Excise Taxes on Nondeductible Contributions To Deferred Compensation Plans

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

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to revise the cost principle concerning taxes. This regulatory action was not subject to Office of Management and Budget review pursuant to Executive Order 12866, dated September 30, 1993.

DATES: Comments should be submitted on or before June 6, 1994 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, room 4037, Washington, DC 20405.

Please cite FAR case 92–604 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Jeremy F. Olson at (202) 501–3221 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite Far case 92–604.

SUPPLEMENTARY INFORMATION:

A. Background

Under the current FAR 31.205–41(b)(6), excise taxes on accumulated funding deficiencies or prohibited transactions involving employee deferred compensation plans pursuant to sections 4971 and 4975 of the Internal Revenue Code of 1954, as amended, are unallowable. This reflects a long-standing Government policy that punitive-type excise taxes are not reimbursable costs on Government contracts. Over the years, subsequent legislation has added several new excise taxes to subtitle D, chapter 43 of the Internal Revenue Service Code such that the Code currently lists 13 such taxes. The Councils have agreed that it is appropriate to revise FAR 31.205–41(b)(6) to insert a general prohibition on all excise taxes found at subtitle D, chapter 43 of the Internal Revenue Service Code. Such a general prohibition will ensure that future legislative changes to subtitle D, chapter 43 of the Internal Revenue Service Code will be automatically reflected in the cost principle.

B. Regulatory Flexibility Act

The proposed rule is not expected to 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.*, because most contracts awarded to small entities are awarded on a competitive, fixed-price basis and the cost principles do not apply. An analysis of data available for fiscal years 1989 through 1991 reveals that, in the Department of Defense, the number of contract actions awarded to small businesses which required the submission of cost or pricing data averaged less than 1 percent of the total number of small business actions during the three-year period. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 92–604), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: March 28, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR part 31 be amended as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 31.205–41 is amended by revising paragraph (b)(6) to read as follows:

31.205–41 Taxes.

* * * * *

(b) * * *

(6) Any excise tax in subtitle D, chapter 43 of the Internal Revenue Code of 1986, as amended. That chapter includes excise taxes imposed in connection with qualified pension plans, welfare plans, deferred compensation plans, or other similar types of plans.

* * * * *

[FR Doc. 94–8146 Filed 4–5–94; 8:45 am]

BILLING CODE 6820–34–M

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48 CFR Parts 44 and 52

[FAR Case 92–40]

Federal Acquisition Regulation; Contractors' Purchasing Systems Reviews and Subcontractor Consent

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

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing amendments to the Federal Acquisition Regulation (FAR) to increase certain dollar thresholds regarding Contractors' Purchasing Systems Reviews (CPSR's) and Subcontractor Consent. These revisions are a result of recommendations submitted in response to the FAR Council's request for industry's views on the FAR. This regulatory action was not subject to Office of Management and Budget review pursuant to Executive Order 12866, dated September 30, 1993.

DATES: Comments should be submitted on or before June 6, 1994, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., Room 4037, Washington, DC 20405.

Please cite FAR case 92–40 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 in reference to this FAR case. For general information, contact the FAR Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501–4755. Please cite FAR case 92–40.

SUPPLEMENTARY INFORMATION:

A. Background

We raised the threshold for performing CPSR's from $10 million to $25 million to recognize the effects of inflation on this threshold which had not been changed since 1980. The $25 million threshold will reduce administrative burden on both the Government and contractors by reducing the number of reviews performed annually and focuses the Government's attention on large dollar procurement systems.

We raised the $10,000 threshold stated in the clause at 52.244–2(a)(4) to $25,000 for notification to the contracting officer on proposed subcontracts involving fabrication, purchase, rental, installation, or other acquisition of special test equipment or any items of facilities to recognize the increased costs of this type of equipment and the effects of inflation.

We also raised the threshold in the clause at 52.244–2(b)(1) requiring additional information on certain subcontracts from $10,000 to $25,000. This increase recognizes rising hourly wage rates and contract costs.

B. Regulatory Flexibility Act

The proposed rule is not expected to 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.*, because the rule reduces burden on contractors by reducing surveillance and by increasing dollar thresholds at which contractors are required to provide notification of intent to subcontract. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 92–40), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) is deemed to apply because the proposed rule contains information collection requirements. Accordingly, a request for approval of a new information collection requirement concerning Contractors' Purchasing Systems Reviews and Subcontractor Consent is being submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Public comments concerning this request are invited through a notice document in this **Federal Register** issue.

List of Subjects in 48 CFR Parts 44 and 52

Government procurement.

Dated: March 28, 1994.

Albert A. Vicchiolla,

Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR parts 44 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 44 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

44.302 [Amended]

2. Section 44.302 is amended in the first and fourth sentences of paragraph (a) by removing the amount "$10 million" and inserting "$25 million".

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.244–2 [Amended]

3. Section 52.244–2 is amended in the clause heading by revising the date to read "(DATE)"; in paragraphs (a)(4) and (b)(1) of the clause by removing the amount "$10,000" and inserting "$25,000".

* * * * *

[FR Doc. 94–8147 Filed 4–5–94; 8:45 am]

BILLING CODE 6820–34–M

federal register

Wednesday
April 6, 1994

Part IX

Department of Defense
General Services Administration
National Aeronautics and Space Administration

Clearance Request for Subcontracting Plans/Subcontracting Report for Individual Contracts and Contractors' Purchasing Systems Reviews; Notices

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0006; FAR Case 92–19]

Clearance Request for Subcontracting Plans/Subcontracting Report for Individual Contracts (Standard Form 294)

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

ACTION: Notice of request for a revision to an existing OMB clearance (9000–0006).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision of a currently approved information collection requirement concerning Subcontracting Plans/Subcontracting Report for Individual Contracts (Standard Form 294).

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

In accordance with the Small Business Act (15 U.S.C. 631, *et seq.*), contractors receiving a contract for more than $10,000 agree to have small and small disadvantaged business concerns participate in the performance of the contract as far as practicable. Contractors receiving a contract or a modification to a contract expected to exceed $500,000 ($1,000,000 for construction) must submit a subcontracting plan that provides maximum practicable opportunities for small and small disadvantaged business concerns. Specific elements required to be included in the plan are specified in section 8(d) of the Small Business Act and implemented in FAR subpart 19.7.

In conjunction with these plans, contractors must submit semiannual reports of their progress on Standard Form 294, Subcontracting Report for Individual Contracts.

A satisfactory subcontracting plan is required before a contract exceeding $500,000 ($1,000,000 for construction) can be awarded. The contracting officer must examine the information in the proposed plan to determine if the plan is in compliance with the Small Business Act and the FAR. In addition, the information is used for policy and management control purposes.

Information submitted on Standard Form 294 is used to assess contractors' compliance with their subcontracting plans.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, 1,625; responses per respondent, 36; total annual responses, 58,500; preparation hours per response, 6; and total response burden hours, 351,000. This represents an increase in the previously approved burden to reflect the number of subcontracting plans that may be required with initial offers.

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeepers, 1,625; hours per recordkeeper, 121; and total recordkeeping burden hours, 196,625.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0006, FAR case 92–19, Subcontracting Plans/Subcontracting Report for Individual Contracts (Standard Form 294), in all correspondence.

Dated: March 22, 1994.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 94–8140 Filed 4–5–94; 8:45 am]

BILLING CODE 6820–34–M

[FAR Case 92–40]

OMB Clearance Request for Contractors' Purchasing Systems Reviews

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

ACTION: Notice of new request for OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve a new information collection requirement concerning Contractors' Purchasing Systems Reviews.

DATES: Comments may be submitted on or before June 6, 1994.

ADDRESSES: Send comments to Mr. Peter Weiss, FAR Desk Officer, OMB, room 3235, NEOB, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

The proposed rule revises 44.302, Requirements, and 52.244–2, Subcontracts (Cost-Requirements, and Letter Contracts), pertaining to performance of Contractors' Purchasing Systems Reviews (CPSR's) and subcontractor consent requirements, respectively. The rule raises the threshold at (1) 44.302(a) for performing CPSR's from $10 million to $25 million to recognize the effects of inflation on this threshold; (2) 52.244–2(a)(4) to recognize the increased costs of special test equipment and the effects of inflation since the threshold was established; and (3) 52.244–2(b)(1) to recognize the effects of raising hourly wage rates and contract costs.

No previous clearance for this requirement existed. The burden hours being requested take into consideration the revised (raised) thresholds; i.e., a reduction in burden on contractors from the present requirement.

The objective of a contractor purchasing system review (CPSR), as discussed in part 44 of the Federal Acquisition Regulation, is to evaluate the efficiency and effectiveness with which the contractor spends Government funds and complies with Government policy when subcontracting. The review provides the administrative contracting officer a basis for granting, withholding, or withdrawing approval of the contractor's purchasing system. These revisions are a result of recommendations submitted by industry. The rule reduces burden on contractors by decreasing surveillance and increasing dollar thresholds at which contractors are required to provide notification of intent to subcontract.

B. Annual Reporting Burden

Total annual public reporting burden for this collection of information is estimated to average 26,860 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and

reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to General Services Administration, FAR Secretariat, 18th & F Streets, NW., room 4035, Washington, DC 20405, and to the FAR Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The annual reporting burden is estimated as follows: Respondents, 1,580; responses per respondent, 1; total annual responses, 1,580; preparation hours per response, 17; and total response burden hours, 26,860.

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB clearance request regarding Contractors' Purchasing Systems Reviews, FAR case 92–40, in all correspondence.

Dated: March 22, 1994.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 94–8141 Filed 4–5–94; 8:45 am]

BILLING CODE 6820–34–M

federal register

Wednesday
April 6, 1994

Part X

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 110

Recordkeeping Requirements for Certified Applicators of Federally Restricted Use Pesticides; Proposed Rules

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 110

[SD-94-001 PR]

RIN No. 0581-AA39

Recordkeeping Requirements for Certified Applicators of Federally Restricted Use Pesticides

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service, United States Department of Agriculture, proposes to revise its regulations in 7 CFR Part 110, governing recordkeeping of federally restricted use pesticides by certified applicators. The regulations governing recordkeeping of federally restricted use pesticides by certified applicators were published on April 9, 1993, and became effective on May 10, 1993. Since that time, issues have been raised regarding the regulations. A lawsuit was filed challenging the substance of limited portions of the regulations. The changes specified in the proposed rule would clarify certain provisions of the regulations, ensure consistency with the objectives of section 1491 of the Food, Agriculture, Conservation, and Trade Act of 1990, and provide for a more pragmatic approach to the implementation of the Pesticide Recordkeeping Program.

DATES: Comments must be received on or before June 6, 1994.

ADDRESSES: Written comments concerning this proposal should be sent to Bonnie L. Poli, Docket Manager, USDA-AMS, Science Division, 8700 Centreville Road, suite 200, Manassas, Virginia 22110, and should refer to the docket title and number located in the heading of this document. All comments submitted in response to this proposal will be available for public inspection in Room 3507, South Agriculture Building, 14th & Independence Avenues, SW., between the hours of 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Bonnie Poli, Chief, Pesticide Records Branch, Science Division, AMS, 8700 Centreville Road, suite 200, Manassas, VA 22110, 703-330-7826.

SUPPLEMENTARY INFORMATION:

Executive Order 12866 and Regulatory Flexibility Act

This rule has been determined to be non-significant for purposes of Executive Order 12866 and therefore has not been reviewed by OMB.

This proposed rule also has been reviewed under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). This proposed rule will (1) clarify certain definitions within the regulations; (2) clarify the availability of pesticide record information to facilitate medical treatment or first aid; (3) clarify the utilization and release of pesticide record information by licensed health care professionals; (4) modify the time period by which the information required by the regulations shall be officially recorded, and (5) ensure uniformity in recording the location of pesticide applications by removing the distinction between recording spot applications and other applications of federally restricted use pesticides. We do not anticipate that any of these proposed changes will result in any significant additional economic impact on certified (private and commercial) applicators of federally restricted use pesticides.

Under these circumstances, the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If adopted, this proposed rule: (1) Will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule; (2) will not have any retroactive effect; and (3) will not require administrative proceedings before parties may file suit challenging this rule.

Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the recordkeeping provisions included in this proposed rule have been approved by the Office of Management and Budget (OMB), number 0581-0164. The proposed rule does not change the data elements required for a record or the collection of information.

Background

As part of the Food, Agriculture, Conservation, and Trade Act of 1990 (Pub.L. 101-624; 7 U.S.C. 136i-1), hereinafter referred to as the FACT Act, Congress mandated the establishment, by the Secretary of Agriculture in consultation with the Administrator of the Environmental Protection Agency, of requirements for recordkeeping by all certified applicators of federally restricted use pesticides.

Applicator certification programs are administered by EPA, other Federal Agencies, and States. A restricted use pesticide, as distinguished from a general use pesticide, is one that has been classified as such under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, at 7 U.S.C. 136a(d)(1)(C)). EPA regulations issued under FIFRA, further provide that restricted use pesticides may be applied only by, or under the supervision of, a certified applicator. Applicator certification requirements are provided in the EPA regulations (40 CFR 171).

A certified applicator may be a commercial applicator or a private applicator. A private applicator is one who uses or supervises the use of any restricted use pesticide for purposes of producing any agricultural commodity: (1) On property that is owned or rented by the applicator, or the employer of the applicator; or (2) if applied without compensation other than trading of personal services between producers of agricultural commodities, on the property of another person. A commercial applicator is one who uses or supervises the use of a restricted use pesticide for any purpose or on any property other than as provided under the definition of a private applicator.

On April 9, 1993, final regulations were published in the Federal Register, "Recordkeeping Requirements for Certified Applicators of Federally Restricted Use Pesticides." These regulations went into affect on May 10, 1993. USDA proceeded to implement a national program for recordkeeping of federally restricted use pesticides. One of USDA's first goals was to inform certified pesticide applicators of their responsibilities under the new regulations.

Early in the implementation phase of the USDA recordkeeping program, State regulatory agencies and others raised issues involving specific interpretations of the regulations. A lawsuit was filed against the Secretary of Agriculture and the Administrator of the Environmental Protection Agency by the National Coalition Against the Misuse of Pesticides and others. The lawsuit challenged the substance of limited portions of the final regulations promulgated by USDA. After careful consideration of the issues raised by the lawsuit and a thorough review of the regulations, we agreed to propose changes to the regulations for the reasons set forth below.

Proposed Amendments to § 110.2 Definitions

Concerns were raised that the regulation's definition of "medical emergency" was too restrictive and could hinder the medical treatment by licensed health care professionals of an individual(s) who may have been exposed to a federally restricted use pesticide. It was pointed out that some particular pesticide exposures could require immediate medical treatment or first aid, but would not meet the criteria of the current definition. It is not the intent of USDA to limit medical treatment of an individual(s) who may have been exposed to a restricted use pesticide. Because reactions to some pesticide exposures could require treatment immediately and not fit the current definition of "medical emergency," USDA is proposing to amend the definition of "medical emergency" to read as follows:

Medical Emergency. A medical emergency shall be defined as a situation that requires immediate medical treatment or first aid.

Questions also were raised concerning the definition of "licensed health care professional." There was some confusion as to whether medically trained individuals who had been certified by a State, such as medical technicians on an ambulance or emergency response vehicle, met the definition. USDA wishes to clarify that individuals that have been licensed or certified by a State to provide medical treatment are considered to be "licensed health care professionals." Therefore, individuals such as physicians, nurses, physician assistants, or emergency medical technicians, licensed or certified by a State to provide medical treatment, would fall into the definition of "licensed health care professionals." However, individuals who have been certified only to provide first aid or cardiopulmonary resuscitation (CPR) through organizations such as the American Red Cross would not be "licensed health care professionals."

In order to clarify this definition, USDA is proposing to amend the definition of "licensed health care professional" to read as follows:

Licensed health care professional. A physician, nurse, emergency medical technician, or other qualified individual, licensed or certified by a State to provide medical treatment.

Proposed Amendment to § 110.3(a)(6)—Spot Applications

The reduced requirements for recording information for spot applications were intended to provide private certified applicators with an incentive to record small spot applications on noxious weeds or similar type applications, without recording each location, due to the usually small amount of pesticide associated with a spot treatment. Concerns were raised that the spot application record provision does not require a specific location for each spot application, which could be important information for the purpose of providing first aid or medical treatment. USDA has reviewed the spot application provision and agrees that, in some instances, the location of spot applications could be valuable information when needed to determine if a pesticide exposure could have occurred in a field or area. Therefore, we are proposing to delete § 110.3(a)(6). Under the proposed regulations, spot applications would be required to be recorded in the same manner as are other applications of federally restricted use pesticides. This would provide field or area locations which could be utilized to help determine if an individual could have been exposed to a federally restricted use pesticide.

Proposed Amendment to § 110.3(b)—Time for Making an Official Record

USDA has reevaluated the 30 day time period allowed certified applicators to make an official record after concerns were expressed regarding the accuracy of the records for both collecting information for a pesticide use data base and for medical treatment if application information was not required to be recorded for 30 days. USDA recognizes the importance of compiling accurate pesticide use data and believes that data recorded in a shorter time period would be more accurate. USDA also reexamined existing State requirements for making official records of pesticide applications for private and commercial certified applicators. We found that many State regulations require applicators to have records available "upon request" which, in some situations, could be interpreted to be immediately after an application. Therefore, to assure more accurate information for both medical treatment and accuracy of collected data on pesticide use, USDA proposes to change the time period from 30 days to 7 days. USDA considers the proposed 7 day requirement adequate to allow the private certified applicator time to make an accurate official record without causing an undue hardship in peak production periods. This proposed requirement also is less stringent than similar existing State requirements for recordkeeping in many States.

Additionally, concerns were raised regarding the certified applicator's responsibility to provide federally restricted use pesticide information concerning a specific application prior to the time to make an official record for purposes of providing medical treatment. USDA interprets the current regulations to require certified applicators to provide the record information for purposes of providing medical treatment or first aid, in accordance with the provisions of § 110.5(a), whether or not the time to make an official written record has elapsed. Nonetheless, in order to make this clear, we propose to add explicit language to this effect. The proposed amendment would read as follows:

The information required in this section shall be recorded within seven (7) days following the pesticide application. However, whether or not the written record has been completed, the certified applicator shall provide the information to be recorded in accordance with the provisions of § 110.5(a) of this part.

Proposed Amendments to § 110.5(a)—Availability of Records to Facilitate Medical Treatment

Questions also have been raised concerning the availability of records to facilitate medical treatment. Concern was expressed that the current regulations could hinder access to record information if a strict interpretation was applied to the need for the licensed health care professional to personally make the record information request. USDA never intended to prevent an individual acting under the direction of the attending licensed health care professional from requesting record information. We are aware that, in some instances, the attending licensed health care professional may rely on a person acting under his/her direction to make the contacts necessary to obtain the pesticide record information. However, the regulations also presume the request for pesticide record information is supported by indications of pesticide exposure and the need for medical treatment or first aid. For example, the attending licensed health care professional, such as a registered nurse, may determine that the pesticide record information will be necessary to treat the patient, and instruct someone under his/her direction, to obtain the record information.

In order to clarify the availability of pesticide record information to facilitate medical treatment, USDA proposes to amend § 110.5(a) to read as follows:

When a licensed health care professional, or an individual acting under the direction of

the attending licensed health care professional, determines that any record of the application of restricted use pesticide required to be maintained under § 110.3 of this part is necessary to provide medical treatment or first aid to an individual who may have been exposed to the restricted use pesticide for which the record is or will be maintained, the certified applicator required to maintain the record shall promptly provide the record information and any available label information. If it is determined by a licensed health care professional, or an individual acting under the direction of the attending licensed health care professional, to be a medical emergency, the record information of the restricted use pesticide, relating to the medical emergency, shall be provided immediately.

Proposed Amendments to § 110.5(b)—Release of Record Information by licensed Health Care Professionals

Under the current regulations, licensed health care professionals may release record information obtained through § 110.5(a) only when necessary to provide medical treatment or first aid to an individual who may have been exposed to the restricted use pesticide for which the record is maintained. Concerns were raised that some confusion could exist among licensed health care professionals as to the extent to which they could share or utilize pesticide record information. Concerns were expressed that licensed health care professionals, or an individual acting under the direction of the attending licensed health care professional, could be reluctant to release pesticide record information to other medical professionals, who may need to be consulted, to provide proper medical treatment.

Issues also were raised concerning the release of the record information as it relates to pesticide poisoning incident reports, and the need to assure licensed health care professionals that they could release pesticide record information for this purpose. Some States require pesticide poisoning incident reporting to a designated State or county agency. For example, California has a law that requires physicians to submit a pesticide poisoning incident report to the California Worker Health and Safety Division. Additionally, in States which do not require the filing of a pesticide poisoning incident report, physicians or other medical professionals are encouraged to report incidents to the local poison control centers. These local poison control centers then may send data to the Toxic Exposure Surveillance System of the American Association of Poison Control Centers (AAPCC) database, which provides an annual compilation of poisoning statistics from around the United States. USDA believes the release of pesticide record information for this purpose is appropriate.

USDA also recognizes that a licensed health care professional may deem it necessary under their responsibility to a code of medical ethics to utilize pesticide record information to prevent additional poisoning or injuries. For example, as a result of treating an individual who had been exposed to a federally restricted use pesticide, the licensed health care professional may feel it necessary to release the record information to the proper State or county authorities in order to remove workers from an area where pesticide exposure could be occurring.

Therefore, in order to clarify the circumstances under which the federally restricted use pesticide information can be utilized and released, and who has authority to release this information, USDA proposes to amend § 110.5(b) to read as follows:

A licensed health care professional, or an individual acting under the direction of the attending licensed health care professional, may utilize and release record or record information obtained under paragraph (a) of this section when necessary to provide medical treatment or first aid to an individual or individuals who may have been exposed to the restricted use pesticide for which the record is or will be maintained. Further utilization and release of such record or record information is limited to licensed health care professionals who may use it: (1) To submit pesticide poisoning incident reports to appropriate State or Federal agencies, or (2) where consideration of medical ethics may necessitate such utilization and release.

Proposed Amendments to § 110.7—Penalties

Several State pesticide regulatory agencies had questions in regard to the penalty provision in § 110.7 of the current regulations. These agencies interpreted this section to provide that the Administrator, or his designee, would have discretion to reduce the penalty for a second violation of the regulations to less than $1,000 if it was determined that the certified applicator made a good faith effort to comply with the regulations, but, that the Administrator, or his designee, would not have discretion to reduce the penalty to less than $1,000 for other subsequent offenses.

USDA has reexamined this issue and agrees that the current language could be unclear. We, therefore, propose to amend the penalty section to eliminate any ambiguity. We are proposing that all offenses subsequent to the first offense would be subject to a fine of not less than $1,000, except that the penalty shall be less than $1,000 if the Administrator, or his designee, determines that the certified applicator made a good faith effort to comply with the regulations. This proposed change follows the language of the statute and provides the Administrator, or his designee, flexibility in assessing penalties for all subsequent offenses, not just the second offense.

Therefore, USDA proposes to amend § 110.7 to read as follows:

Section 1491(d) of the Food, Agriculture, Conservation, and Trade Act of 1990 provides that the Secretary shall be responsible for enforcement of section 1491 (a), (b), and (c) of the Food, Agriculture, Conservation, and Trade Act of 1990. Therefore, as provided in section 1491(d) of the Food, Agriculture, Conservation, and Trade Act of 1990, any certified applicator who violates the requirements of 7 U.S.C. 136i–1 (a), (b), or (c) shall be subject to a civil penalty of not more than $500 in the case of the first offense, and in the case of subsequent offenses, be subject to a fine of not less than $1,000 for each violation, except that the penalty shall be less than $1,000 if the Administrator, or his designee, determines that the certified applicator made a good faith effort to comply with this Part.

List of Subjects in 7 CFR Part 110

Pesticide and pests, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble 7 CFR, part 110 is proposed to be amended as follows:

PART 110—RECORDKEEPING ON RESTRICTED USE PESTICIDES BY CERTIFIED APPLICATORS; SURVEYS AND REPORTS

1. The authority citation for part 110 would continue to read as follows:

Authority: 7 U.S.C. 136a(d)(1)(c); 7 U.S.C. 136i–1; 7 U.S.C. 450; 7 CFR 2.17, 2.50.

2. In § 110.2, the definition for *licensed health care professional* is amended by adding the phrase "or certified" immediately following "licensed."

3. In § 110.2, the definition for *medical emergency* is revised to read as follows:

§ 110.2 Definitions.

* * * * *

Medical emergency. A medical emergency shall be defined as a situation that requires immediate medical treatment or first aid.

* * * * *

4. In § 110.3, paragraph (a)(6) is removed and paragraph (b) is revised to read as follows:

§ 110.3 Records, retention, and access to records.

* * * * *

(b) The information required in this section shall be recorded within seven (7) days following the pesticide application. However, whether or not the written record has been completed, the certified applicator shall provide the information to be recorded in accordance with the provisions of § 110.5(a) of this part.

* * * * *

5. Section 110.5 is revised to read as follows:

§ 110.5 Availability of records to facilitate medical treatment.

(a) When a licensed health care professional, or an individual acting under the direction of the attending licensed health care professional, determines that any record of the application of restricted use pesticide required to be maintained under § 110.3 of this part is necessary to provide medical treatment or first aid to an individual who may have been exposed to the restricted use pesticide for which the record is or will be maintained, the certified applicator required to maintain the record shall promptly provide the record information and any available label information. If it is determined by a licensed health care professional, or an individual acting under the direction of the attending licensed health care professional, to be a medical emergency, the record information of the restricted use pesticide, relating to the medical emergency, shall be provided immediately.

(b) A licensed health care professional, or an individual acting under the direction of the attending licensed health care professional, may utilize and release record or record information obtained under paragraph (a) of this section when necessary to provide medical treatment or first aid to an individual or individuals who may have been exposed to the restricted use pesticide for which the record is or will be maintained. Further utilization and release of such record or record information is limited to licensed health care professionals who may use it:

(1) To submit pesticide poisoning incident reports to appropriate State or Federal agencies; or

(2) Where considerations of medical ethics may necessitate such utilization and release.

6. Section 110.7 is revised to read as follows:

§ 110.7 Penalties.

Section 1491(d) of the Food, Agriculture, Conservation, and Trade Act of 1990 provides that the Secretary shall be responsible for enforcement of section 1491 (a), (b), and (c) of the Food, Agriculture, Conservation, and Trade Act of 1990. Therefore, as provided in section 1491(d) of the Food, Agriculture, Conservation, and Trade Act of 1990, any certified applicator who violates the requirements of 7 U.S.C. 136i–1 (a), (b), or (c) shall be subject to a civil penalty of not more than $500 in the case of the first offense, and in the case of subsequent offenses, be subject to a fine of not less than $1,000 for each violation, except that the penalty shall be less than $1,000 if the Administrator, or his designee, determines that the certified applicator made a good faith effort to comply with this Part.

Dated: March 30, 1994.

Lon Hatamiya,

Administrator.

[FR Doc. 94–8093 Filed 4–5–94; 8:45 am]

BILLING CODE 3410–02–P

federal register

Wednesday
April 6, 1994

Part XI

Department of Justice

Bureau of Prisons

28 CFR Part 522, et al.

Control, Custody, Care, Treatment and Instruction of Inmates; Editorial Amendments; Final Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Parts 522, 545, and 551

[BOP-1021-F]

Control, Custody, Care, Treatment and Instruction of Inmates; Editorial Amendments

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document the Bureau of Prisons is making editorial amendments to its regulations in order to update statutory references, terminology, and to correct typographical errors.

EFFECTIVE DATE: April 6, 1994.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC room 754, 320 First Street NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514-6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending for editorial purposes its regulations on the Inmate Financial Responsibility Program, Non-discrimination Toward Inmates, and Civil Contempt of Court Commitments.

A final rule on the Inmate Financial Responsibility Program (28 CFR 545.10 to 545.11) was published in the **Federal Register** May 21, 1991 (56 FR 23477). This publication contained a typographical error ("Court-Ordered restriction" rather than "Court-ordered restitution") in § 545.11(a)(2). This document accordingly correctly revises that paragraph.

A final rule on Non-Discrimination Toward Inmates (28 CFR 551.90) was published in the **Federal Register** on April 4, 1980 (45 FR 23366). This document amends § 551.90 to use the term "disability" instead of the term "handicap". This amendment is intended to conform to terminology used in current statutes.

A final rule on Civil Contempt of Court Commitments (28 CFR 522.10 to 522.11) was published in the **Federal Register** June 29, 1979 (44 FR 38244). This document amends § 522.11(g) to include reference to subsequent statutory citations. This document also revises the authority citation for the part for the sake of editorial consistency.

Because these amendments are editorial in nature and impose no new restrictions on inmates, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the **Federal Register**.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866, and accordingly this rule was not reviewed by the Office of Management and Budget. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Parts 522, 545, and 551

Prisoners.

Kathleen M. Hawk,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 522 in subchapter B of 28 CFR, chapter V and parts 545 and 551 in subchapter C of 28 CFR, chapter V are amended as set forth below.

SUBCHAPTER B—INMATE ADMISSION, CLASSIFICATION, AND TRANSFER

PART 522—ADMISSION TO INSTITUTION

1. The authority citation for 28 CFR part 522 is revised to read as follows, and all other authority citations in the part are removed:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. In § 522.11, paragraph (g) is revised to read as follows:

§ 522.11 Procedures.

* * * * *

(g) An inmate is not entitled to statutory or extra good time credits under 18 U.S.C. 4161–62 while only the civil contempt sentence is in effect. Nor is an inmate entitled to good conduct time credits under 18 U.S.C. 3624(b). Time spent serving only a civil contempt sentence is not considered jail time under 18 U.S.C. 3568 or 18 U.S.C. 3585(b).

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 545—WORK AND COMPENSATION

3. The authority citation for 28 CFR part 545 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3013, 3571, 3621, 3622, 3624, 3663, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4126, 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

4. In § 545.11, paragraph (a)(2) is revised to read as follows:

§ 545.11 Procedures.

* * * * *

(a) * * *

(2) Court-ordered restitution;

* * * * *

PART 551—MISCELLANEOUS

5. The authority citation for 28 CFR part 551 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 1512, 3621, 3622, 3624, 4001, 4005, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; Pub. L. 99–500 (sec. 209); 28 CFR 0.95–0.99.

6. Section 551.90 is amended by revising the first sentence to read as follows:

§ 551.90 Policy.

Inmates may not be discriminated against on the basis of race, religion, nationality, sex, disability, or political belief. * * *

[FR Doc. 94-8201 Filed 4-5-94; 8:45 am]

BILLING CODE 4410-05-P

federal register

Wednesday
April 6, 1994

Part XII

Department of Housing and Urban Development

Office of the Secretary

24 CFR Part 888

Section 8 Housing Assistance Payments Program; Fair Market Rent Schedules for Use in the Rental Certificate Program; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 888

[Docket No. N-94-3616; FR-3510-N-05]

Section 8 Housing Assistance Payments Program; Fair Market Rent Schedules for Use in the Rental Certificate Program, Loan Management and Property Disposition Programs, Moderate Rehabilitation Program and Rental Voucher Program

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of final fair market rents; amendment.

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 requires the Secretary to publish Fair Market Rents (FMRs) periodically, but not less frequently than annually, to be effective on October 1 of each year. FMRs are used for the Section 8 Rental Certificate program (part 882, subparts A and B), including space rentals by owners of manufactured homes under the Section 8 Rental Certificate program (part 882, subpart F); the Section 8 Moderate Rehabilitation program (part 882, subparts D and E); Section 8 housing assisted under part 886, subparts A and C (Section 8 Loan Management and Property Disposition programs); and are used to determine payment standard schedules in the Rental Voucher program (part 887).

HUD published proposed Fiscal Year (FY) 1994 FMRs for the Section 8 Rental Certificate program on May 6, 1993 (58 FR 27062) and solicited public comments for a 60-day period. The FY 1994 FMRs were the first to be developed with revisions based on use of the 1990 Census data; they also included post-Census American Housing Surveys (AHSs) and Random Digit Dialing (RDD) telephone surveys. Because of the large number of requests in response to changes in the FMRs caused by the Census data rebenchmarking, the public comment period was extended to August 31, 1993 by notice on July 6, 1993 (58 FR 36175).

On October 1, 1993, HUD published final FMRs for all areas, including over 600 areas that still had comments under review. The FMRs for those areas were retained at the levels of the previous year (FY 1993) pending completion of the review of the comments. This review has now been completed and today's notice announces final FY 1994 FMR schedules for the areas under review. The FMR schedules for all areas are included in this notice to avoid the confusion of having more than one publication of FY 1994 FMRs.

EFFECTIVE DATE: The FMRs published in this notice are effective on April 6, 1994.

FOR FURTHER INFORMATION CONTACT: Shirley C. Stone, Rental Assistance Division, Office of Public and Indian Housing, telephone (202) 708-0477. For technical information on the development of schedules for specific areas or the method used for the rent calculations, contact Michael R. Allard, Economic and Market Analysis Division, Office of Economic Affairs, telephone (202) 708-0577. The TDD number for the hearing impaired is (202) 708-0770. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Section 8 of the United States Housing Act of 1937 (the Act) (42 U.S.C. 1437f) authorizes a housing assistance program to aid lower income families in renting decent, safe, and sanitary housing. Assistance payments are limited by Fair Market Rents (FMRs), or payment standards in the Rental Voucher Program, established by HUD for different areas. In general, the FMR for an area is the amount that would be needed to rent privately owned, decent, safe, and sanitary rental housing of a modest (non-luxury) nature with suitable amenities. Section 8(c) of the Act requires the Secretary of HUD to publish FMRs periodically, but not less frequently than annually, to be effective on October 1 of each year. The FMRs must reflect changes based on the most recent available data so FMRs will be current for the year in which they apply.

Metropolitan Area Definitions

In the May 6, 1993 publication of the proposed FMRs, HUD announced that the FMR area definitions, with several exceptions, incorporated the changes made in the definitions of metropolitan areas by the Office of Management and Budget (OMB Bulletin No. 93-05). The HUD exceptions were for nine large metropolitan areas whose revised OMB definitions encompassed areas larger than what HUD considers appropriate for FMR area definitions.

At that time, the metropolitan area definitions for both the Boston and New York-Northern New Jersey areas were still under review by OMB. HUD decided, therefore, to continue using the previous definitions until OMB made its final decisions and HUD could evaluate them. On June 30, 1993, OMB announced its revised definitions in OMB Bulletin NO. 93-17.

OMB's final decisions were, with minor differences, to return to the pre-1993 definitions for both the Boston and New York-Northern New Jersey areas. For the Boston area, the only significant change was to combine the former Salem-Gloucester PMSA with the former Boston PMSA to form the new Boston MA-NH PMSA. This change increased the FMRs for the Salem-Glouchester area, but did not change the Boston area FMRs. For the New York-Northern New Jersey area, Pike County, Pennsylvania was combined with Orange County, New York to form the Newburgh NY-PA PMSA. This had the effect of increasing the FMRs for Pike County but did not change those for Orange County. Because these changes had no significant impact on HUD's existing FMR areas, the October 1 publication adopted the revised OMB definitions of the Primary Metropolitan Statistical Areas (PMSAs) that comprise the greater Boston and the greater New York metropolitan areas as the area definitions for the final FY 1994 FMRs.

HUD also proposed in the May 6, 1993 publication to modify the FMR area definitions for seven other metropolitan areas by deleting counties that OMB had added to its revised definitions. The decision to delete these counties was based on an evaluation conducted by HUD headquarters and field staff. The counties deleted from the FMR areas are those that are the most remote from the central cities/counties of the metropolitan area and have the lowest rents, in most cases significantly below the FMR area rent averages. They are as follows:

FMR Area and Changes in FMR Area

Atlanta, GA—Deleted Carroll, Pickens, Spalding, and Walton Counties.

Chicago, IL—Deleted DeKalb, Grundy and Kendall Counties.

Cincinnati-Hamilton, OH-KY-IN—Deleted Brown County, Ohio; Gallatin, Grant and Pendleton Counties in Kentucky; and Ohio County, Indiana.

Dallas, TX—Deleted Henderson County.

Lafayette, LA—Deleted St. Landry and Acadia Parishes.

New Orleans, LA—Deleted St. James Parish.

Washington, DC—Deleted Berkeley and Jefferson Counties in West Virginia; and Clarke, Culpeper, King George and Warren counties in Virginia.

The counties deleted from the FMR areas are included in Schedule B within their respective states as separate metropolitan FMR areas. The only comments received concerning the revised FMR areas for the above areas were several from Lake County, Illinois, requesting that it be designated a

separate FMR area independent of the Chicago FMR area. On the basis of its analysis, HUD has determined that Lake County is appropriately categorized as part of the Chicago housing market area and should remain a part of the Chicago FMR area. HUD, therefore, has not changed the definition.

OMB also modified the definitions of four other metropolitan areas in its final Bulletin. The four are: Augusta-Aiken, GA-SC; Baton Rouge, LA; Huntington-Ashland, WV-KY-OH; Wilmington, NC. HUD is implementing the new definitions because the changes involved adding small counties that did not affect the FMRs or significantly alter the FMR area definitions.

HUD also proposed in the May 6, 1993 Notice that the FMRs for the independent cities and surrounding counties in Virginia be established by combining the city and county data, rather than having separate FMRs for the cities and counties. The final FY 1994 FMRs are based on the following FMR areas:

FMR area (county)	Independent cities included
Allegheny	Clifton Forge and Covington.
Augusta	Staunton and Waynesboro.
Carroll	Galax.
Frederick	Winchester.
Greensville	Emporia.
Halifax	South Boston.
Henry	Martinsville.
Montgomery	Radford.
Rockbridge	Buena Vista and Lexington.
Rockingham	Harrisonburg.
Southampton	Franklin.
Wise	Norton.

Method Used To Develop the FY 1994 FMRs

FMR Standard: The FMRs are gross rent estimates; they include shelter rent and the cost of utilities, except telephone. HUD sets FMRs to assure that a sufficient supply of rental housing is available to program participants. To accomplish this objective, FMRs must be both high enough to permit a selection of units and neighborhoods and low enough to serve as many families as possible. The level at which FMRs are set is expressed as a percentile point within the rent distribution of standard quality rental housing units. The current definition used is the 45th percentile rent, the dollar amount below which 45 percent of the standard quality rental housing units rent. The 45th percentile rent is drawn from the distribution of rents of units are occupied by recent movers (renter households who moved into their unit within the past 15 months). Public housing units and newly built units less than two years old are excluded.

Data Sources: HUD used the most accurate and current data available to develop the FMR estimates. Three sources of survey data were used as the basis for the base-year estimates. They are: (1) The 1990 Census; (2) the RDD telephone surveys conducted since the Census; and (3) the post-1990 Census American Housing Surveys (AHSs) available up to the time the FMR estimates were prepared. The base-year FMRs were then updated using Consumer Price Index (CPI) data for rents and utilities or the HUD Regional rent change factors developed from RDD surveys. Annual average CPI data are available individually for 95 metropolitan FMR areas. RDD Regional rent change factors are developed annually for the metropolitan and nonmetropolitan parts of each of the 10 HUD Regions (a total of 20 separate factors). The RDD factors are used to update the base year estimates for all FMR areas that do not have their own local CPI survey.

The decennial Census provides statistically reliable rent data for use in establishing base-year FMRs. AHSs are conducted by the Bureau of the Census for HUD and have accuracy comparable to the decennial Census. These surveys enable HUD to develop between-census revisions for 44 of the largest metropolitan areas on a revolving schedule of 11 areas annually. The RDD telephone survey technique is based on a sampling procedure that uses computers to select random samples of rental housing, dial and keep track of the telephone numbers and tabulate the responses. RDD surveys are designed to produce FMR estimates that are within two to four percent of the actual 45th percentile rent.

Public Comments

In response to the proposed FY 1994 FMRs, HUD received over 2,500 comments covering more than 1,100 FMR areas. The first publication on October 1, 1993 included final FMRs (held at the FY 1993 levels) for the areas for which the review of public comments had not been completed. HUD announced in that publication that there would be a second publication of FMRs for those areas and for those with RDD surveys still under review. The final count of FMR areas under consideration was 669, including 40 FMR areas for which both public comments and RDD surveys were submitted. The areas under review are identified in this publication with a "+" symbol next to the FMR schedule for the areas that had both comments and RDD surveys; and with an "*" next to the FMR schedule for all other areas with comments.

HUD carefully evaluated all information submitted with the public comments. Based on this evaluation, the FMRs for 572 areas have been revised. This total includes revised FMRs for: 165 areas that were increased based on the survey data submitted by the commenters; 39 areas that were increased as the result of RDD surveys; and 368 areas that submitted incomplete information but that HUD was able to supplement with available information. The amount of the FMR increase was not always the same as the amount requested by the commenters. For the 165 areas notified with survey data, the increases sometimes differed because commenters requested a return to the FY 1993 FMRs even though their surveys showed something different. In other cases, the survey data had to be re-tabulated and corrected; this resulted in revised FMRs that are sometimes higher and sometimes lower than the requested modifications. The increases approved for the 368 areas, with incomplete but usable data, generally were smaller than those requested by the commenter and generally applied only to the one- and two-bedroom unit sizes. The information submitted for 97 FMR areas was not sufficient to provide a basis for revising the FMRs.

Many commenters expressed their concern that owners would have to accept the reduced FMRs and would not renew leases at a lower rent, and families would be forced to move. The Department wants to assure the PHAs administering the program and the families that are currently participating in the Section 8 program that current participants will not be forced to move or have to pay a higher portion of the rent. The rents specified in the housing assistance contract between the owner and the PHA will continue to be paid by the PHA unless the owner requests a rent increase in accordance with the provisions of the housing assistance contract. In such cases, the rent increase will be calculated using the annual adjustment factors and will be approved by the PHA if the new rent does not exceed the amount of rent charged for comparable unassisted units. The amount of rent the family pays will continue to be based on the family's income, and for families in the rental voucher program the applicable payment standard. The new FMRs will be used for new families entering the program or for current participants when they move to a new unit.

In addition, PHA officials expressed concern about the impact that the reduced FMRs would have on administrative fees and, therefore, their continuing capacity to administer the program. The calculation of PHA administrative fees for FY 1994 is subject to a recent statutory change. FY 1994 administrative fees are calculated using the FY 1993 FMRs if there was a decrease in the FMRs. However, if the FY 1994 FMRs are higher, the law limited the fee increase to 3.5 percent above the FY 1993 fee. HUD Notice PIH–93–66(HA), which was issued on December 16, 1993, contains detailed information on how FY 1994 administrative fees should be calculated.

RDD Surveys

Both HUD and PHAs used RDD telephone surveys to test the reliability of the proposed FY 1994 FMRs in areas with large decreases proposed in FY 1994 FMRs. Of the 46 HUD RDD surveys completed since the proposed FMRs were published, 21 had results that were higher than the proposed FMRs and 24 had results that were lower or not statistically different. FMRs for eighteen areas were increased based on the results of PHA-funded RDD surveys. PHAs that funded surveys which produced FMR estimates below those proposed opted not to comment, so comparative data are not available.

For the areas where RDD survey FMRs are higher than the proposed FMRs, the FMRs published for effect are based on the RDD surveys. The FY 1993 FMRs and the proposed and final FY 1994 FMRs for these areas are as follows:

HUD RDD Surveys with increases	State	Two-bedroom FMRs		
		FY 93 FMR	Proposed FY94 FMR	RDD-based FY94 FMR
Humboldt Co	CA	$583	$503	$552
Bannock Co	ID	478	345	377
Boise	ID	594	440	485
Kootenai Co	ID	478	403	501
Peoria	IL	552	426	450
Duluth	MN	466	382	422
Beaufort Co	NC	410	331	363
Baker Co	OR	552	336	389
Deschutes Co	OR	584	504	543
Eugene	OR	608	521	536
Grant Co	OR	552	352	400
Malheur Co	OR	527	336	389
Odessa-Midland	TX	550	402	425
Provo	UT	462	388	409
Bellingham	WA	619	540	618
Ferry Co	WA	424	362	382
Pend Oreille Co	WA	424	362	382
Spokane	WA	501	432	491
Stevens Co	WA	424	358	379
Yakima	WA	523	418	503
Walla Walla	WA	552	381	407
PHA RDD Surveys with increases				
Mobile	AL	447	338	401
Phoenix	AZ	505	502	512
Tucson	AZ	490	486	501
Colorado Springs	CO	504	472	477
Ft. Collins-Loveland	CO	581	472	530
Greeley	CO	501	420	466
Grand Rapids	MI	505	505	510
Flathead Co	MT	495	382	419
Gallatin Co	MT	544	418	436
Great Falls	MT	487	394	395
Lewis & Clark Co	MT	564	398	413
Missoula Co	MT	495	415	476
Santa Fe	NM	657	627	665
Tulsa	OK	396	397	467
Austin	TX	538	509	613
Bryan-College St	TX	572	486	497
Killeen-Temple	TX	386	387	429
Janesville-Beloit	WI	476	459	496

RDD survey results that are lower than the proposed FY 1994 FMRs are not being used this year, but will be used in developing the proposed FY 1995 FMRs. For such areas, this publication makes effective the proposed FY 1994 FMRs published on May 6, 1993.

RDD Surveys With No Change or Decreases

Albuquerque, NM
Baton Rouge, LA
Beaumont-Port Arthur, TX
Billings, MT
Bismarck, ND
Boston, MA
Charleston, WV
Dimmit Co., TX
Drew Co., AR
Duval Co., TX
Frio Co., TX
Gage Co., NE
Harrisburg, PA
Holmes Co., FL
Imperial Co., CA
Indiana Co., PA
Jamestown, NY

LaSalle Co., TX
Live Oak Co., TX
McMullen Co., TX
Miami, FL
New Bedford, MA
Park Co., MT
Raleigh Co., WV
Washington, Co., FL
Zavala Co., TX

HUD continues to recommend use of RDD surveys to test the accuracy of FMRs for areas where there is a sufficient number of Section 8 units to justify the survey cost of $12,000–$20,000. Areas with 500 or more units meet this criterion, and areas with fewer units may meet it if the actual two-bedroom FMR rent standard is significantly different than that proposed by HUD. Interested organizations concerned about FMR accuracy may wish to begin contracting for an RDD survey in the next few months to assure that the results will be available in time to be incorporated into the FY 1995 FMRs. It takes two to three months to obtain survey rent estimates after contract award. The "PHA Guide To Conducting A Fair Market Rent Telephone Survey" is available from HUD USER by calling 1–800–245–2691. This guide provides information on whether a PHA should consider using this approach, and it includes a draft contractor solicitation letter and a Contract Statement of Work.

FMRs for Flood Damaged Areas in the Midwest

Under the authority granted in 24 CFR part 899, the Secretary finds good cause to waive the regulatory requirements that govern requests for geographic area FMR exceptions for the flood areas that were declared Federal disaster areas. Recognizing that there are a large number of FMR areas that experienced substantial losses as a result of the floods of the past summer in the midwestern states which will have a direct effect on local rent levels, HUD is prepared to grant FMR exceptions under the following conditions. FMR exceptions up to 10 percent above the final FY 1994 FMRs may be approved for single-county FMR areas and for individual county parts of multi-county FMR areas. The flood-related FMR exceptions will be approved by the HUD field office with jurisdiction on the grounds that: (1) The affected counties qualify as disaster areas under the Robert T. Stafford Disaster Relief and Emergency Assistance Act; and (2) the PHA certifies that demand pressures and/or damage to the rental housing stock is so substantial that it has resulted in an increase in the prevailing rent levels. Such exceptions must be requested in writing by the responsible PHAs. The exceptions approved for this special disaster-related purpose will remain in effect until superseded by final FY 1995 FMRs.

Manufactured Home Space FMRs

The FMRs for manufactured home spaces are the same as those published on October 1, 1993, and are reprinted here for the convenience of the program administrators.

Other Matters

A Finding of No Significant Impact with respect to the environment as required by the National Environmental Policy Act (42 U.S.C. 4321–4374) is unnecessary, since the Section 8 Rental Certificate program is categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.20(d).

The undersigned, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), hereby certifies that this notice does not have a significant economic impact on a substantial number of small entities, because FMRs do not change the rent from that which would be charged if the unit were not in the Section 8 program.

The General Counsel, as the Designated Official under Executive Order No. 12606, The Family, has determined that this notice will not have a significant impact on family formation, maintenance, or well-being. The notice amends Fair Market Rent schedules for various Section 8 assisted housing programs, and does not affect the amount of rent a family receiving rental assistance pays, which is based on a percentage of the family's income.

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12611, Federalism, has determined that this notice will not involve the preemption of the State law by Federal statute or regulation and does not have Federalism implications. The Fair Market Rent schedules do not have any substantial direct impact on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibility among the various levels of government.

The Catalog of Federal Domestic Assistance program number is 14.156, Lower-Income Housing Assistance Program (section 8).

Accordingly, the Fair Market Rent Schedules, which will not be codified in 24 CFR Part 888, are amended as follows:

Dated: March 17, 1994.

Henry G. Cisneros,

Secretary.

Section 8 Housing Assistance Payments Program; Fair Market Rent Schedules for Use in the Rental Certificate Program, Loan Management and Property Disposition Programs, Moderate Rehabilitation Program and Rental Voucher

Schedules B and D—General Explanatory Notes

1. Geographic Coverage

a. FMRs for the Section 8 Rental Certificate program (Schedule B) are established for Metropolitan Statistical Areas (MSAs), Primary Metropolitan Statistical Areas (PMSAs), other HUD-designated metropolitan FMR areas. FMRs also are established for nonmetropolitan counties and county equivalents in the United States, Puerto Rico, the Virgin Islands and the Pacific Islands and for nonmetropolitan parts of counties in the New England states.

b. FMRs for the areas in Virginia shown in the table below are established by combining the 1990 Census data for the nonmetropolitan counties with the data for the independent cities that are located within the county borders. Because of space limitations, the FMR listing in Schedule B includes only the name of the nonmetropolitan County. The full definitions of these areas including the independent cities are as follows:

Virginia Nonmetropolitan County FMR Area

Allegheny
Augusta
Carroll
Frederick
Greensville
Halifax
Henry
Montgomery
Rockbridge
Rockingham
Southhampton
Wise

Virginia Independent Cities Included with County

Clifton Forge and Covington
Staunton and Waynesboro
Galax
Winchester
Emporia
South Boston
Martinsville
Radford
Buena Vista and Lexington
Harrisonburg
Franklin
Norton

c. FMRs for Manufactured Home spaces in the Section 8 Certificate

program (Schedule D) are established for MSAs, PMSAs, HUD-designated metropolitan counties, and for selected nonmetropolitan counties and the residual nonmetropolitan part of each State.

2. Arrangement of FMR Areas and Identification of Constituent Parts

a. The FMR areas in Schedules B and D are listed alphabetically by metropolitan FMR area and by nonmetropolitan county within each State.

b. The constituent counties (and New England towns and cities) included in each metropolitan FMR area are listed immediately following the listings of the FMR dollar amounts. All constituent parts of a metropolitan FMR area that are in more than one State can be identified by consulting the listings for each applicable State.

c. Two nonmetropolitan counties are listed alphabetically on each line of the nonmetropolitan county listings.

d. The New England towns and cities included in a nonmetropolitan part of a county are listed immediately following the county name.

e. The FMRs are listed by dollar amount on the first line beginning with the FMR area name.

BILLING CODE 4210-32-M

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 1

A L A B A M A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anniston, AL MSA	208	279	352	490	555	Calhoun
Birmingham, AL MSA	335	378	440	595	661	Blount, Jefferson, St. Clair, Shelby
Columbus, GA-AL MSA	324	362	431	565	613	Russell
Decatur, AL MSA	312	315	398	514	614	Lawrence, Morgan
Dothan, AL MSA	292	299	370	510	518	Dale, Houston
Florence, AL MSA	270	281	375	491	525	Colbert, Lauderdale
Gadsden, AL MSA	232	294	330	430	542	Etowah
Huntsville, AL MSA	327	384	474	630	749	Limestone, Madison
Mobile, AL MSA	+313	349	401	538	631	Baldwin, Mobile
Montgomery, AL MSA	361	387	456	621	748	Autauga, Elmore, Montgomery
Tuscaloosa, AL MSA	309	331	441	605	640	Tuscaloosa

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Barbour	159	227	290	402	475
Bullock	*173	188	218	273	358
Chambers	167	268	304	387	499
Chilton	246	249	320	400	448
Clarke	223	225	296	391	486
Cleburne	163	224	299	400	419
Conecuh	146	199	265	332	372
Covington	*215	244	274	378	446
Cullman	*235	280	331	446	542
Dekalb	*168	246	305	381	489
Fayette	213	236	289	371	404
Geneva	209	211	265	369	435
Hale	146	236	265	332	372
Jackson	259	273	329	411	540
Lee	248	346	444	577	729
Macon	259	291	388	485	543
Marion	146	199	265	369	372
Monroe	161	220	293	408	410
Pickens	228	231	307	385	431
Randolph	207	210	281	351	460
Talladega	217	243	315	438	442
Walker	*193	300	352	455	579
Wilcox	153	199	265	369	372

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Bibb	182	248	331	454	543
Butler	*181	226	297	385	417
Cherokee	160	244	291	399	448
Choctaw	164	225	265	337	372
Clay	192	195	259	336	426
Coffee	235	330	428	595	669
Coosa	162	223	296	400	415
Crenshaw	*199	223	265	332	372
Dallas	231	244	326	436	456
Escambia	224	233	284	395	398
Franklin	*222	256	300	376	420
Greene	164	185	208	290	294
Henry	229	232	308	386	433
Lamar	146	199	265	369	372
Lowndes	*158	255	287	359	405
Marengo	209	236	265	369	425
Marshall	271	278	342	476	562
Perry	173	236	265	369	390
Pike	*243	281	329	411	507
Sumter	222	224	295	369	414
Tallapoosa	239	254	314	394	440
Washington	146	236	265	369	372
Winston	171	233	311	389	436

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 033094

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

A L A S K A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anchorage, AK MSA	*449	528	703	975	939	Anchorage

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Aleutian East	482	543	611	763	1001
Bethel	621	778	984	1232	1379
Dillingham	601	610	812	1016	1138
Haines	448	555	632	859	885
Kenai Peninsula	*361	460	555	771	910
Kodiak Island	647	711	923	1154	1496
Matanuska-Susitna	*346	470	528	718	847
North Slope	718	737	910	1265	1474
Pr.Wales-Outer Ketchikan	337	533	613	851	901
Skagway-Yakutat-Angoon	412	418	542	678	760
Valdez-Cordova	*503	615	684	874	1040
Wrangell-Petersburg	*366	540	655	835	917

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Aleutian West	408	459	516	646	723
Bristol Bay	498	575	648	900	978
Fairbanks North Star	*376	511	669	919	1085
Juneau	*589	681	866	1153	1197
Ketchikan Gateway	*492	602	806	1121	1178
Lake & Peninsula	384	622	699	874	979
Nome	633	783	879	1223	1380
Northwest Arctic	760	856	961	1337	1577
Sitka	529	629	706	981	1158
Southeast Fairbanks	422	443	534	668	749
Wade Hampton	359	542	610	762	854
Yukon-Koyukuk	480	541	609	761	882

A R I Z O N A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Las Vegas, NV-AZ MSA	438	519	618	858	1014	Mohave
Phoenix-Mesa, AZ MSA	+338	409	513	712	840	Maricopa, Pinal
Tucson, AZ MSA	+323	392	522	726	857	Pima
Yuma, AZ MSA	334	397	529	737	742	Yuma

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Apache	247	278	312	425	512
Coconino	397	430	558	749	899
Graham	264	292	360	501	552
La Paz	295	333	374	520	613
Santa Cruz	323	385	475	594	717
Cochise	316	350	433	595	710
Gila	250	324	431	540	707
Greenlee	186	255	339	427	502
Navajo	256	302	360	501	534
Yavapai	361	377	502	699	770

A R K A N S A S

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Fayetteville-Springdale-Rogers, AR MSA	255	318	419	566	586	Benton, Washington
Fort Smith, AR-OK MSA	*275	279	367	491	514	Crawford, Sebastian
Little Rock-North Little Rock, AR MSA	343	380	452	624	728	Faulkner, Lonoke, Pulaski, Saline
Memphis, TN-AR-MS MSA	337	392	462	642	674	Crittenden
Pine Bluff, AR MSA	261	311	409	515	670	Jefferson
Texarkana, TX-Texarkana, AR MSA	282	344	420	555	588	Miller

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 3

ARKANSAS continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Arkansas	251	254	339	473	495
Baxter	217	296	393	504	614
Bradley	210	222	297	413	487
Carroll	266	292	337	439	546
Clark	*250	362	349	437	553
Cleburne	258	261	326	453	519
Columbia	189	258	343	434	481
Craighead	*291	317	373	514	543
Dallas	170	232	310	412	434
Drew	*171	234	312	430	437
Fulton	235	238	302	377	492
Grant	236	281	315	438	517
Hempstead	182	249	332	441	491
Howard	186	254	339	425	476
Izard	169	226	302	401	423
Johnson	*224	244	305	422	445
Lawrence	*172	261	312	390	511
Lincoln	246	263	351	470	491
Logan	238	251	302	377	423
Marion	171	234	312	434	512
Monroe	231	234	312	390	512
Nevada	211	256	340	474	477
Ouachita	264	268	342	477	562
Phillips	195	231	309	411	476
Poinsett	184	251	335	419	469
Pope	213	297	375	521	600
Randolph	166	260	302	386	489
Scott	166	263	302	380	495
Sevier	249	252	336	420	471
Stone	213	217	288	401	474
Van Buren	189	258	343	443	565
Woodruff	218	226	302	377	423

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Ashley	184	248	330	427	542
Boone	263	268	356	495	584
Calhoun	166	269	302	419	495
Chicot	168	228	305	388	427
Clay	206	235	302	377	495
Cleveland	163	223	298	372	488
Conway	206	281	375	469	526
Cross	*236	298	335	465	547
Desha	196	245	326	453	457
Franklin	238	265	302	384	489
Garland	213	290	388	540	637
Greene	239	243	315	413	474
Hot Spring	189	258	343	430	481
Independence	239	277	312	434	512
Jackson	235	238	318	430	445
Lafayette	238	269	302	419	438
Lee	252	256	340	426	477
Little River	193	262	350	486	573
Madison	260	263	351	438	491
Mississippi	259	281	375	494	555
Montgomery	166	226	302	419	495
Newton	166	269	302	377	423
Perry	166	226	302	377	495
Pike	166	226	302	377	495
Polk	*199	252	307	417	429
Prairie	163	223	298	414	440
St. Francis	184	275	336	468	549
Searcy	162	224	296	411	414
Sharp	173	236	315	435	441
Union	288	303	365	489	598
White	190	256	340	474	477
Yell	236	268	334	418	468

CALIFORNIA

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bakersfield, CA MSA	*374	422	527	732	812	Kern
Chico-Paradise, CA MSA	309	394	525	720	862	Butte
Fresno, CA MSA	*379	425	507	704	811	Fresno, Madera

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 033094

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

C A L I F O R N I A continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Los Angeles-Long Beach, CA PMSA	570	683	864	1167	1391	Los Angeles
Merced, CA MSA	*368	414	502	693	818	Merced
Modesto, CA MSA	*424	457	557	776	914	Stanislaus
Oakland, CA PMSA	538	651	815	1117	1337	Alameda, Contra Costa
Orange County, CA PMSA	653	714	882	1227	1367	Orange
Redding, CA MSA	348	386	483	672	792	Shasta
Riverside-San Bernardino, CA PMSA	467	518	632	879	1038	Riverside, San Bernardino
Sacramento, CA PMSA	440	496	620	862	1016	El Dorado, Placer, Sacramento
Salinas, CA MSA	542	633	764	1061	1114	Monterey
San Diego, CA MSA	*486	556	695	966	1139	San Diego
San Francisco, CA PMSA	613	794	1004	1376	1456	Marin, San Francisco, San Mateo
San Jose, CA PMSA	678	773	954	1308	1469	Santa Clara
San Luis Obispo-Atascadero-Paso Robles, CA PMSA	*478	540	684	950	1121	San Luis Obispo
Santa Barbara-Santa Maria-Lompoc, CA MSA	592	658	834	1160	1310	Santa Barbara
Santa Cruz-Watsonville, CA PMSA	589	701	936	1301	1525	Santa Cruz
Santa Rosa, CA PMSA	538	610	791	1100	1299	Sonoma
Stockton-Lodi, CA MSA	*408	462	591	822	970	San Joaquin
Vallejo-Fairfield-Napa, CA PMSA	507	577	704	978	1155	Napa, Solano
Ventura, CA PMSA	626	717	909	1209	1409	Ventura
Visalia-Tulare-Porterville, CA MSA	344	367	477	664	759	Tulare
Yolo, CA PMSA	443	506	624	868	1024	Yolo
Yuba City, CA MSA	307	352	452	629	633	Sutter, Yuba

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Alpine	271	437	492	685	689
Calaveras	*359	415	554	770	908
Del Norte	298	408	543	755	891
Humboldt	+304	420	552	768	908
Inyo	302	407	522	684	731
Lake	*332	421	562	708	921
Mariposa	*314	400	514	673	793
Modoc	317	322	429	536	601
Nevada	376	513	685	952	1103
San Benito	437	514	643	895	1049
Siskiyou	306	334	444	577	729
Trinity	327	331	430	551	705

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Amador	402	443	590	821	916
Colusa	317	322	429	566	704
Glenn	289	355	438	562	614
Imperial	+326	407	501	697	703
Kings	334	387	484	673	793
Lassen	356	360	469	629	676
Mendocino	*411	494	608	846	852
Mono	445	532	708	984	1162
Plumas	*321	344	458	628	641
Sierra	265	389	480	668	787
Tehama	304	322	429	597	704
Tuolumne	*326	444	592	823	971

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

C O L O R A D O

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Boulder-Longmont, CO PMSA	398	478	613	852	1005	Boulder
Colorado Springs, CO MSA	+310	358	477	664	784	El Paso
Denver, CO PMSA	332	408	544	755	891	Adams, Arapahoe, Denver, Douglas, Jefferson
Fort Collins-Loveland, CO MSA	*349	430	530	737	871	Larimer
Greeley, CO PMSA	*298	371	466	647	764	Weld
Pueblo, CO MSA	242	304	404	522	639	Pueblo

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Alamosa	251	329	371	478	607
Baca	224	227	303	422	497
Chaffee	287	291	388	532	587
Clear Creek	345	411	466	649	765
Costilla	205	331	373	519	563
Custer	205	328	373	514	611
Dolores	202	326	365	457	512
Elbert	390	434	493	617	810
Garfield	385	412	521	651	854
Grand	423	428	542	678	820
Hinsdale	331	374	419	584	587
Jackson	205	279	373	466	522
Kit Carson	213	290	387	485	542
La Plata	*331	365	481	669	790
Lincoln	*295	331	398	497	652
Mesa	*231	329	410	570	672
Moffat	192	302	351	488	575
Montrose	*286	355	422	587	692
Otero	235	279	373	466	560
Park	279	391	509	707	804
Pitkin	530	724	965	1274	1447
Rio Blanco	276	279	373	519	570
Routt	331	427	563	783	923
San Juan	*214	345	388	540	556
Sedgwick	164	224	299	374	471
Teller	307	418	558	775	781
Yuma	198	270	360	500	503

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Archuleta	*272	388	435	601	709
Bent	205	280	374	476	523
Cheyenne	205	280	374	467	614
Conejos	172	278	312	391	485
Crowley	172	269	312	415	512
Delta	276	279	373	499	522
Eagle	491	534	712	991	1169
Fremont	229	301	401	558	658
Gilpin	328	470	596	786	871
Gunnison	317	334	428	596	703
Huerfano	219	279	373	481	611
Kiowa	192	312	351	446	501
Lake	328	332	444	554	692
Las Animas	*297	377	424	591	697
Logan	205	279	373	499	522
Mineral	258	290	327	413	537
Montezuma	*273	359	433	603	662
Morgan	*289	301	392	531	642
Ouray	254	348	463	588	750
Phillips	229	233	310	413	453
Prowers	*260	263	353	479	578
Rio Grande	205	279	373	496	522
Saguache	201	295	364	456	529
San Miguel	*650	938	1031	1289	1661
Summit	414	496	636	885	1044
Washington	260	306	373	466	611

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 033094

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

CONNECTICUT

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Bridgeport, CT PMSA	533	692	833	1042	1300	Fairfield county towns of Bridgeport town, Easton town Fairfield town, Monroe town, Shelton town Stratford town, Trumbull town New Haven county towns of Ansonia town, Beacon Falls town Derby town, Milford town, Oxford town, Seymour town
Danbury, CT PMSA	631	754	942	1244	1433	Fairfield county towns of Bethel town, Brookfield town Danbury town, New Fairfield town, Newtown town Redding town, Ridgefield town, Sherman town Litchfield county towns of Bridgewater town New Milford town, Roxbury town, Washington town
Hartford, CT PMSA	446	554	709	887	1078	Hartford county towns of Avon town, Berlin town Bloomfield town, Bristol town, Burlington town Canton town, East Granby town, East Hartford town East Windsor town, Enfield town, Farmington town Glastonbury town, Granby town, Hartford town Manchester town, Marlborough town, New Britain town Newington town, Plainville town, Rocky Hill town Simsbury town, Southington town, South Windsor town Suffield town, West Hartford town, Wethersfield town Windsor town, Windsor Locks town Litchfield county towns of Barkhamsted town Harwinton town, New Hartford town, Plymouth town Winchester town Middlesex county towns of Cromwell town, Durham town East Haddam town, East Hampton town, Haddam town Middlefield town, Middletown town, Portland town New London county towns of Colchester town, Lebanon town Tolland county towns of Andover town, Bolton town Columbia town, Coventry town, Ellington town Hebron town, Mansfield town, Somers town, Stafford town Tolland town, Vernon town, Willington town Windham county towns of Ashford town, Chaplin town Windham town
New Haven-Meriden, CT PMSA	518	636	786	1007	1165	Middlesex county towns of Clinton town, Killingworth town New Haven county towns of Bethany town, Branford town Cheshire town, East Haven town, Guilford town Hamden town, Madison town, Meriden town, New Haven town North Branford tow, North Haven town, Orange town Wallingford town, West Haven town, Woodbridge town
New London-Norwich, CT-RI MSA	476	575	700	876	1001	Middlesex county towns of Old Saybrook town New London county towns of Bozrah town, East Lyme town Franklin town, Griswold town, Groton town, Ledyard town Lisbon town, Montville town, New London town North Stonington t, Norwich town, Old Lyme town Preston town, Salem town, Sprague town, Stonington town Waterford town Windham county towns of Canterbury town, Plainfield town

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 033094

CONNECTICUT continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Stamford-Norwalk, CT PMSA	784	918	1119	1500	1657	Fairfield county towns of Darien town, Greenwich town New Canaan town, Norwalk town, Stamford town Weston town, Westport town, Wilton town
Waterbury, CT MSA	401	540	668	834	934	Litchfield county towns of Bethlehem town, Thomaston town Watertown town, Woodbury town New Haven county towns of Middlebury town, Naugatuck town Prospect town, Southbury town, Waterbury town Wolcott town
Worcester, MA-CT	461	558	697	871	976	Windham county towns of Thompson town

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Hartford	343	555	625	868	1024	Hartland town
Litchfield	398	542	723	904	1028	Canaan town, Colebrook town, Cornwall town, Goshen town Kent town, Litchfield town, Morris town, Norfolk town North Canaan town, Salisbury town, Sharon town Torrington town, Warren town
Middlesex	589	668	892	1240	1463	Chester town, Deep River town, Essex town Westbrook town
New London	500	612	695	897	1139	Lyme town, Voluntown town
Tolland	343	555	625	868	874	Union town
Windham	394	482	625	782	981	Brooklyn town, Eastford town, Hampton town Killingly town, Pomfret town, Putnam town, Scotland town Sterling town, Woodstock town

DELAWARE

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Dover, DE MSA	*408	452	516	669	760	Kent
Wilmington-Newark, DE-MD PMSA	*407	538	626	851	1026	New Castle

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Sussex	*362	384	491	643	687

DIST. OF COLUMBIA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Washington, DC-MD-VA	633	719	844	1149	1385	District of Columbia

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom For example the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR 033094

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

F L O R I D A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Daytona Beach, FL MSA	347	430	551	732	777	Flagler, Volusia
Fort Lauderdale, FL PMSA	475	559	690	960	1132	Broward
Fort Myers-Cape Coral, FL MSA	411	474	571	795	830	Lee
Fort Pierce-Port Lucie, FL MSA	420	462	600	779	840	Martin, St. Lucie
Fort Walton Beach, FL MSA	351	391	444	618	729	Okaloosa
Gainesville, FL MSA	*314	377	488	670	790	Alachua
Jacksonville, FL MSA	*385	430	519	686	762	Clay, Duval, Nassau, St. Johns
Lakeland-Winter Haven, FL MSA	329	370	452	578	663	Polk
Melbourne-Titusville-Palm Bay, FL MSA	350	438	548	734	855	Brevard
Miami, FL PMSA	471	590	737	1011	1173	Dade
Naples, FL MSA	394	555	668	928	1036	Collier
Ocala, FL MSA	*313	371	436	599	703	Marion
Orlando, FL MSA	447	509	606	795	971	Lake, Orange, Osceola, Seminole
Panama City, FL MSA	318	343	419	582	624	Bay
Pensacola, FL MSA	*330	375	421	580	685	Escambia, Santa Rosa
Punta Gorda, FL MSA	345	417	556	772	911	Charlotte
Sarasota-Bradenton, FL MSA	370	470	596	768	835	Manatee, Sarasota
Tallahassee, FL MSA	378	417	549	719	867	Gadsden, Leon
Tampa-St. Petersburg-Clearwater, FL MSA	369	439	543	722	874	Hernando, Hillsborough, Pasco, Pinellas
West Palm Beach-Boca Raton, FL MSA	487	572	707	940	1160	Palm Beach

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Baker	209	339	382	478	565
Calhoun	159	217	290	400	475
Columbia	260	288	330	458	541
Dixie	232	260	293	408	481
Gilchrist	195	270	355	445	583
Gulf	205	280	374	468	523
Hardee	235	382	428	535	600
Highlands	304	337	448	562	628
Indian River	343	461	592	741	829
Jefferson	184	246	328	449	538
Levy	260	264	330	412	535
Madison	229	257	290	402	449
Okeechobee	244	395	444	555	622
Sumter	296	324	376	470	527
Taylor	288	291	388	485	617
Wakulla	*185	280	337	469	552
Washington	161	256	294	368	412

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Bradford	196	314	356	482	532
Citrus	301	324	431	546	602
Desoto	310	314	414	542	579
Franklin	217	348	396	550	554
Glades	340	384	431	539	602
Hamilton	208	217	290	362	475
Hendry	311	400	471	589	660
Holmes	213	217	290	402	475
Jackson	*159	257	290	386	475
Lafayette	239	242	323	402	529
Liberty	169	276	308	386	433
Monroe	528	595	765	1055	1254
Putnam	271	304	342	461	525
Suwannee	273	277	346	433	484
Union	247	251	335	438	469
Walton	*195	310	350	460	575

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 033094

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 9

G E O R G I A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Albany, GA MSA	272	288	383	532	536	Dougherty, Lee
Athens, GA MSA	340	364	473	643	775	Clarke, Madison, Oconee
Atlanta, GA	454	506	589	784	949	Barrow, Bartow, Cherokee, Clayton, Cobb, Coweta, Dekalb Douglas, Fayette, Forsyth, Fulton, Gwinnett, Henry Newton, Paulding, Rockdale
Augusta-Aiken, GA-SC MSA	325	389	458	623	738	Columbia, Mcduffie, Richmond
Carroll County, GA	303	307	410	570	673	Carroll
Chattanooga, TN-GA MSA	316	370	444	573	654	Catoosa, Dade, Walker
Columbus, GA-AL MSA	324	362	431	565	613	Chattahoochee, Harris, Muscogee
Macon, GA MSA	336	375	435	602	618	Bibb, Houston, Jones, Peach, Twiggs
Pickens County, GA	211	287	384	533	538	Pickens
Savannah, GA MSA	338	421	489	657	685	Bryan, Chatham, Effingham
Spalding County, GA	329	333	445	560	623	Spalding
Walton County, GA	317	342	440	612	721	Walton

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Appling	174	259	317	422	444
Bacon	174	269	317	396	444
Baldwin	228	339	414	530	579
Ben Hill	177	247	317	396	520
Bleckley	174	237	317	408	485
Brooks	234	237	317	408	520
Burke	210	213	285	397	399
Calhoun	162	177	216	271	303
Candler	249	282	317	440	444
Chattooga	184	275	335	419	529
Clinch	167	228	303	422	425
Colquitt	234	237	317	408	444
Crawford	264	268	335	425	469
Dawson	255	348	464	580	716
Dodge	234	237	317	440	463
Early	234	237	317	415	466
Elbert	245	277	311	389	510
Evans	249	263	317	427	444
Floyd	259	307	399	528	558
Gilmer	253	256	342	428	480
Glynn	379	422	480	642	787
Grady	249	269	317	411	520
Habersham	291	320	368	512	592
Hancock	199	293	362	453	530
Hart	192	303	349	436	489

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Atkinson	216	243	273	363	383
Baker	175	215	265	369	379
Banks	183	293	333	464	546
Berrien	174	237	317	440	444
Brantley	188	257	343	430	481
Bulloch	330	335	430	554	704
Butts	248	340	453	606	634
Camden	372	420	471	654	772
Charlton	254	257	343	430	512
Clay	153	209	279	366	390
Coffee	174	253	317	402	520
Cook	174	282	317	440	520
Crisp	249	282	317	440	520
Decatur	174	282	317	402	444
Dooly	175	206	275	382	384
Echols	249	282	317	440	444
Emanuel	244	276	308	426	433
Fannin	177	237	317	440	444
Franklin	192	248	331	431	543
Glascock	148	201	269	336	440
Gordon	321	326	407	526	669
Greene	216	294	392	491	550
Hall	281	427	502	628	702
Haralson	256	259	347	475	503
Heard	257	260	348	435	487

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 033094

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

G E O R G I A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Irwin	174	237	317	396	444
Jasper	220	300	399	543	558
Jefferson	216	243	273	380	448
Johnson	177	237	317	396	444
Lanier	174	282	317	440	444
Liberty	333	373	423	588	592
Long	215	348	391	490	547
Lumpkin	223	361	406	544	666
Macon	252	258	319	399	446
Meriwether	185	287	337	428	472
Mitchell	217	221	294	409	483
Montgomery	232	235	313	391	438
Murray	207	310	378	476	530
Pierce	234	256	317	411	444
Polk	210	291	384	533	538
Putnam	215	270	359	499	589
Rabun	189	303	344	431	544
Schley	174	237	317	440	444
Seminole	174	263	317	440	444
Stewart	174	237	317	440	520
Talbot	173	236	314	437	516
Tattnall	234	237	317	440	444
Telfair	211	279	317	396	444
Thomas	195	315	354	457	496
Toombs	240	243	324	404	531
Treutlen	139	189	253	341	415
Turner	186	254	339	431	475
Upson	265	269	358	447	501
Warren	249	282	317	396	444
Wayne	245	277	311	433	510
Wheeler	207	280	314	394	453
Whitfield	243	347	419	535	631
Wilkes	174	282	317	408	494
Worth	197	273	359	449	503

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Jackson	284	289	385	481	631
Jeff Davis	174	282	317	440	520
Jenkins	174	282	317	440	520
Lamar	212	319	367	467	602
Laurens	275	303	352	440	578
Lincoln	174	282	317	440	444
Lowndes	276	332	404	564	624
Mcintosh	176	285	321	401	449
Marion	171	233	311	389	510
Miller	174	282	317	440	444
Monroe	198	288	360	501	504
Morgan	212	291	388	485	543
Oglethorpe	218	282	317	440	491
Pike	300	325	410	571	575
Pulaski	239	269	302	421	495
Quitman	163	266	299	416	419
Randolph	223	227	301	419	494
Screven	210	268	335	419	469
Stephens	264	268	356	493	532
Sumter	*217	328	393	496	551
Taliaferro	145	234	263	329	432
Taylor	222	249	281	390	394
Terrell	175	268	319	411	523
Tift	218	263	337	451	526
Towns	177	242	323	448	529
Troup	244	369	415	519	581
Union	228	310	412	517	578
Ware	262	294	331	414	543
Washington	249	282	317	415	520
Webster	249	282	317	440	520
White	199	323	362	504	594
Wilcox	160	258	291	367	478
Wilkinson	178	288	324	404	515

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 033094

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 11

HAWAII

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Honolulu, HI MSA	760	909	1069	1445	1563	Honolulu

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Hawaii	460	598	687	914	1126
Maui	733	910	1110	1433	1622
Kauai	580	866	1056	1395	1510

IDAHO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Boise City, ID MSA	+349	399	485	674	795	Ada, Canyon

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	162	262	295	383	412
Bear Lake	174	239	318	442	522
Bingham	*278	293	351	488	576
Boise	207	335	376	470	526
Bonneville	*261	329	449	605	738
Butte	162	221	295	410	412
Caribou	157	216	288	400	471
Clark	167	268	305	423	427
Custer	180	247	328	443	538
Franklin	167	247	305	420	499
Gem	*222	224	299	394	472
Idaho	*239	289	321	402	450
Jerome	*172	246	312	418	493
Latah	*219	288	371	503	607
Lewis	222	225	300	375	480
Madison	254	258	339	471	513
Nez Perce	*266	295	377	486	528
Owyhee	*226	252	287	384	441
Power	176	281	323	403	451
Teton	282	286	376	523	618
Valley	*270	274	365	507	540

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Bannock	+214	291	377	523	617
Benewah	162	258	296	382	414
Blaine	399	440	586	816	962
Bonner	*296	369	454	631	726
Boundary	195	282	344	430	481
Camas	162	239	295	368	412
Cassia	*189	253	322	431	505
Clearwater	*221	257	302	406	427
Elmore	*241	244	309	430	507
Fremont	167	263	296	387	485
Gooding	190	225	297	398	487
Jefferson	266	299	336	467	527
Kootenai	*326	382	501	696	822
Lemhi	*175	255	317	397	503
Lincoln	182	224	299	374	476
Minidoka	*227	245	301	418	493
Oneida	259	262	349	440	552
Payette	*222	224	299	415	490
Shoshone	*187	250	305	382	482
Twin Falls	*243	298	391	516	549
Washington	*231	260	292	392	409

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 033094

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

I L L I N O I S

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bloomington-Normal, IL MSA	292	358	478	664	702	Mclean
Champaign-Urbana, IL MSA	315	385	499	684	819	Champaign
Chicago, IL	*489	587	699	824	979	Cook, Dupage, Kane, Lake, Mchenry, Will
Davenport-Moline-Rock Island, IA-IL MSA	*246	341	420	543	588	Henry, Rock Island
Decatur, IL MSA	247	320	411	554	576	Macon
De Kalb County, IL	376	438	554	770	892	Dekalb
Grundy County, IL	328	379	505	667	708	Grundy
Kankakee, IL PMSA	*295	358	477	609	668	Kankakee
Kendall County, Il	453	516	622	865	871	Kendall
Peoria-Pekin, IL MSA	*304	337	450	598	735	Peoria, Tazewell, Woodford
Rockford, IL MSA	*295	378	461	580	676	Boone, Ogle, Winnebago
St. Louis, MO-IL MSA	295	361	468	609	674	Clinton, Jersey, Madison, Monroe, St. Clair
Springfield, IL MSA	286	352	470	624	710	Menard, Sangamon

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	196	267	356	446	585
Bond	244	248	330	413	462
Bureau	237	314	369	466	517
Carroll	171	241	314	401	439
Christian	263	266	355	465	498
Clay	236	238	314	398	514
Crawford	177	248	321	447	450
De Witt	254	257	343	477	487
Edgar	185	249	319	399	447
Effingham	215	289	357	451	529
Ford	177	246	320	446	449
Fulton	*187	278	340	428	510
Greene	226	251	314	401	514
Hancock	232	236	315	393	441
Henderson	171	236	314	392	442
Jackson	*303	304	383	544	608
Jefferson	250	294	367	500	514
Johnson	219	231	308	429	505
La Salle	215	292	390	527	590
Lee	279	287	382	478	537
Logan	277	294	391	489	614
Macoupin	217	274	351	450	491
Marshall	192	257	326	406	456
Massac	245	276	311	431	435
Montgomery	193	245	327	418	457

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Alexander	171	236	314	392	514
Brown	177	241	321	401	527
Calhoun	151	244	275	382	385
Cass	251	255	340	426	476
Clark	171	236	314	430	439
Coles	260	310	413	549	648
Cumberland	182	254	314	437	471
Douglas	266	273	337	468	472
Edwards	232	236	314	392	514
Fayette	207	254	314	437	439
Franklin	179	248	326	434	456
Gallatin	161	240	292	406	425
Hamilton	171	279	314	392	439
Hardin	171	236	314	408	439
Iroquois	215	265	331	431	464
Jasper	167	272	306	426	489
Jo Daviess	277	299	351	442	491
Knox	*189	257	343	450	543
Lawrence	158	234	289	397	405
Livingston	221	302	402	518	564
Mcdonough	221	286	345	450	567
Marion	255	272	332	455	465
Mason	180	245	328	447	538
Mercer	190	258	345	432	504
Morgan	241	312	416	553	583

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

033094

I L L I N O I S continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Moultrie	207	263	351	485	491
Piatt	217	304	394	538	553
Pope	143	196	261	327	428
Putnam	190	281	317	441	444
Richland	239	242	311	388	435
Schuyler	184	281	317	416	466
Shelby	188	255	340	426	489
Stephenson	263	302	381	477	535
Vermilion	*226	317	397	496	556
Warren	263	266	355	448	504
Wayne	163	231	296	379	486
Whiteside	258	294	391	489	549

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Perry	233	253	295	401	466
Pike	205	211	280	370	406
Pulaski	161	219	292	366	434
Randolph	236	269	337	462	472
Saline	231	241	321	418	450
Scott	182	248	330	413	462
Stark	171	234	313	435	438
Union	178	229	302	419	423
Wabash	188	266	341	454	560
Washington	219	299	398	498	646
White	171	256	302	392	423
Williamson	202	275	366	509	516

I N D I A N A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bloomington, IN MSA	299	387	516	716	845	Monroe
Cincinnati, OH-KY-IN	*282	364	485	651	703	Dearborn
Elkhart-Goshen, IN MSA	342	391	495	634	728	Elkhart
Evansville-Henderson, IN-KY MSA	265	324	421	527	589	Posey, Vanderburgh, Warrick
Fort Wayne, IN MSA	294	377	466	601	653	Adams, Allen, De Kalb, Huntington, Wells, Whitley
Gary, IN PMSA	313	411	513	642	718	Lake, Porter
Indianapolis, IN MSA	*336	421	507	634	710	Boone, Hamilton, Hancock, Hendricks, Johnson, Madison Marion, Morgan, Shelby
Kokomo, IN MSA	273	323	420	542	588	Howard, Tipton
Lafayette, IN MSA	294	373	497	692	816	Clinton, Tippecanoe
Louisville, KY-IN MSA	269	345	420	583	614	Clark, Floyd, Harrison, Scott
Muncie, IN MSA	*271	338	399	542	640	Delaware
Ohio County, IN	188	272	341	473	491	Ohio
South Bend, IN MSA	295	392	517	645	723	St. Joseph
Terre Haute, IN MSA	*236	311	396	495	554	Clay, Vermillion, Vigo

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Bartholomew	374	403	486	608	798
Blackford	218	298	396	495	554
Carroll	240	262	349	471	488
Crawford	178	242	323	403	503
Decatur	*220	314	400	516	560
Fayette	212	288	385	481	582
Franklin	204	278	370	464	608

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Benton	185	296	337	454	472
Brown	255	353	465	647	671
Cass	*224	282	349	453	543
Daviess	219	275	366	459	513
Dubois	238	282	372	487	559
Fountain	255	258	332	416	465
Fulton	294	308	372	516	521

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 033094

I N D I A N A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Gibson	203	263	333	450	467
Greene	*247	259	330	413	462
Jackson	*307	321	397	524	563
Jay	254	261	323	449	452
Jennings	279	283	368	493	515
Kosciusko	250	352	425	552	595
La Porte	274	332	443	567	621
Marshall	318	323	430	542	602
Miami	*222	273	341	426	491
Newton	279	282	377	472	529
Orange	248	251	323	426	457
Parke	*199	286	362	462	567
Pike	178	264	323	426	452
Putnam	*290	337	415	555	560
Ripley	239	272	362	503	568
Spencer	180	255	328	456	504
Steuben	326	369	440	550	615
Switzerland	181	273	329	457	477
Wabash	219	291	343	477	522
Washington	191	261	348	463	490
White	266	285	365	456	599

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Grant	285	289	386	502	541
Henry	224	270	335	465	468
Jasper	214	323	362	492	506
Jefferson	266	298	338	469	473
Knox	277	299	397	497	556
Lagrange	272	312	399	518	603
Lawrence	238	282	377	498	529
Martin	181	244	323	449	477
Montgomery	311	327	408	517	572
Noble	305	310	386	498	549
Owen	256	260	347	448	568
Perry	178	244	323	449	506
Pulaski	214	295	339	424	475
Randolph	*245	288	335	442	469
Rush	275	278	349	485	568
Starke	233	292	370	464	518
Sullivan	192	262	350	438	525
Union	178	248	323	449	455
Warren	177	279	321	447	527
Wayne	245	287	373	466	541

I O W A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Cedar Rapids, IA MSA	*249	352	451	628	673	Linn
Davenport-Moline-Rock Island, IA-IL MSA	*246	341	420	543	588	Scott
Des Moines, IA MSA	*338	429	527	683	718	Dallas, Polk, Warren
Dubuque, IA MSA	+261	320	412	525	640	Dubuque
Iowa City, IA MSA	*301	388	497	691	816	Johnson
Omaha, NE-IA MSA	284	388	491	643	721	Pottawattamie
Sioux City, IA-NE MSA	*290	347	433	541	615	Woodbury
Waterloo-Cedar Falls, IA MSA	*227	318	396	528	620	Black Hawk

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 033094

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

I O W A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adair	*197	280	359	449	503
Allamakee	*198	271	307	440	503
Audubon	*170	257	309	387	454
Boone	*250	328	385	496	588
Buchanan	*264	302	374	468	524
Butler	*257	280	335	431	469
Carroll	*208	291	378	481	529
Cedar	195	313	355	444	497
Cherokee	*210	242	304	395	426
Clarke	*258	280	367	484	516
Clayton	*224	282	338	423	517
Crawford	*232	249	327	426	458
Decatur	*199	262	349	436	489
Des Moines	*226	318	410	513	574
Emmet	*197	250	304	407	499
Floyd	*272	300	382	478	535
Fremont	*275	278	365	456	572
Grundy	*226	262	321	435	515
Hamilton	*285	323	392	490	549
Hardin	206	269	349	446	492
Henry	*221	316	402	503	570
Humboldt	*183	284	332	423	465
Iowa	200	300	365	467	512
Jasper	*221	316	401	501	561
Jones	238	241	318	420	450
Kossuth	201	275	367	460	514
Louisa	*200	307	363	484	508
Lyon	*165	241	301	410	420
Mahaska	*223	292	372	484	521
Marshall	*253	300	380	475	532
Mitchell	*179	256	325	406	455
Monroe	*212	325	385	482	572
Muscatine	241	308	410	545	574
Osceola	*205	280	372	465	521
Palo Alto	*170	251	310	394	452
Pocahontas	*228	257	343	429	480
Ringgold	*179	245	326	408	456
Shelby	*193	278	351	452	491
Story	325	395	465	646	739
Taylor	*204	278	371	464	544

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	*203	296	369	461	517
Appanoose	*246	293	350	456	546
Benton	258	262	349	437	492
Bremer	*206	284	359	465	572
Buena Vista	*265	300	385	481	539
Calhoun	*180	245	327	409	458
Cass	*196	282	357	446	500
Cerro Gordo	*227	327	405	540	567
Chickasaw	*179	244	326	412	456
Clay	*201	287	366	458	512
Clinton	*226	295	393	491	550
Davis	192	262	349	437	489
Delaware	192	278	349	437	495
Dickinson	*206	281	374	468	524
Fayette	*189	278	344	452	482
Franklin	*258	289	361	451	505
Greene	*182	249	332	462	465
Guthrie	*187	270	342	465	560
Hancock	*222	292	368	465	515
Harrison	*201	291	366	463	513
Howard	*197	295	358	432	567
Ida	*258	296	354	443	496
Jackson	*215	305	390	488	546
Jefferson	231	315	420	547	691
Keokuk	170	232	310	397	435
Lee	*220	300	400	500	560
Lucas	198	262	336	467	522
Madison	222	302	403	516	565
Marion	*231	343	420	525	588
Mills	*237	335	394	493	552
Monona	*196	300	356	445	498
Montgomery	*275	310	365	484	511
O'Brien	*166	256	302	378	423
Page	*209	254	326	419	456
Plymouth	*223	305	405	506	567
Poweshiek	*265	328	420	525	588
Sac	*198	225	291	406	446
Sioux	*228	264	332	439	489
Tama	235	281	374	467	525
Union	*201	298	366	467	572

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 033094

I O W A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Van Buren	197	246	324	451	454
Washington	216	269	349	446	572
Webster	*217	295	393	493	551
Winneshiek	*202	283	367	459	514
Wright	*197	298	359	449	503
Wapello	*230	312	395	494	553
Wayne	167	226	302	411	432
Winnebago	*202	314	371	464	520
Worth	*201	295	366	458	551

K A N S A S

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Kansas City, MO-KS MSA	316	398	478	661	732	Johnson, Leavenworth, Miami, Wyandotte
Lawrence, KS MSA	321	384	493	686	789	Douglas
Topeka, KS MSA	305	351	455	615	694	Shawnee
Wichita, KS MSA	298	360	481	649	702	Butler, Harvey, Sedgwick

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Allen	215	219	276	385	453
Atchison	190	261	348	438	570
Barton	*180	251	326	431	469
Brown	177	241	322	403	529
Chautauqua	177	286	322	448	529
Cheyenne	210	213	273	376	381
Clay	177	241	322	403	451
Coffey	264	277	339	423	555
Cowley	272	275	367	489	526
Decatur	177	241	322	403	451
Doniphan	179	244	325	406	455
Elk	153	225	277	377	431
Ellsworth	232	235	314	437	440
Ford	273	322	402	506	571
Geary	310	326	407	526	571
Graham	194	214	246	343	404
Gray	177	258	322	403	451
Greenwood	177	241	322	448	451
Harper	173	243	315	439	489
Hodgeman	177	241	322	403	451
Jefferson	208	283	377	499	529
Kearny	283	286	381	512	562
Kiowa	238	241	322	441	529
Lane	157	257	287	400	403
Linn	207	241	322	448	451
Lyon	213	272	362	475	572
Anderson	177	241	322	448	451
Barber	169	231	308	427	431
Bourbon	212	241	322	444	487
Chase	177	286	322	415	451
Cherokee	175	253	320	418	448
Clark	192	276	350	438	490
Cloud	223	252	283	354	397
Comanche	148	219	270	348	377
Crawford	214	286	381	478	535
Dickinson	237	256	340	425	476
Edwards	177	241	322	448	490
Ellis	238	241	322	448	529
Finney	311	333	426	554	700
Franklin	276	281	374	467	584
Gove	168	272	305	424	427
Grant	*234	300	365	507	552
Greeley	177	286	322	448	451
Hamilton	177	241	322	403	529
Haskell	*186	295	339	433	488
Jackson	177	283	322	438	451
Jewell	142	193	258	322	368
Kingman	180	254	326	435	457
Labette	237	256	340	425	476
Lincoln	153	209	277	348	389
Logan	218	245	275	366	432
Mcpherson	258	262	349	478	489

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 033094

K A N S A S continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Marion	241	244	322	403	451
Meade	237	240	321	430	527
Montgomery	208	256	340	462	509
Morton	*190	261	348	435	487
Neosho	177	276	322	444	454
Norton	177	276	322	403	451
Osborne	130	185	235	327	387
Pawnee	*177	241	322	448	529
Pottawatomie	182	272	332	418	544
Rawlins	164	243	283	354	407
Republic	149	205	272	340	443
Riley	312	344	458	573	693
Rush	*153	209	277	359	403
Saline	*279	286	381	526	533
Seward	286	312	415	520	582
Sherman	177	244	322	432	451
Stafford	*167	226	302	387	423
Stevens	183	289	333	463	546
Thomas	177	241	322	441	529
Wabaunsee	238	241	322	448	451
Washington	150	206	274	380	385
Wilson	174	243	316	440	519

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Marshall	188	232	310	403	508
Mitchell	168	228	304	380	436
Morris	177	241	322	405	451
Nemaha	169	239	308	385	431
Ness	*238	241	322	448	451
Osage	238	241	322	429	451
Ottawa	193	269	316	395	443
Phillips	177	254	322	403	529
Pratt	*202	276	368	487	516
Reno	196	267	356	481	584
Rice	236	254	299	415	420
Rooks	148	202	271	358	444
Russell	184	270	328	456	460
Scott	*207	262	350	487	559
Sheridan	141	220	256	355	418
Smith	156	213	284	387	398
Stanton	177	259	323	449	491
Sumner	197	269	359	499	502
Trego	177	241	322	448	451
Wallace	170	274	309	429	506
Wichita	210	286	381	478	592
Woodson	189	241	322	403	451

K E N T U C K Y

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Cincinnati, OH-KY-IN	*282	364	485	651	703	Boone, Campbell, Kenton
Clarksville-Hopkinsville, TN-KY MSA	*308	346	405	551	567	Christian
Evansville-Henderson, IN-KY MSA	265	324	421	527	589	Henderson
Gallatin County, KY	212	317	387	484	634	Gallatin
Grant County, KY	207	284	377	525	620	Grant
Huntington-Ashland, WV-KY-OH MSA	*260	305	375	478	525	Boyd, Carter, Greenup
Lexington, KY MSA	*304	376	463	631	714	Bourbon, Clark, Fayette, Jessamine, Madison, Scott Woodford
Louisville, KY-IN MSA	269	345	420	583	614	Bullitt, Jefferson, Oldham
Owensboro, KY MSA	*272	282	371	497	520	Daviess
Pendleton County, KY	239	276	368	461	516	Pendleton

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

K E N T U C K Y continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adair	*182	295	331	460	463
Anderson	*265	272	364	455	510
Barren	*242	292	336	420	470
Bell	*193	262	350	437	490
Bracken	162	222	295	410	414
Breckinridge	*187	253	339	423	414
Caldwell	*147	219	267	366	427
Carlisle	230	233	294	368	445
Casey	*155	251	282	353	395
Clinton	*149	241	271	339	379
Cumberland	*155	243	273	366	382
Elliott	195	197	263	329	432
Fleming	164	225	300	375	421
Franklin	*234	346	426	550	694
Garrard	*223	262	295	392	462
Grayson	*152	244	277	369	438
Hancock	*181	247	329	454	538
Harlan	*155	247	281	366	432
Hart	*161	252	294	366	410
Hickman	*146	200	266	362	428
Jackson	*155	220	281	351	393
Knott	*145	234	263	366	416
Larue	153	209	279	349	390
Lawrence	*200	245	285	394	399
Leslie	195	197	263	329	368
Lewis	146	199	265	353	435
Livingston	278	281	375	521	525
Lyon	175	239	318	397	445
Mccreary	*139	196	254	353	355
Magoffin	145	218	263	329	432
Marshall	*184	287	334	419	540
Mason	230	265	328	449	459
Menifee	*145	205	263	366	368
Metcalfe	145	227	263	329	368
Montgomery	*241	244	326	424	456
Muhlenberg	215	242	272	378	446
Nicholas	186	254	339	424	482
Owen	174	236	315	438	518
Perry	269	272	362	453	507
Powell	*160	252	292	380	492

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Allen	168	260	306	399	430
Ballard	145	198	264	367	401
Bath	*161	260	292	365	409
Boyle	284	288	384	480	538
Breathitt	*169	230	309	384	443
Butler	*145	211	263	329	368
Calloway	*186	255	339	446	470
Carroll	236	266	299	374	491
Clay	*158	230	288	360	403
Crittenden	145	197	263	366	368
Edmonson	*149	240	279	338	378
Estill	*182	250	331	414	463
Floyd	*260	315	354	493	566
Fulton	240	253	338	423	493
Graves	183	249	332	416	472
Green	*186	254	338	423	473
Hardin	301	308	386	518	614
Harrison	*196	282	356	445	551
Henry	217	221	294	409	483
Hopkins	209	249	307	388	505
Johnson	*183	268	332	427	465
Knox	*185	255	326	408	499
Laurel	*243	273	325	438	455
Lee	*145	235	264	330	371
Letcher	216	218	284	355	398
Lincoln	*179	244	332	408	456
Logan	191	259	347	458	485
Mccracken	*278	301	375	480	615
Mclean	145	197	263	366	376
Marion	148	239	269	374	440
Martin	163	223	297	396	489
Meade	249	310	356	471	586
Mercer	182	275	330	458	461
Monroe	204	230	258	329	380
Morgan	*182	248	330	413	462
Nelson	*264	268	358	447	501
Ohio	233	236	314	409	503
Owsley	152	208	278	347	389
Pike	*259	296	358	448	531
Pulaski	*261	272	352	446	471

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 033094

K E N T U C K Y continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Robertson	145	197	263	348	368
Rowan	*237	251	328	440	525
Shelby	243	318	356	496	499
Spencer	187	287	341	444	478
Todd	159	217	290	402	475
Trimble	*155	249	281	390	394
Warren	*229	312	416	520	600
Wayne	*157	214	285	373	399
Whitley	*179	280	325	433	455

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Rockcastle	*200	223	297	374	416
Russell	*163	251	297	371	416
Simpson	194	303	352	450	493
Taylor	*241	284	319	425	483
Trigg	161	260	293	408	481
Union	236	240	319	444	446
Washington	*211	285	321	401	449
Webster	230	233	311	389	436
Wolfe	145	227	263	366	368

L O U I S I A N A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Alexandria, LA MSA	257	319	403	558	566	Rapides
Acadia Parishes, LA	*206	277	311	389	452	Acadia
Baton Rouge, LA MSA	+275	342	423	588	694	Ascension, East Baton Rouge, Livingston, West Baton Rouge
Houma, LA MSA	242	296	379	527	622	Lafourche, Terrebonne
Lafayette, LA MSA	*266	308	368	505	597	Lafayette, St. Martin
Lake Charles, LA MSA	285	331	420	550	688	Calcasieu
Monroe, LA MSA	277	311	414	559	580	Ouachita
New Orleans, LA	*328	375	469	638	771	Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles St. John the Baptist, St. Tammany
St. James Parish, LA	213	290	387	483	541	St. James
St. Landry Parish, LA	170	240	307	385	467	St. Landry
Shreveport-Bossier City, LA MSA	293	334	419	561	687	Bossier, Caddo, Webster

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Allen	225	227	304	423	438
Avoyelles	199	201	269	374	441
Bienville	239	244	324	450	532
Cameron	167	271	304	423	426
Claiborne	174	237	317	397	444
De Soto	167	268	304	423	499
East Feliciana	181	248	329	413	462
Franklin	179	271	304	423	499
Iberia	*270	283	349	436	489
Jackson	167	227	303	379	425
La Salle	167	237	304	423	499
Madison	159	257	288	401	407
Natchitoches	271	278	358	496	500
Red River	167	227	304	423	499

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Assumption	278	297	353	441	494
Beauregard	309	336	400	521	573
Caldwell	167	271	304	423	426
Catahoula	173	227	304	423	426
Concordia	234	237	317	397	444
East Carroll	116	173	211	292	302
Evangeline	203	248	278	348	404
Grant	227	231	304	423	466
Iberville	246	254	311	398	511
Jefferson Davis	*244	269	314	392	504
Lincoln	297	300	375	514	615
Morehouse	223	250	333	416	466
Pointe Coupee	200	247	328	411	539
Richland	167	227	304	398	499

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 033094

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

L O U I S I A N A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Sabine	174	283	318	442	522
St. Mary	*253	270	340	463	482
Tensas	200	203	271	377	379
Vermilion	*239	255	307	396	430
Washington	156	212	283	393	396
West Feliciana	243	330	441	552	619

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
St. Helena	160	260	291	393	410
Tangipahoa	272	283	363	476	507
Union	225	227	304	380	499
Vernon	288	322	366	473	559
West Carroll	168	228	305	381	427
Winn	167	227	304	423	426

M A I N E

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Bangor, ME MSA	340	415	531	692	744	Penobscot county towns of Bangor city, Brewer city Eddington town, Glenburn town, Hampden town, Hermon town Holden town, Kenduskeag town, Milford town Old Town city, Orono town, Orrington town Penobscot Indian I, Veazie town Waldo county towns of Winterport town
Lewiston-Auburn, ME MSA	267	378	485	606	679	Androscoggin county towns of Auburn city, Greene town Lewiston city, Lisbon town, Mechanic Falls tow Poland town, Sabattus town, Turner town, Wales town
Portland, ME MSA	398	514	676	845	947	Cumberland county towns of Cape Elizabeth tow, Casco town Cumberland town, Falmouth town, Freeport town Gorham town, Gray town, North Yarmouth tow Portland city, Raymond town, Scarborough town South Portland cit, Standish town, Westbrook city Windham town, Yarmouth town York county towns of Buxton town, Hollis town Limington town, Old Orchard Beach
Portsmouth-Rochester, NH-ME PMSA	439	527	676	866	1062	York county towns of Berwick town, Eliot town Kittery town, South Berwick town, York town

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Androscoggin	292	378	503	629	705	Durham town, Leeds town, Livermore town Livermore Falls to, Minot town
Aroostook	267	317	423	529	593	
Cumberland	450	457	609	829	951	Harpswell town, Harrison town, Naples town New Gloucester tow, Pownal town, Sebago town
Franklin	314	357	436	581	612	
Hancock	330	406	501	631	702	
Kennebec	320	398	479	600	671	
Knox	282	395	513	683	719	
Lincoln	399	445	505	703	829	
Oxford	254	356	446	558	625	
Penobscot	290	334	446	562	625	Alton town, Argyle unorg., Bradford town, Bradley town

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 033094

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

M A I N E continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
						Burlington town, Carmel town, Carroll plantation Charleston town, Chester town, Clifton town Corinna town, Corinth town, Dexter town, Dixmont town Drew plantation, East Central Penob, East Millinocket t Edinburg town, Enfield town, Etna town, Exeter town Garland town, Greenbush town, Greenfield town Howland town, Hudson town, Kingman unorg., Lagrange town Lakeville town, Lee town, Levant town, Lincoln town Lowell town, Mattawamkeag town, Maxfield town Medway town, Millinocket town, Mount Chase town Newburgh town, Newport town, North Penobscot un Passadumkeag town, Patten town, Plymouth town Prentiss plantatio, Seboeis plantation, Springfield town Stacyville town, Stetson town, Twombly unorg. Webster plantation, Whitney unorg., Winn town Woodville town
Piscataquis	236	352	430	537	602	
Sagadahoc	432	494	609	811	999	
Somerset	322	366	435	544	693	
Waldo	250	359	455	569	646	Belfast city, Belmont town, Brooks town, Burnham town Frankfort town, Freedom town, Islesboro town Jackson town, Knox town, Liberty town, Lincolnville town Monroe town, Montville town, Morrill town Northport town, Palermo town, Prospect town Searsmont town, Searsport town, Stockton Springs t Swanville town, Thorndike town, Troy town, Unity town Waldo town
Washington	242	331	442	552	619	
York	378	435	581	726	813	Acton town, Alfred town, Arundel town, Biddeford city Cornish town, Dayton town, Kennebunk town Kennebunkport town, Lebanon town, Limerick town Lyman town, Newfield town, North Berwick town Ogunquit town, Parsonsfield town, Saco city Sanford town, Shapleigh town, Waterboro town, Wells town

M A R Y L A N D

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Baltimore, MD	404	494	603	796	911	Anne Arundel, Baltimore, Carroll, Harford, Howard Queen Anne's, Baltimore city
Columbia, MD	523	703	818	1081	1350	Columbia
Cumberland, MD-WV MSA	228	287	374	493	541	Allegany
Hagerstown, MD PMSA	260	359	473	591	700	Washington
Washington, DC-MD-VA	633	719	844	1149	1385	Calvert, Charles, Frederick, Montgomery, Prince George's
Wilmington-Newark, DE-MD PMSA	*407	538	626	851	1026	Cecil

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M A R Y L A N D continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Caroline	322	339	435	570	610
Garrett	*246	337	379	474	621
St. Mary's	*471	558	644	896	1025
Talbot	408	431	576	720	944
Worcester	258	375	470	653	657
Dorchester	292	391	456	570	638
Kent	312	384	512	640	772
Somerset	337	380	427	593	700
Wicomico	346	402	517	657	723

M A S S A C H U S E T T S

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Barnstable-Yarmouth, MA MSA	450	603	805	1007	1127	Barnstable county towns of Barnstable town, Brewster town Chatham town, Dennis town, Eastham town, Harwich town Mashpee town, Orleans town, Sandwich town, Yarmouth town
Boston, MA-NH PMSA	*565	637	796	995	1169	Bristol county towns of Berkley town, Dighton town Mansfield town, Norton town, Taunton city Essex county towns of Amesbury town, Beverly city Danvers town, Essex town, Gloucester city, Hamilton town Ipswich town, Lynn city, Lynnfield town, Manchester town Marblehead town, Middleton town, Nahant town Newbury town, Newburyport city, Peabody city Rockport town, Rowley town, Salem city, Salisbury town Saugus town, Swampscott town, Topsfield town Wenham town Middlesex county towns of Acton town, Arlington town Ashland town, Ayer town, Bedford town, Belmont town Boxborough town, Burlington town, Cambridge city Carlisle town, Concord town, Everett city Framingham town, Holliston town, Hopkinton town Hudson town, Lexington town, Lincoln town Littleton town, Malden city, Marlborough city Maynard town, Medford city, Melrose city, Natick town Newton city, North Reading town, Reading town Sherborn town, Shirley town, Somerville city Stoneham town, Stow town, Sudbury town, Townsend town Wakefield town, Waltham city, Watertown town Wayland town, Weston town, Wilmington town Winchester town, Woburn city Norfolk county towns of Bellingham town, Braintree town Brookline town, Canton town, Cohasset town, Dedham town Dover town, Foxborough town, Franklin town Holbrook town, Medfield town, Medway town, Millis town Milton town, Needham town, Norfolk town, Norwood town Plainville town, Quincy city, Randolph town, Sharon town Stoughton town, Walpole town, Wellesley town Westwood town, Weymouth town, Wrentham town Plymouth county towns of Carver town, Duxbury town Hanover town, Hingham town, Hull town, Kingston town

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 033094

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 23

M A S S A C H U S E T T S continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Marshfield town, Norwell town, Pembroke town Plymouth town, Rockland town, Scituate town Wareham town Suffolk county towns of Boston city, Chelsea city Revere city, Winthrop town Worcester county towns of Berlin town, Blackstone town Bolton town, Harvard town, Hopedale town, Lancaster town Mendon town, Milford town, Millville town Southborough town, Upton town
Brockton, MA PMSA	*417	550	673	840	956	Bristol county towns of Easton town, Raynham town Norfolk county towns of Avon town Plymouth county towns of Abington town, Bridgewater town Brockton city, East Bridgewater t, Halifax town Hanson town, Lakeville town, Middleborough town Plympton town, West Bridgewater t, Whitman town
Fitchburg-Leominster, MA MSA	372	522	677	874	948	Middlesex county towns of Ashby town Worcester county towns of Ashburnham town, Fitchburg city Gardner city, Leominster city, Lunenburg town Templeton town, Westminster town, Winchendon town
Lawrence, MA-NH PMSA	+429	518	650	813	1001	Essex county towns of Andover town, Boxford town Georgetown town, Groveland town, Haverhill city Lawrence city, Merrimac town, Methuen town North Andover town, West Newbury town
Lowell, MA-NH PMSA	*435	562	679	850	952	Middlesex county towns of Billerica town, Chelmsford town Dracut town, Dunstable town, Groton town, Lowell city Pepperell town, Tewksbury town, Tyngsborough town Westford town
New Bedford, MA MSA	400	489	555	694	778	Bristol county towns of Acushnet town, Dartmouth town Fairhaven town, Freetown town, New Bedford city Plymouth county towns of Marion town, Mattapoisett town Rochester town
Pittsfield, MA MSA	330	469	579	724	898	Berkshire county towns of Adams town, Cheshire town Dalton town, Hinsdale town, Lanesborough town, Lee town Lenox town, Pittsfield city, Richmond town Stockbridge town
Providence-Fall River-Warwick, RI-MA PMSA	396	539	649	813	1001	Bristol county towns of Attleboro city, Fall River city North Attleborough, Rehoboth town, Seekonk town Somerset town, Swansea town, Westport town
Springfield, MA MSA	*389	481	608	759	931	Franklin county towns of Sunderland town Hampden county towns of Agawam town, Chicopee city East Longmeadow to, Hampden town, Holyoke city Longmeadow town, Ludlow town, Monson town Montgomery town, Palmer town, Russell town Southwick town, Springfield city, Westfield city West Springfield t, Wilbraham town Hampshire county towns of Amherst town, Belchertown town Easthampton town, Granby town, Hadley town

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 033094

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 24

M A S S A C H U S E T T S continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Hatfield town, Huntington town, Northampton city Southampton town, South Hadley town, Ware town Williamsburg town
Worcester, MA-CT	461	558	697	871	976	Hampden county towns of Holland town Worcester county towns of Auburn town, Barre town Boylston town, Brookfield town, Charlton town Clinton town, Douglas town, Dudley town East Brookfield to, Grafton town, Holden town Leicester town, Millbury town, Northborough town Northbridge town, North Brookfield t, Oakham town Oxford town, Paxton town, Princeton town, Rutland town Shrewsbury town, Southbridge town, Spencer town Sterling town, Sturbridge town, Sutton town Uxbridge town, Webster town, Westborough town West Boylston town, West Brookfield to, Worcester city
NONMETROPOLITAN COUNTIES	**O BR**	**1 BR**	**2 BR**	**3 BR**	**4 BR**	**Towns within non metropolitan counties**
Barnstable	437	598	797	996	1115	Bourne town, Falmouth town, Provincetown town Truro town, Wellfleet town
Berkshire	360	438	516	708	847	Alford town, Becket town, Clarksburg town, Egremont town Florida town, Great Barrington t, Hancock town Monterey town, Mount Washington t, New Ashford town New Marlborough to, North Adams city, Otis town Peru town, Sandisfield town, Savoy town, Sheffield town Tyringham town, Washington town, West Stockbridge t Williamstown town, Windsor town
Dukes	578	587	782	977	1095	
Franklin	388	481	616	770	930	Ashfield town, Bernardston town, Buckland town Charlemont town, Colrain town, Conway town Deerfield town, Erving town, Gill town, Greenfield town Hawley town, Heath town, Leverett town, Leyden town Monroe town, Montague town, New Salem town Northfield town, Orange town, Rowe town, Shelburne town Shutesbury town, Warwick town, Wendell town Whately town
Hampden	392	534	712	948	1169	Blandford town, Brimfield town, Chester town Granville town, Tolland town, Wales town
Hampshire	549	556	743	929	1041	Chesterfield town, Cummington town, Goshen town Middlefield town, Pelham town, Plainfield town Westhampton town, Worthington town
Nantucket	694	929	1239	1549	1735	
Worcester	437	455	607	759	850	Athol town, Hardwick town, Hubbardston town New Braintree town, Petersham town, Phillipston town Royalston town, Warren town

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 25

M I C H I G A N

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Ann Arbor, MI PMSA	431	522	644	845	947	Lenawee, Livingston, Washtenaw
Benton Harbor, MI MSA	347	352	462	578	648	Berrien
Detroit, MI PMSA	342	466	562	703	787	Lapeer, Macomb, Monroe, Oakland, St. Clair, Wayne
Flint, MI PMSA	326	372	465	595	651	Genesee
Grand Rapids-Muskegon-Holland, MI MSA	+358	417	510	638	714	Allegan, Kent, Muskegon, Ottawa
Jackson, MI MSA	254	365	462	578	648	Jackson
Kalamazoo-Battle Creek, MI MSA	321	386	487	610	682	Calhoun, Kalamazoo, Van Buren
Lansing-East Lansing, MI MSA	342	403	518	678	783	Clinton, Eaton, Ingham
Saginaw-Bay City-Midland, MI MSA	315	347	462	578	648	Bay, Midland, Saginaw

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Alcona	263	286	381	508	535
Alpena	199	307	361	459	592
Arenac	252	298	366	459	539
Barry	270	339	452	565	633
Branch	318	326	402	548	564
Charlevoix	333	338	428	582	603
Chippewa	237	299	382	478	586
Crawford	302	305	406	554	578
Dickinson	229	338	417	521	584
Gladwin	273	277	369	484	540
Grand Traverse	364	390	520	651	728
Hillsdale	209	300	374	498	523
Huron	190	303	344	448	483
Iosco	260	308	376	500	617
Isabella	311	332	443	598	727
Keweenaw	185	258	337	431	472
Leelanau	373	405	472	617	774
Mackinac	261	294	363	454	508
Marquette	267	303	388	501	587
Mecosta	264	313	400	556	658
Missaukee	290	305	367	466	514
Montmorency	211	287	382	478	560
Oceana	294	313	372	473	521
Ontonagon	217	254	311	431	453
Oscoda	260	305	342	441	538
Presque Isle	266	273	341	440	477
St. Joseph	245	320	396	518	554
Schoolcraft	245	252	337	448	472
Tuscola	296	323	430	538	602

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Alger	276	279	373	466	522
Antrim	214	333	375	506	555
Baraga	169	248	310	387	457
Benzie	288	291	384	535	538
Cass	276	305	405	552	568
Cheboygan	287	303	364	502	597
Clare	286	294	363	468	515
Delta	236	295	347	481	520
Emmet	308	369	435	570	608
Gogebic	245	262	337	422	481
Gratiot	291	296	389	487	546
Houghton	212	282	337	422	552
Ionia	337	341	427	534	598
Iron	185	252	337	428	472
Kalkaska	263	304	399	518	655
Lake	279	282	367	511	525
Luce	276	279	373	466	522
Manistee	190	278	344	444	483
Mason	237	286	353	442	579
Menominee	263	266	351	488	491
Montcalm	283	304	389	487	546
Newaygo	316	339	399	499	560
Ogemaw	287	314	364	505	510
Osceola	206	291	374	478	523
Otsego	280	337	426	591	686
Roscommon	305	308	390	488	547
Sanilac	219	323	384	518	576
Shiawassee	274	345	416	578	620
Wexford	274	320	416	545	644

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M I N N E S O T A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Duluth-Superior, MN-WI MSA	+245	329	422	562	656	St. Louis
Fargo-Moorhead, ND-MN MSA	*265	366	440	612	655	Clay
Grand Forks, ND-MN MSA	277	330	434	598	668	Polk
La Crosse, WI-MN MSA	*242	334	424	566	687	Houston
Minneapolis-St. Paul, MN-WI MSA	*370	474	604	819	926	Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey Scott, Sherburne, Washington, Wright
Rochester, MN MSA	287	401	522	725	813	Olmsted
St. Cloud, MN MSA	*308	397	469	593	757	Benton, Stearns

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Aitkin	*256	331	442	553	619
Beltrami	243	320	427	560	598
Blue Earth	*307	371	462	591	752
Carlton	245	295	378	473	530
Chippewa	166	228	304	416	429
Cook	299	303	403	549	570
Crow Wing	*226	308	410	513	644
Douglas	*227	288	352	478	548
Fillmore	*180	245	327	435	458
Goodhue	*246	325	434	553	608
Hubbard	258	287	364	466	510
Jackson	218	257	304	406	426
Kandiyohi	*240	323	391	489	593
Koochiching	306	311	414	516	678
Lake	179	269	325	405	533
Le Sueur	*214	308	388	485	602
Lyon	223	269	360	475	590
Mahnomen	*194	266	354	443	496
Martin	183	249	332	416	546
Mille Lacs	269	294	391	545	641
Mower	*217	302	359	452	503
Nicollet	316	338	451	596	631
Norman	*195	305	355	444	497
Pennington	*207	281	375	521	527
Pipestone	169	231	308	416	505
Red Lake	*199	318	362	453	507
Renville	*236	272	331	413	463
Rock	166	228	304	379	474
Sibley	228	231	296	412	427
Stevens	*297	375	423	529	592
Todd	*190	257	312	414	437

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Becker	*231	366	411	514	576
Big Stone	*183	270	334	418	468
Brown	*202	326	366	458	513
Cass	207	281	376	471	526
Clearwater	*207	282	376	470	526
Cottonwood	181	246	329	412	461
Dodge	*236	303	350	438	534
Faribault	179	252	308	400	435
Freeborn	221	303	403	529	565
Grant	*196	269	359	449	535
Itasca	*323	327	426	533	596
Kanabec	226	317	412	514	576
Kittson	*175	280	318	434	437
Lac qui Parle	170	232	311	388	435
Lake of the Woods	191	260	347	434	485
Lincoln	140	192	255	319	419
Mcleod	*239	326	433	541	606
Marshall	*178	235	313	390	439
Meeker	*261	276	358	448	501
Morrison	*263	271	362	453	507
Murray	168	230	307	408	430
Nobles	207	276	363	454	508
Otter Tail	*205	275	373	466	522
Pine	280	283	369	491	551
Pope	166	228	304	379	426
Redwood	182	231	308	385	431
Rice	264	361	481	602	675
Roseau	306	311	408	526	572
Steele	273	315	420	525	588
Swift	*225	267	304	391	426
Traverse	*166	257	305	381	427

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M I N N E S O T A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Wabasha	*200	273	363	479	508
Waseca	280	285	379	475	531
Wilkin	167	229	306	386	429
Yellow Medicine	166	228	304	389	426
Wadena	209	245	304	398	453
Watonwan	166	252	304	423	438
Winona	*264	342	434	543	608

M I S S I S S I P P I

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Biloxi-Gulfport-Pascagpula, MS MSA	284	334	384	534	630	Hancock, Harrison, Jackson
Jackson, MS MSA	353	404	491	654	689	Hinds, Madison, Rankin
Memphis, TN-AR-MS MSA	337	392	462	642	674	Desoto

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	212	277	354	454	578
Amite	203	273	306	396	503
Benton	168	273	306	426	430
Calhoun	168	248	306	384	430
Chickasaw	*209	252	283	394	397
Claiborne	178	276	324	404	453
Clay	*194	266	313	403	515
Copiah	191	271	335	419	469
Forrest	234	287	350	486	575
George	186	260	339	424	498
Grenada	*192	286	349	482	509
Humphreys	171	224	299	395	419
Itawamba	*233	236	306	424	430
Jefferson	168	273	306	426	463
Jones	228	230	306	426	430
Lafayette	247	337	449	563	629
Lauderdale	*228	310	390	505	546
Leake	*168	257	306	426	454
Leflore	236	253	329	450	540
Lowndes	*300	323	384	480	542
Marshall	233	236	315	438	518
Montgomery	168	230	306	384	503
Newton	*193	231	260	362	366
Oktibbeha	295	307	375	521	615
Pearl River	253	256	338	456	473
Pike	245	277	311	430	510
Prentiss	231	259	292	380	453

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Alcorn	*175	244	318	436	445
Attala	*231	247	296	412	469
Bolivar	275	278	371	463	530
Carroll	160	218	291	363	428
Choctaw	176	240	320	400	448
Clarke	*168	242	306	396	503
Coahoma	279	283	377	472	528
Covington	168	273	306	408	430
Franklin	242	273	306	426	430
Greene	168	230	306	411	430
Holmes	168	230	306	384	430
Issaquena	253	346	460	576	645
Jasper	*159	258	290	402	438
Jefferson Davis	205	230	306	384	463
Kemper	*242	273	308	426	438
Lamar	207	336	377	472	528
Lawrence	168	264	306	421	494
Lee	*305	327	394	492	552
Lincoln	168	273	306	426	430
Marion	221	233	306	418	503
Monroe	*173	280	314	408	440
Neshoba	*212	220	292	391	409
Noxubee	*195	220	246	332	403
Panola	248	254	314	437	440
Perry	168	257	306	426	503
Pontotoc	*196	248	306	426	430
Quitman	168	230	306	426	454

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M I S S I S S I P P I continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Scott	*168	273	306	387	430
Simpson	242	252	306	426	467
Stone	168	273	306	384	503
Tallahatchie	201	205	273	341	426
Tippah	*171	262	294	368	412
Tunica	168	230	306	426	460
Walthall	184	252	306	426	430
Washington	257	306	408	527	580
Webster	*230	259	291	378	407
Winston	227	230	305	425	501
Yazoo	*245	262	338	423	473

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Sharkey	205	231	259	330	426
Smith	*228	272	306	384	503
Sunflower	265	289	336	423	541
Tate	206	324	376	470	617
Tishomingo	*145	235	264	353	370
Union	*168	273	306	384	430
Warren	*217	314	392	540	647
Wayne	224	230	306	384	430
Wilkinson	228	230	306	392	503
Yalobusha	233	240	295	369	414

M I S S O U R I

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Columbia, MO MSA	240	336	437	608	717	Boone
Joplin, MO MSA	234	270	359	472	507	Jasper, Newton
Kansas City, MO-KS MSA	316	398	478	661	732	Cass, Clay, Clinton, Jackson, Lafayette, Platte, Ray
St. Joseph, MO MSA	*205	274	366	462	513	Andrew, Buchanan
St. Louis, MO-IL MSA	295	361	468	609	674	Crawford-Sullivan (part), Franklin, Jefferson, Lincoln St. Charles, St. Louis, Warren, St. Louis city
Springfield, MO MSA	*246	311	401	553	577	Christian, Greene, Webster

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adair	220	284	378	474	569
Audrain	243	246	328	456	527
Barton	167	215	286	359	469
Benton	258	261	348	435	487
Butler	184	238	318	407	446
Callaway	269	272	363	461	595
Cape Girardeau	232	285	379	505	619
Carter	211	237	267	372	374
Chariton	195	200	267	369	406
Cole	*220	300	400	534	560
Crawford	*251	301	339	446	498
Dallas	*213	245	305	381	497
Dekalb	236	239	320	444	448
Douglas	221	223	286	399	401
Gasconade	*179	255	327	437	455
Grundy	210	235	313	423	489

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Atchison	209	239	278	356	390
Barry	*180	268	329	417	457
Bates	172	234	312	435	512
Bollinger	*155	235	281	351	393
Caldwell	187	256	341	426	478
Camden	296	300	400	555	652
Carroll	149	205	272	378	446
Cedar	181	215	287	400	471
Clark	150	206	274	343	403
Cooper	170	234	309	429	476
Dade	*147	237	267	356	439
Daviess	162	222	296	411	484
Dent	*216	240	301	403	479
Dunklin	182	202	267	366	393
Gentry	150	207	275	361	386
Harrison	201	206	273	342	381

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 033094

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 29

M I S S O U R I continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Henry	261	265	353	442	580
Holt	147	201	269	373	376
Howell	*212	257	305	387	427
Johnson	*273	306	398	528	623
Laclede	*193	258	324	442	454
Lewis	208	227	281	360	450
Livingston	211	236	315	439	463
Macon	184	251	334	417	467
Maries	*158	228	287	369	402
Mercer	197	200	267	372	439
Mississippi	156	214	285	397	400
Monroe	162	222	296	411	413
Morgan	193	256	312	435	465
Nodaway	*238	287	354	450	543
Osage	156	214	285	397	400
Pemiscot	214	218	278	388	390
Pettis	247	289	387	487	583
Pike	210	241	322	403	529
Pulaski	*220	315	354	469	523
Ralls	161	233	291	406	409
Reynolds	198	201	269	363	441
St. Clair	156	213	284	369	398
St. Francois	*238	300	379	476	623
Schuyler	207	212	283	393	411
Scott	273	276	368	497	572
Shelby	148	201	270	375	386
Stone	*265	281	349	446	489
Taney	*254	278	365	491	580
Vernon	195	244	325	449	455
Wayne	206	209	277	359	455
Wright	179	202	271	376	444

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Hickory	172	235	313	392	439
Howard	209	231	308	394	504
Iron	*165	247	299	397	456
Knox	149	206	273	379	381
Lawrence	*241	269	321	437	440
Linn	167	227	303	420	497
Mcdonald	218	220	282	392	414
Madison	*182	254	311	389	444
Marion	193	233	311	432	469
Miller	*251	301	337	442	521
Moniteau	208	220	292	399	413
Montgomery	180	245	327	413	458
New Madrid	216	235	314	393	440
Oregon	201	223	257	336	359
Ozark	147	200	267	372	374
Perry	265	269	359	478	502
Phelps	*234	279	358	486	527
Polk	*183	264	332	426	527
Putnam	150	206	274	343	385
Randolph	180	252	327	410	489
Ripley	153	209	278	351	457
Ste. Genevieve	*191	270	348	446	564
Saline	189	259	346	439	501
Scotland	161	219	291	406	417
Shannon	147	200	267	351	374
Stoddard	206	218	289	362	455
Sullivan	197	200	267	351	374
Texas	179	213	284	366	398
Washington	*267	321	361	451	505
Worth	142	209	258	358	422

M O N T A N A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Billings, MT MSA	250	307	410	549	667	Yellowstone
Great Falls, MT MSA	+217	296	395	505	616	Cascade

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 033094

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

M O N T A N A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Beaverhead	243	275	352	486	579
Blaine	219	275	365	457	512
Carbon	230	306	359	470	502
Chouteau	204	278	371	486	549
Daniels	205	332	374	493	614
Deer Lodge	183	250	334	424	503
Fergus	201	274	364	456	598
Gallatin	*261	326	436	562	716
Glacier	216	295	393	491	551
Granite	195	279	353	443	495
Jefferson	288	292	390	514	546
Lake	267	280	338	468	506
Liberty	177	241	322	448	529
Mccone	187	304	342	476	479
Meagher	205	332	374	520	523
Missoula	*305	357	476	614	781
Park	219	289	385	482	632
Phillips	209	280	374	467	614
Powder River	191	295	348	434	493
Prairie	162	226	293	409	424
Richland	*173	306	336	355	451
Rosebud	266	288	374	467	614
Sheridan	233	235	313	414	514
Stillwater	277	280	374	520	614
Teton	190	264	346	482	486
Treasure	205	299	374	520	523
Wheatland	154	214	282	379	395

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Big Horn	199	272	363	455	596
Broadwater	226	309	412	527	675
Carter	165	268	301	418	493
Custer	202	258	337	434	470
Dawson	195	266	354	464	553
Fallon	163	222	296	406	475
Flathead	*260	314	419	583	687
Garfield	189	258	344	431	564
Golden Valley	180	291	328	411	459
Hill	280	284	374	517	531
Judith Basin	205	332	374	467	523
Lewis and Clark	*265	311	413	576	680
Lincoln	295	310	374	512	523
Madison	277	280	374	493	523
Mineral	216	296	394	493	646
Musselshell	251	255	340	427	476
Petroleum	197	269	359	449	502
Pondera	189	307	344	479	564
Powell	261	266	354	444	582
Ravalli	205	280	374	520	580
Roosevelt	269	272	354	482	496
Sanders	205	280	374	467	523
Silver Bow	205	280	374	470	523
Sweet Grass	244	256	312	434	456
Toole	277	280	374	520	523
Valley	170	258	308	427	431
Wibaux	246	332	374	520	614

N E B R A S K A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Lincoln, NE MSA	*268	341	453	600	699	Lancaster
Omaha, NE-IA MSA	284	388	491	643	721	Cass, Douglas, Sarpy, Washington
Sioux City, IA-NE MSA	*290	347	433	541	615	Dakota

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 033094

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 31

NEBRASKA continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	*222	305	403	504	564
Arthur	202	276	368	461	516
Blaine	*106	145	194	243	272
Box Butte	*183	262	332	460	543
Brown	*174	259	316	395	508
Burt	167	227	303	394	466
Cedar	167	201	269	352	376
Cherry	183	297	333	463	546
Clay	179	243	324	435	454
Cuming	174	283	317	416	444
Dawes	232	249	330	460	543
Deuel	159	216	288	395	442
Dodge	*209	285	380	474	531
Fillmore	196	256	340	429	476
Frontier	216	219	291	386	409
Gage	+188	259	336	427	470
Garfield	*152	208	277	365	424
Grant	186	256	340	425	476
Hall	*218	298	397	522	587
Harlan	186	262	340	471	476
Hitchcock	180	245	326	409	457
Hooker	186	302	340	471	476
Jefferson	184	251	334	417	467
Kearney	186	282	340	452	557
Keya Paha	*186	256	340	425	476
Knox	141	225	257	323	381
Logan	161	220	292	366	481
Mcpherson	186	256	340	471	476
Merrick	*184	275	335	419	469
Nance	*154	233	279	350	392
Nuckolls	163	223	298	372	416
Pawnee	157	241	287	400	403
Phelps	251	256	340	471	557
Platte	207	277	369	514	529
Red Willow	188	258	343	469	545
Rock	*156	246	283	385	412
Saunders	190	261	348	452	522
Seward	278	282	376	470	528
Sherman	*153	236	277	348	455
Stanton	186	256	340	445	476

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Antelope	136	221	249	346	349
Banner	186	256	340	471	476
Boone	*163	246	297	371	487
Boyd	*148	240	271	339	379
Buffalo	*228	330	414	517	624
Butler	185	252	336	420	470
Chase	167	270	303	378	497
Cheyenne	251	256	340	449	476
Colfax	*213	261	297	409	415
Custer	*230	264	311	389	509
Dawson	*247	301	369	475	518
Dixon	241	245	327	416	514
Dundy	186	256	340	425	476
Franklin	150	212	275	384	386
Furnas	164	193	258	329	422
Garden	137	220	250	348	410
Gosper	*189	258	344	460	543
Greeley	*156	237	283	354	453
Hamilton	*180	273	326	454	457
Hayes	145	236	265	368	436
Holt	*195	266	335	430	462
Howard	*186	254	339	425	475
Johnson	186	291	340	425	476
Keith	*188	285	342	448	535
Kimball	186	278	340	471	557
Lincoln	*230	301	356	460	523
Loup	122	167	222	277	364
Madison	*228	300	395	512	625
Morrill	188	263	310	415	508
Nemaha	186	256	340	425	493
Otoe	209	276	342	444	560
Perkins	207	254	339	448	519
Pierce	174	238	317	403	444
Polk	173	238	314	393	458
Richardson	176	240	321	401	450
Saline	*224	302	360	471	504
Scotts Bluff	*228	300	380	468	557
Sheridan	184	251	334	417	526
Sioux	186	256	340	452	557
Thayer	162	262	295	367	412

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 033094

NEBRASKA continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Thomas	186	259	340	425	476
Valley	*186	256	340	425	476
Webster	156	213	284	355	426
York	206	281	374	467	525
Thurston	155	231	282	353	443
Wayne	247	251	326	451	535
Wheeler	186	256	340	471	476

NEVADA

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Las Vegas, NV-AZ MSA	438	519	618	858	1014	Clark, Nye
Reno, NV MSA	+415	482	618	860	1016	Washoe

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Churchill	414	419	560	773	918
Elko	377	429	572	756	939
Eureka	301	487	548	685	766
Lander	240	372	436	546	716
Lyon	299	358	459	638	754
Pershing	423	429	572	716	818
White Pine	304	416	554	748	786
Douglas	376	548	685	951	1060
Esmeralda	342	428	481	602	674
Humboldt	448	470	566	742	794
Lincoln	212	317	386	483	541
Mineral	309	422	562	737	922
Storey	429	435	572	796	939
Carson City	322	440	587	816	964

NEW HAMPSHIRE

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Boston, MA-NH PMSA	*565	637	796	995	1169	Rockingham county towns of Seabrook town South Hampton town
Lawrence, MA-NH PMSA	+429	518	650	813	1001	Rockingham county towns of Atkinson town, Chester town Danville town, Derry town, Fremont town, Hampstead town Kingston town, Newton town, Plaistow town, Raymond town Salem town, Sandown town, Windham town
Lowell, MA-NH PMSA	*435	562	679	850	952	Hillsborough county towns of Pelham town
Manchester, NH PMSA	*347	494	617	772	864	Hillsborough county towns of Bedford town, Goffstown town Manchester city, Weare town Merrimack county towns of Allenstown town, Hooksett town Rockingham county towns of Auburn town, Candia town Londonderry town
Nashua, NH PMSA	*413	574	713	970	1155	Hillsborough county towns of Amherst town, Brookline town Greenville town, Hollis town, Hudson town Litchfield town, Mason town, Merrimack town Milford town, Mont Vernon town, Nashua city New Ipswich town, Wilton town
Portsmouth-Rochester, NH-ME PMSA	439	527	676	866	1062	Rockingham county towns of Brentwood town East Kingston town, Epping town, Exeter town Greenland town, Hampton town, Hampton Falls town

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NEW HAMPSHIRE continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Kensington town, New Castle town, Newfields town Newington town, Newmarket town, North Hampton town Portsmouth city, Rye town, Stratham town Strafford county towns of Barrington town, Dover city Durham town, Farmington town, Lee town, Madbury town Milton town, Rochester city, Rollinsford town Somersworth city

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Belknap	413	476	626	845	1027	
Carroll	345	472	629	787	982	
Cheshire	427	507	649	844	999	
Coos	271	353	410	558	673	
Grafton	378	457	609	787	994	
Hillsborough	405	505	674	890	1071	Antrim town, Bennington town, Deering town Francestown town, Greenfield town, Hancock town Hillsborough town, Lyndeborough town, New Boston town Peterborough town, Sharon town, Temple town Windsor town
Merrimack	425	508	634	812	907	Andover town, Boscawen town, Bow town, Bradford town Canterbury town, Chichester town, Concord city Danbury town, Dunbarton town, Epsom town, Franklin city Henniker town, Hill town, Hopkinton town, Loudon town Newbury town, New London town, Northfield town Pembroke town, Pittsfield town, Salisbury town Sutton town, Warner town, Webster town, Wilmot town
Rockingham	442	517	691	959	1106	Deerfield town, Northwood town, Nottingham town
Strafford	390	530	708	886	992	Middleton town, New Durham town, Strafford town
Sullivan	412	418	542	711	759	

NEW JERSEY

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Atlantic-Cape May, NJ PMSA	510	579	772	965	1104	Atlantic, Cape May
Bergen-Passaic, NJ PMSA	631	767	902	1200	1481	Bergen, Passaic
Jersey City, NJ PMSA	583	687	800	1015	1119	Hudson
Middlesex-Somerset-Hunterdon, NJ PMSA	684	749	936	1272	1469	Hunterdon, Middlesex, Somerset
Monmouth-Ocean, NJ PMSA	569	680	862	1146	1345	Monmouth, Ocean
Newark, NJ PMSA	*546	697	840	1059	1336	Essex, Morris, Sussex, Union, Warren
Philadelphia, PA-NJ PMSA	453	558	688	861	1080	Burlington, Camden, Gloucester, Salem
Trenton, NJ PMSA	455	634	773	1045	1261	Mercer
Vineland-Millville-Bridgeton, NJ PMSA	439	535	645	806	904	Cumberland

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NEW MEXICO

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Albuquerque, NM MSA	+336	398	500	688	812	Bernalillo, Sandoval, Valencia
Las Cruces, NM MSA	*279	350	417	571	673	Dona Ana
Santa Fe, NM MSA	+379	538	665	891	1010	Los Alamos, Santa Fe

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Catron	189	299	342	477	562
Cibola	235	257	299	415	490
Curry	*230	294	387	484	542
Eddy	262	265	354	475	581
Guadalupe	*197	270	358	448	568
Hidalgo	189	264	342	429	480
Lincoln	291	297	394	518	647
Mckinley	253	323	409	511	572
Otero	221	284	369	514	518
Rio Arriba	299	307	378	474	530
San Juan	287	308	384	533	630
Sierra	212	258	342	477	480
Taos	351	356	475	593	780
Union	*197	313	359	449	562

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Chaves	251	292	386	529	541
Colfax	215	269	309	429	506
Debaca	*189	292	343	477	480
Grant	236	268	353	463	557
Harding	*156	213	284	392	398
Lea	236	258	342	477	536
Luna	264	268	342	477	562
Mora	183	251	334	418	468
Quay	*253	372	418	523	585
Roosevelt	*240	258	328	447	528
San Miguel	285	288	385	481	539
Socorro	194	289	353	490	579
Torrance	282	304	358	447	529

NEW YORK

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Albany-Schenectady-Troy, NY MSA	382	468	578	723	809	Albany, Montgomery, Rensselaer, Saratoga, Schenectady Schoharie
Binghamton, NY MSA	296	373	478	608	670	Broome, Tioga
Buffalo-Niagara Falls, NY PMSA	326	405	487	609	682	Erie, Niagara
Dutchess County, NY PMSA	498	632	780	1014	1186	Dutchess
Elmira, NY MSA	*291	376	470	593	710	Chemung
Glens Falls, NY MSA	327	440	536	671	752	Warren, Washington
Jamestown, NY MSA	*226	331	397	513	557	Chautauqua
Nassau-Suffolk, NY PMSA	684	824	1005	1397	1497	Nassau, Suffolk
New York, NY PMSA	647	721	819	1025	1147	Bronx, Kings, New York, Putnam, Queens, Richmond Rockland
Westchester County, NY	615	801	976	1269	1513	Westchester
Newburgh, NY-PA PMSA	495	645	787	999	1141	Orange
Rochester, NY MSA	364	473	577	738	807	Genesee, Livingston, Monroe, Ontario, Orleans, Wayne
Syracuse, NY MSA	349	422	521	667	739	Cayuga, Madison, Onondaga, Oswego
Utica-Rome, NY MSA	323	363	453	567	635	Herkimer, Oneida

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

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NEW YORK continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Allegany	239	295	363	457	508
Chenango	*355	360	426	545	604
Columbia	420	442	567	743	794
Delaware	321	370	435	575	714
Franklin	283	345	415	524	587
Greene	326	431	518	669	815
Jefferson	362	427	503	629	704
Otsego	312	394	453	585	744
Schuyler	*364	389	460	641	755
Steuben	*348	396	440	594	669
Tompkins	439	474	608	846	998
Wyoming	248	347	408	510	571

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Cattaraugus	239	293	380	475	586
Clinton	280	370	494	618	692
Cortland	274	398	498	623	737
Essex	262	380	475	595	665
Fulton	244	350	444	556	622
Hamilton	*334	405	465	581	651
Lewis	285	364	439	549	614
St. Lawrence	*264	337	440	550	632
Seneca	356	383	462	596	647
Sullivan	445	499	609	841	853
Ulster	413	574	691	898	1133
Yates	*325	369	447	559	606

NORTH CAROLINA

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Asheville, NC MSA	277	342	445	579	624	Buncombe, Madison
Charlotte-Gastonia-Rock Hill, NC-SC MSA	400	452	508	670	802	Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union
Fayetteville, NC MSA	343	387	435	602	715	Cumberland
Goldsboro, NC MSA	199	300	362	503	594	Wayne
Greensboro--Winston-Salem--High Point, NC MSA	341	387	462	637	647	Alamance, Davidson, Davie, Forsyth, Guilford, Randolph Stokes, Yadkin
Greenville, NC MSA	338	342	444	596	729	Pitt
Hickory-Morganton, NC MSA	*357	388	451	566	673	Alexander, Burke, Caldwell, Catawba
Jacksonville, NC MSA	321	376	423	588	695	Onslow
Norfolk-Virginia Beach-Newport News, VA-NC MSA	409	458	545	758	890	Currituck
Raleigh-Durham-Chapel Hill, NC MSA	381	462	543	728	858	Chatham, Durham, Franklin, Johnston, Orange, Wake
Rocky Mount, NC MSA	301	314	382	523	577	Edgecombe, Nash
Wilmington, NC MSA	362	400	488	669	797	Brunswick, New Hanover

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Alleghany	*227	274	321	401	501
Ashe	*162	263	295	399	428
Beaufort	*254	309	363	465	509
Bladen	*218	263	295	369	414
Carteret	317	347	423	588	654
Cherokee	*233	263	295	369	476
Clay	*162	263	295	410	414
Columbus	*239	272	305	396	427
Dare	291	460	530	726	742
Gates	162	222	295	410	414

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Anson	200	326	366	494	512
Avery	*262	294	359	449	503
Bertie	189	254	295	369	420
Camden	265	361	482	602	675
Caswell	176	241	321	401	449
Chowan	193	311	350	486	491
Cleveland	*219	340	399	537	565
Craven	*234	353	426	558	596
Duplin	233	263	295	392	414
Graham	*161	260	292	364	478

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 033094

NORTH CAROLINA continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Granville	299	321	378	526	593
Halifax	271	305	343	430	481
Haywood	*287	293	382	532	535
Hertford	259	263	351	439	492
Hyde	195	291	354	444	496
Jackson	*245	251	333	416	543
Lee	*230	354	419	543	587
Mcdowell	*179	271	326	445	526
Martin	*190	291	345	431	483
Montgomery	283	287	368	460	516
Northampton	156	253	284	395	398
Pasquotank	327	348	435	604	610
Perquimans	192	303	349	485	489
Polk	273	358	402	503	564
Robeson	*243	334	375	476	525
Rutherford	*280	289	363	454	508
Scotland	204	307	372	497	520
Surry	242	290	337	466	508
Transylvania	*314	335	423	562	601
Vance	297	336	377	475	528
Washington	241	244	326	449	456
Wilkes	*263	298	335	464	520
Yancey	*170	275	309	421	495

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Greene	*211	322	385	418	566
Harnett	278	282	376	507	556
Henderson	329	338	418	558	642
Hoke	198	300	361	467	506
Iredell	*340	349	461	576	645
Jones	*176	284	320	400	448
Lenoir	*194	314	353	441	494
Macon	*266	338	380	485	532
Mitchell	*194	308	353	482	503
Moore	287	348	415	569	681
Pamlico	*188	304	342	442	480
Pender	242	342	385	481	624
Person	233	323	424	555	648
Richmond	245	280	373	467	522
Rockingham	272	294	383	479	535
Sampson	252	255	336	420	470
Stanly	239	297	397	537	555
Swain	*233	257	295	392	423
Tyrrell	173	236	314	394	440
Warren	175	240	319	399	446
Watauga	*310	372	470	639	770
Wilson	296	301	401	502	563

NORTH DAKOTA

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bismarck, ND MSA	271	304	404	562	663	Burleigh, Morton
Fargo-Moorhead, ND-MN MSA	*265	366	440	612	655	Cass
Grand Forks, ND-MN MSA	277	330	434	598	668	Grand Forks

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	162	234	295	390	485
Benson	240	244	324	406	500
Bottineau	167	229	306	425	427
Burke	229	258	290	372	477
Dickey	229	249	290	386	407
Dunn	161	259	291	364	408
Emmons	127	205	230	320	377
Golden Valley	198	270	360	450	503

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Barnes	*194	264	352	460	503
Billings	229	258	290	404	407
Bowman	160	241	290	404	424
Cavalier	198	271	361	451	556
Divide	189	221	295	390	414
Eddy	161	260	292	407	422
Foster	*189	257	343	429	480
Grant	138	205	250	349	361

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 033094

NORTH DAKOTA continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Griggs	*161	261	293	366	477
Kidder	160	217	290	370	407
Logan	146	201	268	373	434
Mcintosh	*163	233	297	371	416
Mclean	223	233	290	392	477
Mountrail	234	251	296	409	465
Oliver	160	226	290	363	475
Pierce	180	246	328	456	502
Ransom	214	239	319	398	447
Richland	226	266	354	444	524
Sargent	161	219	292	372	411
Sioux	124	201	225	282	316
Stark	170	232	309	429	506
Stutsman	251	255	341	475	559
Traill	221	281	330	419	466
Ward	209	286	382	516	615
Williams	190	233	302	419	496

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Hettinger	165	217	290	379	470
Lamoure	229	258	290	363	407
Mchenry	160	217	290	404	454
Mckenzie	142	211	259	361	411
Mercer	171	239	311	432	511
Nelson	160	217	290	363	477
Pembina	184	257	335	449	535
Ramsey	216	289	386	483	630
Renville	244	246	320	446	526
Rolette	189	241	290	363	477
Sheridan	160	258	290	372	477
Slope	160	258	290	384	407
Steele	154	211	281	383	448
Towner	241	270	360	450	591
Walsh	*280	299	372	465	520
Wells	224	227	300	375	491

OHIO

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Akron, OH PMSA	324	395	507	634	711	Portage, Summit
Brown County, OH	*262	287	375	498	525	Brown
Canton-Massillon, OH MSA	*248	339	435	544	609	Carroll, Stark
Cincinnati, OH-KY-IN	*282	364	485	651	703	Clermont, Hamilton, Warren
Cleveland-Lorain-Elyria, OH PMSA	322	407	503	640	720	Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina
Columbus, OH MSA	315	374	479	608	699	Delaware, Fairfield, Franklin, Licking, Madison, Pickaway
Dayton-Springfield, OH MSA	347	388	496	640	719	Clark, Greene, Miami, Montgomery
Hamilton-Middletown, OH PMSA	*284	403	517	646	724	Butler
Huntington-Ashland, WV-KY-OH MSA	*260	305	375	478	525	Lawrence
Lima, OH MSA	251	313	412	524	577	Allen, Auglaize
Mansfield, OH MSA	218	313	398	497	556	Crawford, Richland
Parkersburg-Marietta, WV-OH MSA	*279	333	381	494	509	Washington
Steubenville-Weirton, OH-WV MSA	195	288	357	450	501	Jefferson
Toledo, OH MSA	*327	397	485	625	679	Fulton, Lucas, Wood
Wheeling, WV-OH MSA	*293	318	385	481	539	Belmont
Youngstown-Warren, OH MSA	*274	323	404	509	578	Columbiana, Mahoning, Trumbull

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 033094

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

O H I O continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	*182	263	328	410	459
Athens	315	357	420	551	677
Clinton	225	339	408	567	572
Darke	291	296	394	493	553
Erie	239	348	435	587	712
Gallia	189	257	343	429	480
Hancock	335	339	429	549	600
Harrison	*175	246	318	438	500
Highland	260	263	351	453	491
Holmes	232	280	342	428	489
Jackson	184	274	335	442	468
Logan	*310	314	406	547	568
Meigs	189	239	300	389	491
Monroe	175	239	319	405	447
Morrow	206	301	375	469	529
Noble	230	258	344	431	565
Paulding	250	256	325	429	533
Pike	*187	303	340	447	476
Putnam	275	278	372	468	521
Sandusky	239	339	435	548	608
Seneca	263	281	361	498	505
Tuscarawas	*228	315	414	518	580
Van Wert	209	317	381	477	535
Wayne	*250	350	430	547	602
Wyandot	241	270	361	451	505

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Ashland	234	310	413	515	577
Champaign	228	319	415	518	580
Coshocton	256	263	325	405	454
Defiance	277	311	414	521	579
Fayette	*288	310	370	489	518
Guernsey	*210	286	381	507	564
Hardin	182	294	330	436	462
Henry	*286	316	395	509	579
Hocking	*261	296	367	469	529
Huron	307	332	416	549	583
Knox	*276	303	389	503	556
Marion	237	308	376	489	546
Mercer	206	281	375	499	574
Morgan	*194	318	354	462	516
Muskingum	256	286	362	453	506
Ottawa	248	391	450	612	653
Perry	*252	288	340	472	527
Preble	281	285	361	487	552
Ross	304	316	385	481	539
Scioto	*195	290	351	439	491
Shelby	241	329	439	549	614
Union	262	363	477	597	692
Vinton	*217	279	344	430	482
Williams	*285	297	362	487	507

O K L A H O M A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Enid, OK MSA	271	275	366	509	581	Garfield
Fort Smith, AR-OK MSA	*275	279	367	491	514	Sequoyah
Lawton, OK MSA	332	335	425	591	647	Comanche
Oklahoma City, OK MSA	305	331	430	598	670	Canadian, Cleveland, Logan, Mcclain, Oklahoma Pottawatomie
Tulsa, OK MSA	+298	358	467	651	7671	Creek, Osage, Rogers, Tulsa, Wagoner

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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O K L A H O M A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adair	215	218	290	405	419
Atoka	160	248	290	384	448
Beckham	239	247	328	411	461
Bryan	231	253	316	440	487
Carter	198	273	341	476	517
Choctaw	152	213	277	386	388
Coal	223	234	283	393	465
Craig	181	248	329	458	541
Delaware	222	237	317	441	521
Ellis	175	262	320	399	448
Grady	257	261	347	473	570
Greer	183	263	307	383	469
Harper	160	259	290	384	407
Hughes	215	218	290	364	407
Jefferson	157	203	271	338	436
Kay	265	281	369	514	602
Kiowa	160	218	290	384	407
Le Flore	215	231	309	429	432
Love	186	254	339	425	476
Mcintosh	170	232	310	387	471
Marshall	181	248	330	417	464
Murray	160	218	290	364	407
Noble	228	232	310	430	434
Okfuskee	215	218	290	364	407
Ottawa	224	235	290	392	437
Payne	*271	320	408	564	632
Pontotoc	185	261	326	409	487
Roger Mills	158	215	287	399	403
Stephens	239	265	324	438	532
Tillman	217	245	274	381	450
Washita	230	238	290	405	477
Woodward	171	269	312	434	437

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Alfalfa	160	218	290	364	419
Beaver	169	273	308	427	504
Blaine	160	218	290	405	477
Caddo	166	235	302	384	423
Cherokee	247	278	316	409	519
Cimarron	138	224	252	335	414
Cotton	224	227	303	422	464
Custer	224	254	339	473	546
Dewey	145	235	264	367	371
Garvin	172	235	314	409	516
Grant	160	259	290	405	477
Harmon	168	228	305	381	427
Haskell	230	232	290	398	477
Jackson	203	304	371	486	549
Johnston	156	253	284	394	466
Kingfisher	189	277	342	449	480
Latimer	167	227	303	403	496
Lincoln	252	261	318	437	488
Mccurtain	230	235	290	405	477
Major	184	282	335	466	469
Mayes	202	275	367	463	515
Muskogee	257	289	337	469	473
Nowata	170	232	310	387	474
Okmulgee	244	247	328	411	461
Pawnee	266	270	351	452	491
Pittsburg	218	236	315	438	517
Pushmataha	212	234	312	390	437
Seminole	215	224	290	405	442
Texas	197	279	322	447	450
Washington	218	325	396	524	614
Woods	222	225	301	403	422

O R E G O N

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Eugene-Springfield, OR MSA	+300	411	536	747	865	Lane
Medford-Ashland, OR MSA	*420	512	604	754	846	Jackson
Portland-Vancouver, OR-WA PMSA	*349	429	529	736	800	Clackamas, Columbia, Multnomah, Washington, Yamhill

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O R E G O N continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Salem, OR PMSA	*323	380	487	672	705	Marion, Polk

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Baker	+260	292	389	541	544
Clatsop	*262	342	448	605	685
Crook	220	300	400	499	560
Deschutes	+353	407	543	756	875
Gilliam	233	364	423	529	592
Harney	*183	296	333	458	510
Jefferson	236	323	430	576	646
Klamath	*282	330	440	606	722
Lincoln	*350	355	474	659	716
Malheur	+260	319	389	501	564
Sherman	*184	299	336	467	470
Umatilla	258	268	353	490	518
Wallowa	*213	326	363	505	548
Wheeler	168	231	307	384	430

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Benton	*302	390	495	745	791
Coos	*272	352	468	651	656
Curry	*287	392	521	667	820
Douglas	*277	314	405	557	727
Grant	+219	300	400	500	631
Hood River	*318	357	487	632	746
Josephine	*248	350	451	607	711
Lake	*232	316	355	475	582
Linn	255	324	425	579	630
Morrow	220	288	359	496	528
Tillamook	*223	330	410	554	603
Union	*286	295	386	536	633
Wasco	*266	330	371	504	564

P E N N S Y L V A N I A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Allentown-Bethlehem-Easton, PA MSA	355	481	573	745	837	Carbon, Lehigh, Northampton
Altoona, PA MSA	*269	333	380	475	551	Blair
Erie, PA MSA	*249	345	407	509	570	Erie
Harrisburg-Lebanon-Carlisle, PA MSA	*321	411	527	664	738	Cumberland, Dauphin, Lebanon, Perry
Johnstown, PA MSA	*238	298	350	437	490	Cambria, Somerset
Lancaster, PA MSA	348	428	534	695	748	Lancaster
Newburgh, NY-PA PMSA	495	645	787	999	1141	Pike
Philadelphia, PA-NJ PMSA	453	558	688	861	1080	Bucks, Chester, Delaware, Montgomery, Philadelphia
Pittsburgh, PA PMSA	310	380	458	574	641	Allegheny, Beaver, Butler, Fayette, Washington Westmoreland
Reading, PA MSA	290	428	528	661	745	Berks
Scranton--Wilkes-Barre--Hazleton, PA MSA	250	368	438	547	662	Columbia, Lackawanna, Luzerne, Wyoming
Sharon, PA MSA	290	316	368	460	537	Mercer
State College, PA MSA	381	467	577	756	809	Centre
Williamsport, PA MSA	227	342	411	514	576	Lycoming
York, PA MSA	292	401	496	621	694	York

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 033094

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

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P E N N S Y L V A N I A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	259	355	473	611	775
Bedford	177	283	322	418	464
Cameron	238	278	326	408	457
Clearfield	*220	302	348	443	495
Crawford	*249	298	358	487	501
Forest	198	258	336	420	471
Fulton	*225	308	362	452	507
Huntingdon	182	279	332	414	465
Jefferson	*190	293	336	432	484
Lawrence	*210	319	383	506	536
Mifflin	*293	313	369	471	516
Montour	*313	322	422	588	694
Potter	213	268	343	428	518
Snyder	*319	336	405	523	527
Susquehanna	317	329	401	503	623
Union	*268	353	442	553	618
Warren	*243	306	373	466	522

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Armstrong	*270	354	403	510	661
Bradford	*214	305	382	498	536
Clarion	*265	316	358	447	509
Clinton	193	284	338	471	474
Elk	*221	321	393	491	550
Franklin	229	332	409	561	573
Greene	204	259	292	406	455
Indiana	+304	338	385	482	539
Juniata	198	284	342	427	478
Mc Kean	*243	338	372	465	520
Monroe	422	504	622	851	951
Northumberland	*280	353	431	574	638
Schuylkill	*230	330	418	522	585
Sullivan	201	275	367	460	514
Tioga	*185	288	331	439	463
Venango	*245	328	376	470	526
Wayne	267	411	484	615	790

R H O D E I S L A N D

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
New London-Norwich, CT-RI MSA	476	575	700	876	1001	Washington county towns of Hopkinton town, Westerly town
Providence-Fall River-Warwick, RI-MA PMSA	396	539	649	813	1001	Bristol county towns of Barrington town, Bristol town Warren town Kent county towns of Coventry town, East Greenwich tow Warwick city, West Greenwich tow, West Warwick town Newport county towns of Jamestown town Little Compton tow, Tiverton town Providence county towns of Burrillville town Central Falls city, Cranston city, Cumberland town East Providence ci, Foster town, Glocester town Johnston town, Lincoln town, North Providence t North Smithfield t, Pawtucket city, Providence city Scituate town, Smithfield town, Woonsocket city Washington county towns of Charlestown town, Exeter town Narragansett town, North Kingstown to, Richmond town South Kingstown to

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 033094

R H O D E I S L A N D continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Newport	534	621	797	996	1115	Middletown town, Newport city, Portsmouth town
Washington	593	668	750	968	1066	New Shoreham town

S O U T H C A R O L I N A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Augusta-Aiken, GA-SC MSA	325	389	458	623	738	Aiken, Edgefield
Charleston-North Charleston, SC MSA	365	423	486	647	754	Berkeley, Charleston, Dorchester
Charlotte-Gastonia-Rock Hill, NC-SC MSA	400	452	508	670	802	York
Columbia, SC MSA	392	431	496	656	754	Lexington, Richland
Florence, SC MSA	299	334	433	542	607	Florence
Greenville-Spartanburg-Anderson, SC MSA	311	374	424	535	628	Anderson, Cherokee, Greenville, Pickens, Spartanburg
Myrtle Beach, SC MSA	385	391	501	626	702	Horry
Sumter, SC MSA	313	348	395	542	641	Sumter

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Abbeville	180	244	326	433	534
Bamberg	173	235	313	391	438
Beaufort	397	487	561	700	784
Chester	188	256	342	428	486
Clarendon	*210	321	382	478	535
Darlington	203	277	368	460	516
Fairfield	233	373	424	530	593
Greenwood	279	283	377	472	528
Jasper	254	257	343	430	564
Lancaster	292	326	371	485	558
Lee	*253	256	342	428	562
Marion	243	246	329	457	540
Newberry	188	304	342	428	480
Orangeburg	223	297	342	428	534
Union	185	295	336	443	470

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Allendale	171	277	311	389	436
Barnwell	293	296	396	495	554
Calhoun	207	243	325	450	454
Chesterfield	188	271	342	451	562
Colleton	*193	312	350	438	490
Dillon	246	278	312	409	437
Georgetown	218	353	397	496	603
Hampton	188	304	342	438	499
Kershaw	206	281	375	469	525
Laurens	196	296	356	485	499
Mccormick	206	282	376	470	617
Marlboro	254	295	348	435	487
Oconee	*270	314	353	481	494
Saluda	*157	248	285	397	469
Williamsburg	*253	307	361	451	505

S O U T H D A K O T A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Rapid City, SD MSA	285	339	452	614	742	Pennington
Sioux Falls, SD MSA	*271	373	473	599	687	Lincoln, Minnehaha

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 033094

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

S O U T H D A K O T A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Aurora	146	237	267	371	402
Bennett	212	307	360	500	544
Brookings	*215	296	378	509	600
Brule	186	281	340	455	558
Butte	*211	288	384	500	591
Charles Mix	165	248	285	356	398
Clay	215	293	392	493	643
Corson	159	215	287	369	402
Davison	*247	294	392	525	568
Deuel	*184	251	337	421	470
Douglas	225	229	306	418	427
Fall River	267	270	360	454	591
Grant	198	270	360	493	503
Haakon	198	320	360	500	591
Hand	171	225	301	396	424
Harding	198	320	360	450	503
Hutchinson	164	233	287	364	470
Jackson	180	291	328	426	474
Jones	191	260	348	469	487
Lake	206	278	312	434	481
Lyman	186	255	341	426	478
Mcpherson	185	221	295	411	414
Meade	*255	287	383	500	591
Miner	149	243	272	364	433
Perkins	172	235	312	434	512
Roberts	161	245	291	364	408
Shannon	171	276	310	431	434
Stanley	198	320	360	500	522
Todd	260	266	353	443	495
Turner	167	244	304	398	426
Walworth	*234	320	360	497	591
Ziebach	198	270	360	450	591

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Beadle	*230	302	360	493	591
Bon Homme	238	241	322	448	529
Brown	*212	289	385	507	585
Buffalo	204	278	371	463	607
Campbell	*184	251	337	434	514
Clark	*175	239	318	399	447
Codington	199	272	362	497	507
Custer	199	272	363	505	596
Day	239	243	323	450	505
Dewey	*201	307	365	456	519
Edmunds	*198	270	360	500	503
Faulk	*226	310	413	517	579
Gregory	218	248	327	409	458
Hamlin	*166	226	302	377	426
Hanson	240	328	437	548	614
Hughes	*261	310	413	545	643
Hyde	182	295	331	437	534
Jerauld	145	235	265	366	433
Kingsbury	*218	253	300	375	461
Lawrence	*212	307	386	529	597
Mccook	153	218	280	390	459
Marshall	222	239	285	364	405
Mellette	255	287	322	423	451
Moody	*194	263	318	423	522
Potter	*194	308	352	476	493
Sanborn	198	288	360	450	503
Spink	*258	299	399	498	558
Sully	172	264	313	405	439
Tripp	190	259	346	444	486
Union	241	258	345	432	483
Yankton	198	310	360	490	591

T E N N E S S E E

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Chattanooga, TN-GA MSA	316	370	444	573	654	Hamilton, Marion
Clarksville-Hopkinsville, TN-KY MSA	*308	346	405	551	567	Montgomery
Jackson, TN MSA	239	314	420	583	587	Madison

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 033094

T E N N E S S E E continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Johnson City-Kingsport-Bristol, TN-VA MSA	246	286	363	472	537	Carter, Hawkins, Sullivan, Unicoi, Washington
Knoxville, TN MSA	*280	345	431	576	691	Anderson, Blount, Knox, Loudon, Sevier, Union
Memphis, TN-AR-MS MSA	337	392	462	642	674	Fayette, Shelby, Tipton
Nashville, TN MSA	348	415	512	697	784	Cheatham, Davidson, Dickson, Robertson, Rutherford Sumner, Williamson, Wilson

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Bedford	199	297	362	457	507
Bledsoe	163	223	297	373	418
Campbell	233	236	299	416	419
Carroll	*173	280	315	394	441
Claiborne	176	258	297	414	489
Cocke	173	239	297	399	489
Crockett	163	249	297	373	444
Decatur	210	227	301	377	494
Dyer	288	292	389	486	606
Franklin	242	263	337	469	552
Giles	199	294	363	455	508
Greene	185	265	336	420	470
Hamblen	209	270	355	473	498
Hardeman	*184	255	321	422	449
Haywood	243	281	375	469	525
Henry	*182	241	304	422	492
Houston	221	223	297	382	418
Jackson	163	223	297	373	418
Johnson	157	213	285	386	420
Lauderdale	188	257	343	433	481
Lewis	*161	262	294	409	412
Mcminn	207	253	325	450	454
Macon	171	254	310	388	434
Maury	331	337	448	562	628
Monroe	163	223	297	401	418
Morgan	169	264	307	385	431
Overton	163	241	297	373	489
Pickett	*136	221	248	310	347
Putnam	280	283	363	498	538
Roane	248	253	337	458	552
Sequatchie	163	265	297	382	418
Stewart	*221	261	297	390	489
Van Buren	150	205	273	375	383

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Benton	*248	283	317	428	466
Bradley	212	291	388	525	637
Cannon	165	227	301	377	422
Chester	*167	254	303	379	489
Clay	235	258	297	373	489
Coffee	198	321	361	502	571
Cumberland	244	265	353	492	495
Dekalb	181	246	329	411	494
Fentress	*217	234	311	409	412
Gibson	*180	262	327	409	458
Grainger	235	265	297	382	489
Grundy	147	239	268	373	412
Hancock	144	213	260	362	428
Hardin	163	265	297	401	435
Henderson	169	240	307	385	431
Hickman	271	275	366	483	512
Humphreys	215	281	331	414	464
Jefferson	*252	262	349	436	557
Lake	*227	256	298	414	426
Lawrence	222	225	300	375	421
Lincoln	189	258	344	431	483
Mcnairy	*183	211	277	385	418
Marshall	270	296	386	486	540
Meigs	165	227	301	419	494
Moore	230	233	311	433	436
Obion	266	270	346	459	484
Perry	167	271	304	418	499
Polk	184	251	335	419	469
Rhea	180	288	327	454	460
Scott	163	223	297	373	418
Smith	176	246	320	400	448
Trousdale	207	283	377	472	618
Warren	257	260	348	435	487

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 033094

TENNESSEE continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Wayne	162	264	296	388	415
White	*235	268	301	404	489
Weakley	249	258	320	438	468

TEXAS

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Abilene, TX MSA	269	290	387	521	634	Taylor
Amarillo, TX MSA	254	323	403	561	662	Potter, Randall
Austin-San Marcos, TX MSA	+381	460	613	851	1006	Bastrop, Caldwell, Hays, Travis, Williamson
Beaumont-Port Arthur, TX MSA	289	350	426	564	598	Hardin, Jefferson, Orange
Brazoria, TX PMSA	397	442	553	770	907	Brazoria
Brownsville-Harlingen-San Benito, TX MSA	*276	347	434	543	676	Cameron
Bryan-College Station, TX MSA	+338	393	497	693	817	Brazos
Corpus Christi, TX MSA	*295	363	464	631	745	Nueces, San Patricio
Dallas, TX	*386	444	570	788	931	Collin, Dallas, Denton, Ellis, Hunt, Kaufman, Rockwall
El Paso, TX MSA	*358	399	473	657	776	El Paso
Fort Worth-Arlington, TX PMSA	370	402	522	726	857	Hood, Johnson, Parker, Tarrant
Galveston-Texas City, TX PMSA	403	414	518	720	849	Galveston
Henderson County, TX	275	327	398	545	653	Henderson
Houston, TX PMSA	381	426	553	769	907	Chambers, Fort Bend, Harris, Liberty, Montgomery, Waller
Killeen-Temple, TX MSA	+325	339	429	596	655	Bell, Coryell
Laredo, TX MSA	294	339	445	557	624	Webb
Longview-Marshall, TX MSA	*291	329	404	549	601	Gregg, Harrison, Upshur
Lubbock, TX MSA	276	349	454	631	699	Lubbock
Mc Allen-Edinburg-Mission, TX MSA	*251	357	409	512	573	Hidalgo
Odessa-Midland, TX MSA	+276	318	425	592	686	Ector, Midland
San Angelo, TX MSA	*225	324	393	539	636	Tom Green
San Antonio, TX MSA	*338	389	504	701	827	Bexar, Comal, Guadalupe, Wilson
Sherman-Denison, TX MSA	249	350	422	540	646	Grayson
Texarkana, TX-Texarkana, AR MSA	282	344	420	555	588	Bowie
Tyler, TX MSA	320	354	432	601	635	Smith
Victoria, TX MSA	*319	323	409	568	641	Victoria
Waco, TX MSA	279	342	450	599	630	Mclennan
Wichita Falls, TX MSA	*308	344	414	552	650	Archer, Wichita

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 033094

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

T E X A S continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Anderson	316	356	400	556	561
Angelina	288	334	375	521	615
Armstrong	219	299	398	498	557
Austin	210	271	362	503	561
Bandera	283	304	359	498	502
Bee	205	268	353	490	546
Borden	169	274	309	429	432
Brewster	257	271	362	495	593
Brooks	156	205	230	320	322
Burleson	*212	297	386	521	634
Calhoun	282	300	366	508	601
Camp	356	361	450	564	631
Cass	*227	288	324	429	506
Cherokee	294	305	373	488	522
Clay	192	310	348	485	572
Coke	173	237	316	396	519
Collingsworth	172	235	314	392	468
Comanche	227	231	309	411	450
Cooke	286	290	387	524	581
Crane	206	271	362	452	506
Crosby	244	274	309	419	506
Dallam	192	261	348	457	488
Deaf Smith	232	284	347	482	570
Dewitt	239	250	316	396	442
Dimmit	212	258	300	417	419
Duval	244	259	309	429	466
Edwards	176	278	321	401	449
Falls	215	237	317	397	444
Fayette	251	254	339	428	556
Floyd	236	239	320	399	474
Franklin	199	271	362	503	506
Frio	+227	231	309	429	496
Garza	161	245	294	368	412
Glasscock	169	274	309	386	432
Gonzales	222	231	309	391	493
Grimes	*200	272	363	495	584
Hall	148	201	269	374	441
Hansford	263	281	351	488	576
Hartley	173	237	316	440	442
Hemphill	209	338	380	529	533

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Andrews	225	300	336	468	552
Aransas	237	324	432	601	605
Atascosa	180	247	328	457	539
Bailey	169	274	309	429	432
Baylor	169	262	309	386	432
Blanco	214	291	389	541	569
Bosque	199	292	362	478	543
Briscoe	192	261	348	461	488
Brown	*247	301	368	493	604
Burnet	206	281	374	520	609
Callahan	238	243	318	439	445
Carson	197	298	359	448	502
Castro	264	288	335	455	550
Childress	245	275	310	387	507
Cochran	202	230	259	360	425
Coleman	160	203	271	377	444
Colorado	203	231	309	429	506
Concho	176	240	322	447	450
Cottle	159	218	289	403	476
Crockett	244	257	309	429	432
Culberson	172	274	309	407	432
Dawson	169	274	309	429	506
Delta	*193	312	351	438	491
Dickens	173	218	289	383	476
Donley	186	256	340	474	477
Eastland	244	274	309	386	506
Erath	272	309	400	517	561
Fannin	266	276	355	493	561
Fisher	226	256	287	399	403
Foard	171	264	311	388	435
Freestone	210	247	328	457	490
Gaines	268	274	342	460	480
Gillespie	258	332	430	590	603
Goliad	179	271	326	418	536
Gray	289	294	391	490	580
Hale	238	271	358	486	500
Hamilton	244	274	309	429	503
Hardeman	169	231	309	429	506
Haskell	162	254	296	411	414
Hill	240	265	354	471	495

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 033094

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

T E X A S continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Hockley	268	314	358	496	546
Houston	182	265	332	462	465
Hudspeth	317	358	401	502	658
Irion	210	302	339	425	476
Jackson	*250	305	343	458	541
Jeff Davis	198	296	361	451	504
Jim Wells	190	281	346	481	568
Karnes	195	249	300	417	491
Kenedy	169	274	309	386	432
Kerr	251	340	426	592	698
King	189	258	343	430	481
Kleberg	320	332	405	564	664
Lamar	256	324	381	531	627
Lampasas	197	283	359	498	588
Lavaca	164	224	299	410	453
Leon	*208	337	379	480	622
Lipscomb	180	246	327	454	458
Llano	248	338	451	565	741
Lynn	169	253	309	426	506
Mcmullen	169	274	309	386	432
Marion	195	283	354	467	581
Mason	162	221	296	369	485
Maverick	246	263	351	438	491
Menard	227	231	309	429	432
Mills	*176	284	319	399	493
Montague	227	231	309	429	506
Morris	*184	297	334	417	467
Nacogdoches	278	335	435	543	640
Newton	181	248	330	424	542
Ochiltree	174	283	318	442	522
Palo Pinto	198	276	360	478	583
Parmer	185	271	338	443	474
Polk	294	321	373	503	611
Rains	225	340	411	571	575
Real	169	252	308	427	430
Reeves	169	274	309	417	432
Roberts	189	307	343	430	481
Runnels	244	253	309	429	491
Sabine	232	235	314	392	508
San Jacinto	276	311	350	476	573

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Hopkins	304	327	385	536	575
Howard	281	285	356	495	499
Hutchinson	235	301	380	529	624
Jack	167	227	304	423	499
Jasper	258	296	374	498	613
Jim Hogg	169	231	309	417	506
Jones	172	235	314	396	440
Kendall	237	385	432	601	709
Kent	145	234	263	366	414
Kimble	220	301	400	501	561
Kinney	169	231	309	429	503
Knox	163	245	298	398	417
Lamb	244	262	309	414	469
La Salle	166	244	301	418	493
Lee	298	335	377	525	589
Limestone	251	298	334	465	468
Live Oak	169	274	309	429	503
Loving	169	231	309	386	432
Mcculloch	*270	274	364	456	511
Madison	*193	313	352	489	578
Martin	169	274	309	429	432
Matagorda	304	333	411	571	575
Medina	239	284	334	448	547
Milam	*186	300	338	463	546
Mitchell	169	274	309	429	506
Moore	225	309	347	482	570
Motley	169	274	309	419	506
Navarro	315	332	399	506	558
Nolan	270	274	365	464	544
Oldham	219	299	398	498	582
Panola	236	310	348	470	527
Pecos	203	268	356	495	584
Presidio	226	256	286	359	401
Reagan	335	340	453	568	744
Red River	*207	335	376	470	526
Refugio	243	274	323	429	530
Robertson	*234	347	390	487	545
Rusk	274	277	347	482	528
San Augustine	183	251	334	418	468
San Saba	*153	236	278	388	459

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 033094

T E X A S continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Schleicher	169	272	309	429	432
Shackelford	169	231	309	429	506
Sherman	249	281	315	438	441
Starr	232	272	305	381	427
Sterling	174	238	318	417	445
Sutton	173	282	316	440	442
Terrell	169	274	309	407	506
Throckmorton	224	266	300	417	419
Trinity	273	309	346	481	557
Upton	227	231	309	386	506
Val Verde	250	348	410	513	606
Walker	355	378	462	614	646
Washington	328	334	444	556	730
Wheeler	244	274	309	429	441
Willacy	*160	239	291	406	410
Wise	203	307	369	514	536
Yoakum	234	345	426	532	698
Zapata	169	257	309	386	506

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Scurry	210	286	381	531	627
Shelby	243	273	307	383	429
Somervell	301	338	380	521	533
Stephens	179	254	326	453	536
Stonewall	169	234	309	429	506
Swisher	169	274	309	429	506
Terry	180	290	327	454	498
Titus	277	343	390	539	546
Tyler	215	294	392	491	644
Uvalde	183	282	317	441	444
Van Zandt	282	286	381	519	627
Ward	244	274	309	429	506
Wharton	250	301	363	490	507
Wilbarger	261	264	353	490	579
Winkler	228	232	310	403	507
Wood	244	285	380	529	624
Young	257	260	346	481	568
Zavala	163	214	286	398	470

U T A H

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Provo-Orem, UT MSA	+313	331	409	568	670	Utah
Salt Lake City-Ogden, UT MSA	*297	345	438	608	713	Davis, Salt Lake, Weber

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Beaver	184	251	337	421	552
Cache	*265	298	378	524	607
Daggett	*297	406	541	677	759
Emery	261	300	337	454	538
Grand	*216	295	361	451	584
Juab	233	236	314	437	517
Millard	248	251	335	419	550
Piute	170	275	309	386	506
San Juan	266	300	337	421	552
Sevier	277	280	359	449	502
Tooele	*248	348	395	513	637
Wasatch	215	348	391	544	642
Wayne	209	286	381	477	533

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Box Elder	*303	330	395	549	616
Carbon	*293	299	371	516	608
Duchesne	*184	282	335	464	549
Garfield	245	267	355	445	498
Iron	*273	372	463	579	681
Kane	215	292	391	489	548
Morgan	214	291	388	540	637
Rich	184	251	337	431	470
Sanpete	184	292	337	440	507
Summit	405	498	623	840	1021
Uintah	*217	305	396	549	6490
Washington	*337	414	551	735	901

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 033094

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

V E R M O N T

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Burlington, VT MSA	393	483	644	877	1057	Chittenden county towns of Burlington city Charlotte town, Colchester town, Essex town Hinesburg town, Jericho town, Milton town, Richmond town St. George town, Shelburne town, South Burlington c Williston town, Winooski city Franklin county towns of Fairfax town, Georgia town St. Albans city, St. Albans town, Swanton town Grand Isle county towns of Grand Isle town South Hero town

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Addison	*374	453	527	733	823	
Bennington	349	439	564	717	836	
Caledonia	*317	377	423	541	593	
Chittenden	*323	524	589	819	965	Bolton town, Buels gore, Huntington town, Underhill town Westford town
Essex	*309	352	419	524	587	
Franklin	*332	375	421	586	674	Bakersfield town, Berkshire town, Enosburg town Fairfield town, Fletcher town, Franklin town Highgate town, Montgomery town, Richford town Sheldon town
Grand Isle	*238	357	432	540	617	Alburg town, Isle La Motte town, North Hero town
Lamoille	*310	429	512	704	806	
Orange	*274	407	500	660	740	
Orleans	*210	306	381	476	617	
Rutland	348	453	553	693	775	
Washington	*332	416	557	696	780	
Windham	*373	433	575	728	803	
Windsor	401	452	565	724	860	

V I R G I N I A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Charlottesville, VA MSA	376	444	569	757	848	Albemarle, Fluvanna, Greene, Charlottesville city
Clarke County, VA	285	401	520	713	728	Clarke
Culpeper County, VA	351	512	595	785	941	Culpeper
Danville, VA MSA	*263	319	370	462	518	Pittsylvania, Danville city
Johnson City-Kingsport-Bristol, TN-VA MSA	246	286	363	472	537	Scott, Washington, Bristol city
King George County, VA	348	462	519	722	727	King George
Lynchburg, VA MSA	*317	348	402	512	594	Amherst, Bedford, Campbell, Bedford city, Lynchburg city
Norfolk-Virginia Beach-Newport News, VA-NC MSA	409	458	545	758	890	Gloucester, Isle of Wight, James City, Mathews, York Chesapeake city, Hampton city, Newport News city Norfolk city, Poquoson city, Portsmouth city

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 033094

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING

V I R G I N I A continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Richmond-Petersburg, VA MSA	403	455	529	736	869	Suffolk city, Virginia Beach city, Williamsburg city Charles City, Chesterfield, Dinwiddie, Goochland, Hanover Henrico, New Kent, Powhatan, Prince George Colonial Heights city, Hopewell city, Petersburg city Richmond city
Roanoke, VA MSA	272	333	439	563	703	Botetourt, Roanoke, Roanoke city, Salem city
Warren County, VA	284	388	518	679	849	Warren
Washington, DC-MD-VA	633	719	844	1149	1385	Arlington, Fairfax, Loudoun, Prince William, Spotsylvania Stafford, Alexandria city, Fairfax city Falls Church city, Fauquier, Fredericksburg city Manassas city, Manassas Park city

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Accomack	322	346	407	509	570
Amelia	182	295	332	462	520
Augusta	*242	351	425	561	683
Bland	169	274	308	386	431
Buchanan	203	283	317	399	444
Caroline	384	389	519	690	727
Charlotte	239	270	303	420	497
Cumberland	237	371	431	539	604
Essex	247	382	451	626	739
Franklin	263	276	333	416	466
Giles	215	258	336	420	471
Greensville	216	350	393	513	646
Henry	261	290	367	460	566
King and Queen	240	389	438	547	630
Lancaster	339	381	429	571	696
Louisa	239	353	435	604	610
Madison	273	405	455	569	746
Middlesex	265	343	385	535	539
Nelson	209	338	380	476	625
Northumberland	193	313	352	489	493
Orange	301	410	547	760	892
Patrick	214	216	274	343	384
Pulaski	196	282	356	481	498
Richmond	222	361	406	516	666
Rockingham	*261	375	475	652	762
Shenandoah	357	366	452	624	709
Southampton	187	303	376	485	545
Sussex	196	286	357	447	586

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Alleghany	283	318	358	487	502
Appomattox	261	264	334	438	467
Bath	209	338	380	491	533
Brunswick	209	283	318	443	446
Buckingham	259	286	328	410	460
Carroll	238	264	318	417	446
Craig	174	238	317	442	520
Dickenson	174	283	317	442	520
Floyd	231	235	314	436	487
Frederick	367	423	510	699	837
Grayson	162	263	295	386	484
Halifax	187	273	317	431	444
Highland	174	283	317	419	444
King William	229	371	417	521	643
Lee	238	240	317	397	520
Lunenburg	173	281	315	393	485
Mecklenburg	211	269	353	442	526
Montgomery	280	366	430	598	706
Northampton	195	267	355	455	497
Nottoway	271	274	356	445	498
Page	315	355	399	499	574
Prince Edward	304	343	385	535	539
Rappahannock	275	445	499	695	819
Rockbridge	211	305	386	537	540
Russell	177	241	323	449	529
Smyth	230	232	292	406	478
Surry	282	317	356	445	498
Tazewell	252	284	320	444	524

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 033094

SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 51

V I R G I N I A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Westmoreland	269	366	488	611	792
Wythe	284	295	359	450	504
Wise	251	282	376	471	601

W A S H I N G T O N

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bellingham, WA MSA	+358	464	618	854	1014	Whatcom
Bremerton, WA PMSA	376	432	561	757	921	Kitsap
Olympia, WA PMSA	*361	443	552	760	896	Thurston
Portland-Vancouver, OR-WA PMSA	*349	429	529	736	800	Clark
Richland-Kennewick-Pasco, WA MSA	*367	420	503	699	821	Benton, Franklin
Seattle-Bellevue-Everett, WA PMSA	424	516	653	908	1072	Island, King, Snohomish
Spokane, WA MSA	*295	407	491	667	746	Spokane
Tacoma, WA PMSA	350	417	555	773	872	Pierce
Yakima, WA MSA	+331	406	503	674	705	Yakima

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	254	274	338	440	490
Chelan	*227	318	412	537	577
Columbia	176	287	323	448	451
Douglas	*342	361	440	562	649
Garfield	176	242	323	403	451
Grays Harbor	*298	345	459	620	715
Kittitas	209	285	378	518	614
Lewis	261	310	408	537	594
Mason	*276	341	419	550	591
Pacific	233	287	382	512	534
San Juan	361	493	657	867	1031
Skamania	*268	317	356	471	556
Wahkiakum	211	293	357	447	543
Whitman	286	325	433	603	712
Asotin	*214	275	362	495	573
Clallam	*297	369	470	604	659
Cowlitz	*326	364	468	649	658
Ferry	+210	325	382	477	534
Grant	*314	348	407	553	665
Jefferson	*255	379	464	630	650
Klickitat	*239	300	386	482	540
Lincoln	183	242	323	432	513
Okanogan	*204	280	344	455	482
Pend Oreille	+210	294	382	503	626
Skagit	*393	482	566	708	792
Stevens	+207	285	379	493	531
Walla Walla	+252	306	407	565	669

W E S T V I R G I N I A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Berkeley County, WV	353	375	447	559	626	Berkeley
Charleston, WV MSA	224	322	408	560	613	Kanawha, Putnam
Cumberland, MD-WV MSA	228	287	374	493	541	Mineral
Huntington-Ashland, WV-KY-OH MSA	*260	305	375	478	525	Cabell, Wayne
Jefferson County, WV	349	386	478	620	703	Jefferson

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 033094

W E S T V I R G I N I A continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Parkersburg-Marietta, WV-OH MSA	*279	333	381	494	509	Wood
Steubenville-Weirton, OH-WV MSA	195	288	357	450	501	Brooke, Hancock
Wheeling, WV-OH MSA	*293	318	385	481	539	Marshall, Ohio

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Barbour	178	242	324	405	454
Braxton	156	241	284	386	466
Clay	232	263	295	369	438
Fayette	161	259	292	406	439
Grant	174	252	316	395	443
Hampshire	188	257	343	453	481
Harrison	*265	325	375	468	562
Lewis	163	221	296	408	414
Logan	245	271	318	443	523
Marion	*224	304	374	481	553
Mercer	195	250	331	413	509
Monongalia	*303	335	409	562	665
Morgan	296	334	375	470	525
Pendleton	162	229	295	380	412
Pocahontas	*166	282	303	378	424
Raleigh	248	280	314	430	515
Ritchie	*224	252	284	358	397
Summers	209	213	284	395	466
Tucker	156	213	284	395	429
Upshur	*238	286	343	430	480
Wetzel	*273	276	368	460	582
Wyoming	210	229	306	382	428

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Boone	215	243	317	397	444
Calhoun	156	213	284	355	397
Doddridge	*248	266	315	394	441
Gilmer	265	279	335	419	470
Greenbrier	*230	332	354	442	495
Hardy	174	259	316	395	443
Jackson	185	300	336	467	481
Lincoln	198	213	284	395	406
Mcdowell	160	207	276	345	387
Mason	*179	271	327	408	526
Mingo	173	239	315	428	517
Monroe	*164	273	306	382	453
Nicholas	208	248	331	413	463
Pleasants	*247	257	335	418	524
Preston	*237	309	334	417	467
Randolph	183	275	327	419	459
Roane	209	213	284	395	397
Taylor	*294	318	346	432	484
Tyler	197	270	359	450	504
Webster	199	239	285	356	399
Wirt	*167	228	305	423	427

W I S C O N S I N

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Appleton-Oshkosh-Neenah, WI MSA	288	356	451	569	655	Calumet, Outagamie, Winnebago
Duluth-Superior, MN-WI MSA	+245	329	422	562	656	Douglas
Eau Claire, WI MSA	283	308	405	519	584	Chippewa, Eau Claire
Green Bay, WI MSA	316	347	445	619	623	Brown
Janesville-Beloit, WI MSA	+318	401	496	621	695	Rock
Kenosha, WI PMSA	*331	411	505	692	778	Kenosha
La Crosse, WI-MN MSA	*242	334	424	566	687	La Crosse
Madison, WI MSA	+390	491	592	823	971	Dane

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 033094

W I S C O N S I N continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Milwaukee-Waukesha, WI PMSA	336	439	551	689	770	Milwaukee, Ozaukee, Washington, Waukesha
Minneapolis-St. Paul, MN-WI MSA	*370	474	604	819	926	Pierce, St. Croix
Racine, WI PMSA	295	366	483	623	681	Racine
Sheboygan, WI MSA	276	355	433	541	670	Sheboygan
Wausau, WI MSA	336	350	437	594	660	Marathon

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	189	285	343	477	556
Barron	202	275	366	465	524
Buffalo	206	258	344	431	483
Clark	166	239	303	409	466
Crawford	207	256	329	415	461
Door	234	324	404	517	627
Florence	240	261	348	484	487
Forest	175	241	318	398	446
Green	267	301	376	523	526
Iowa	272	287	378	511	530
Jackson	206	257	323	419	452
Juneau	268	278	340	452	476
Lafayette	266	270	361	455	505
Lincoln	242	258	345	480	550
Marinette	206	257	343	460	480
Menominee	229	232	310	387	434
Oconto	175	261	318	430	477
Pepin	173	237	316	434	517
Portage	318	336	436	545	675
Richland	246	280	338	456	473
Sauk	307	316	422	526	590
Shawano	267	275	366	459	513
Trempealeau	211	260	333	420	520
Vilas	244	292	370	464	535
Washburn	258	262	350	444	490
Waushara	209	291	343	432	480

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Ashland	286	316	372	465	521
Bayfield	184	265	336	427	469
Burnett	253	301	362	453	506
Columbia	245	311	409	537	601
Dodge	331	336	442	553	619
Dunn	261	302	401	535	659
Fond du Lac	*264	358	425	576	595
Grant	265	268	349	437	488
Green Lake	226	290	359	460	516
Iron	169	236	303	412	497
Jefferson	261	347	451	582	636
Kewaunee	178	242	324	404	453
Langlade	248	252	336	460	497
Manitowoc	264	287	335	425	512
Marquette	184	280	335	465	529
Monroe	261	300	378	518	530
Oneida	214	307	388	501	598
Polk	241	298	396	495	554
Price	187	267	339	427	550
Rusk	178	244	323	436	452
Sawyer	258	290	350	438	490
Taylor	233	273	333	437	467
Vernon	193	240	312	434	437
Walworth	274	384	499	650	728
Waupaca	209	286	381	496	588
Wood	*285	325	405	506	567

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WYOMING

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Casper, WY MSA	*215	299	378	525	620	Natrona
Cheyenne, WY MSA	*287	359	479	613	743	Laramie

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Albany	*283	354	473	657	775
Campbell	291	296	380	528	623
Converse	180	271	327	455	537
Fremont	190	258	345	459	560
Hot Springs	238	271	361	502	593
Lincoln	238	299	379	519	530
Park	205	279	373	519	611
Sheridan	246	279	373	499	611
Sweetwater	280	285	380	528	623
Uinta	282	290	387	527	636
Weston	254	257	343	443	546

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Big Horn	180	246	328	453	459
Carbon	217	255	340	471	558
Crook	268	302	340	425	486
Goshen	232	285	340	471	558
Johnson	251	255	340	471	520
Niobrara	185	253	338	422	544
Platte	186	257	340	425	476
Sublette	299	337	379	488	530
Teton	359	457	608	816	889
Washakie	199	272	362	454	595

PACIFIC ISLANDS

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Pacific Islands	*648	779	922	1155	1299

NONMETROPOLITAN COUNTIES O BR 1 BR 2 BR 3 BR 4 BR

PUERTO RICO

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Aguadilla, PR MSA	225	275	325	405	455	Aguada Municipio, Aguadilla Municipio, Moca Municipio
Arecibo, PR PMSA	330	400	470	590	660	Arecibo Municipio, Camuy Municipio, Hatillo Municipio
Caguas, PR PMSA	275	330	390	490	545	Caguas Municipio, Cayey Municipio, Cidra Municipio Gurabo Municipio, San Lorenzo Municipio
Mayaguez, PR MSA	225	275	325	405	455	Anasco Municipio, Cabo Rojo Municipio Hormigueros Municipio, Mayaguez Municipio Sabana Grande Municipio, San German Municipio
Ponce, PR MSA	320	390	460	575	645	Guayanilla Municipio, Juana Diaz Municipio Penuelas Municipio, Ponce Municipio, Villalba Municipio Yauco Municipio
San Juan-Bayamon, PR PMSA	320	390	460	575	645	Aguas Buenas Municipio, Barceloneta Municipio Bayamon Municipio, Canovanas Municipio Carolina Municipio, Catano Municipio, Ceiba Municipio Comerio Municipio, Corozal Municipio, Dorado Municipio Fajardo Municipio, Florida Municipio, Guaynabo Municipio Humacao Municipio, Juncos Municipio Las Piedras Municipio, Loiza Municipio Luquillo Municipio, Manati Municipio, Morovis Municipio

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SCHEDULE B - FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 55

P U E R T O R I C O continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
						Naguabo Municipio, Naranjito Municipio Rio Grande Municipio, San Juan Municipio Toa Alta Municipio, Toa Baja Municipio Trujillo Alto Municipio, Vega Alta Municipio Vega Baja Municipio, Yabucoa Municipio

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adjuntas Municipio.....	215	265	310	390	435
Arroyo Municipio.....	215	265	310	390	435
Ciales Municipio.....	215	265	310	390	435
Culebra Municipio.....	215	265	310	390	435
Guayama Municipio.....	215	265	310	390	435
Jayuya Municipio.....	215	265	310	390	435
Lares Municipio.....	215	265	310	390	435
Maricao Municipio.....	215	265	310	390	435
Orocovis Municipio.....	215	265	310	390	435
Quebradillas Municipio..	330	400	470	590	660
Salinas Municipio.....	215	265	310	390	435
Santa Isabel Municipio..	215	265	310	390	435
Vieques Municipio.....	215	265	310	390	435

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Aibonito Municipio.....	215	265	310	390	435
Barranquitas Municipio..	215	265	310	390	435
Coamo Municipio.....	215	265	310	390	435
Guanica Municipio.....	215	265	310	390	435
Isabela Municipio.....	225	275	325	405	455
Lajas Municipio.....	215	265	310	390	435
Las Marias Municipio....	215	265	310	390	435
Maunabo Municipio.....	215	265	310	390	435
Patillas Municipio.....	215	265	310	390	435
Rincon Municipio.....	215	265	310	390	435
San Sebastian Municipio.	215	265	310	390	435
Utuado Municipio.....	215	265	310	390	435

V I R G I N I S L A N D S

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Virgin Islands.....	485	590	694	867	970

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 033094

SCHEDULE D - FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM) PAGE 56

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
NON METRO STATE: ALABAMA	73	84
MSA: Anniston, AL	76	86
MSA: Birmingham, AL	110	121
MSA: Columbus, GA-AL	100	110
MSA: Decatur, AL	73	85
MSA: Dothan, AL	71	81
MSA: Florence, AL	86	93
MSA: Gadsden, AL	76	86
MSA: Huntsville, AL	110	121
MSA: Mobile, AL	87	94
MSA: Montgomery, AL	87	93
MSA: Tuscaloosa, AL	103	117
EXCEPTION COUNTY: LIMESTONE	81	89
EXCEPTION COUNTY: MARSHALL	81	89
NON METRO STATE: ALASKA	173	173
MSA: Anchorage, AK	204	204
EXCEPTION COUNTY: KETCHIKAN	173	182
NON METRO STATE: ARIZONA	109	141
MSA: Phoenix-Mesa, AZ	153	183
MSA: Tucson, AZ	109	153
MSA: Yuma, AZ	109	140
NON METRO STATE: ARKANSAS	39	44
MSA: Fayetteville-Springdale-Rogers, AR	68	73
MSA: Fort Smith, AR-OK	37	40
MSA: Little Rock-North Little Rock, AR	58	60
MSA: Memphis, TN-AR-MS	102	102
MSA: Pine Bluff, AR	28	31
MSA: Texarkana, TX-Texarkana, AR	120	135
EXCEPTION COUNTY: BENTON	53	55
EXCEPTION COUNTY: LITTLE RIVER	88	99
NON METRO STATE: CALIFORNIA	173	227
MSA: Bakersfield, CA	161	247
MSA: Chico-Paradise, CA	172	226
MSA: Fresno, CA	247	280
PMSA: Los Angeles-Long Beach, CA	204	344
MSA: Merced, CA	172	226
MSA: Modesto, CA	258	280

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

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SCHEDULE D - FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM) PAGE 57

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
PMSA: Oakland, CA	286	376
PMSA: Orange County, CA	422	422
MSA: Redding, CA	172	226
PMSA: Riverside-San Bernardino, CA	173	284
PMSA: Sacramento, CA	199	237
MSA: Salinas, CA	247	312
MSA: San Diego, CA	317	346
PMSA: San Francisco, CA	307	400
PMSA: San Jose, CA	365	426
PMSA: San Luis Obispo-Atascadero-Paso Robles, CA	238	282
MSA: Santa Barbara-Santa Maria-Lompoc, CA	203	312
PMSA: Santa Cruz-Watsonville, CA	267	334
PMSA: Santa Rosa, CA	267	320
MSA: Stockton-Lodi, CA	258	280
PMSA: Vallejo-Fairfield-Napa, CA	278	317
PMSA: Ventura, CA	299	398
MSA: Visalia-Tulare-Porterville, CA	172	226
PMSA: Yolo, CA	172	226
MSA: Yuba City, CA	172	226
NON METRO STATE: COLORADO	N/A	N/A
PMSA: Boulder-Longmont, CO	231	252
MSA: Colorado Springs, CO	169	190
PMSA: Denver, CO	263	284
MSA: Fort Collins-Loveland, CO	159	179
PMSA: Greeley, CO	159	179
MSA: Pueblo, CO	159	179
EXCEPTION COUNTY: ALAMOSA	132	159
EXCEPTION COUNTY: ARCHULETA	159	177
EXCEPTION COUNTY: BACA	132	159
EXCEPTION COUNTY: BENT	132	159
EXCEPTION COUNTY: CHAFFEE	159	177
EXCEPTION COUNTY: CHEYENNE	132	159
EXCEPTION COUNTY: CLEAR CREEK	159	177
EXCEPTION COUNTY: CONEJOS	132	159
EXCEPTION COUNTY: COSTILLA	132	159
EXCEPTION COUNTY: CROWLEY	132	159
EXCEPTION COUNTY: CUSTER	159	177
EXCEPTION COUNTY: DELTA	159	177
EXCEPTION COUNTY: DELORES	159	177
EXCEPTION COUNTY: EAGLE	257	289
EXCEPTION COUNTY: ELBERT	132	159
EXCEPTION COUNTY: FREMONT	159	177
EXCEPTION COUNTY: GARFIELD	257	289
EXCEPTION COUNTY: GILPIN	164	189

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

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SCHEDULE D - FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM) PAGE 58

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
EXCEPTION COUNTY: GRAND	159	177
EXCEPTION COUNTY: GUNNISON	159	177
EXCEPTION COUNTY: HINSDALE	159	177
EXCEPTION COUNTY: HUERFANO	132	159
EXCEPTION COUNTY: JACKSON	159	177
EXCEPTION COUNTY: KIOWA	132	159
EXCEPTION COUNTY: KIT CARSON	132	159
EXCEPTION COUNTY: LAKE	159	177
EXCEPTION COUNTY: LA PLATA	159	177
EXCEPTION COUNTY: LAS ANIMAS	132	159
EXCEPTION COUNTY: LINCOLN	132	159
EXCEPTION COUNTY: LOGAN	132	159
EXCEPTION COUNTY: MESA	159	177
EXCEPTION COUNTY: MINERAL	132	159
EXCEPTION COUNTY: MOFFAT	257	289
EXCEPTION COUNTY: MONTEZUMA	159	177
EXCEPTION COUNTY: MONTROSE	159	177
EXCEPTION COUNTY: MORGAN	132	159
EXCEPTION COUNTY: OTERO	132	159
EXCEPTION COUNTY: OURAY	159	177
EXCEPTION COUNTY: PARK	159	177
EXCEPTION COUNTY: PHILLIPS	132	159
EXCEPTION COUNTY: PITKIN	257	289
EXCEPTION COUNTY: PROWERS	132	159
EXCEPTION COUNTY: RIO BLANCO	257	289
EXCEPTION COUNTY: RIO GRANDE	132	159
EXCEPTION COUNTY: ROUTT	257	289
EXCEPTION COUNTY: SAGUACHE	132	159
EXCEPTION COUNTY: SAN JUAN	159	177
EXCEPTION COUNTY: SAN MIGUEL	159	177
EXCEPTION COUNTY: SEDGWICK	132	159
EXCEPTION COUNTY: SUMMIT	257	289
EXCEPTION COUNTY: TELLER	132	159
EXCEPTION COUNTY: WASHINGTON	132	159
EXCEPTION COUNTY: YUMA	132	159
NON METRO STATE: CONNECTICUT	168	168
PMSA: Bridgeport, CT	225	225
PMSA: Danbury, CT	172	172
PMSA: Hartford, CT	185	185
PMSA: New Britain, CT	185	185
PMSA: New Haven-Meriden, CT	167	167
MSA: New London-Norwich, CT-RI	158	158
PMSA: Stamford-Norwalk, CT	211	211
MSA: Waterbury, CT	171	171

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

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SCHEDULE D - FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM) PAGE 59

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
NON METRO STATE: DELAWARE	74 (1)	74 (1)
MSA: Dover, DE	160	160
PMSA: Wilmington-Newark, DE-MD	153	153
EXCEPTION COUNTY: DE SUSSEX	115	115
NON METRO STATE: DIST. OF COLUMBIA	N/A	N/A
PMSA: Washington, DC-MD-VA	209	209
NON METRO STATE: FLORIDA	92	92
MSA: Daytona Beach, FL	120	120
PMSA: Fort Lauderdale, FL	196	196
MSA: Fort Myers-Cape Coral, FL	126	126
MSA: Fort Pierce-Port Lucie, FL	90	90
MSA: Fort Walton Beach, FL	93	93
MSA: Gainesville, FL	93	93
MSA: Jacksonville, FL	86	102
MSA: Lakeland-Winter Haven, FL	93	93
MSA: Melbourne-Titusville-Palm Bay, FL	110	110
PMSA: Miami, FL	154	154
MSA: Naples, FL	93	93
MSA: Ocala, FL	93	93
MSA: Orlando, FL	110	110
MSA: Panama City, FL	93	93
MSA: Pensacola, FL	93	93
MSA: Punta Gorda, FL	92	92
MSA: Sarasota-Bradenton, FL	126	126
MSA: Tallahassee, FL	86	86
MSA: Tampa-St. Petersburg-Clearwater, FL	126	126
MSA: West Palm Beach-Boca Raton, FL	161	161
EXCEPTION COUNTY: BAKER	83	99
EXCEPTION COUNTY: COLUMBIA	92	92
EXCEPTION COUNTY: WAKULLA	83	99
NON METRO STATE: GEORGIA	67	67
MSA: Albany, GA	59	63
MSA: Athens, GA	67	67
MSA: Atlanta, GA	106	114
MSA: Augusta-Aiken, GA-SC	90	93
MSA: Chattanooga, TN-GA	59	86
MSA: Columbus, GA-AL	100	110
MSA: Macon, GA	60	66
MSA: Savannah, GA	74	86

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

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SCHEDULE D - FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM) PAGE 60

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
EXCEPTION COUNTY: BRYAN	67	67
EXCEPTION COUNTY: CARROLL	67	67
EXCEPTION COUNTY: PICKENS	67	67
EXCEPTION COUNTY: SPALDING	106	114
EXCEPTION COUNTY: TWIGGS	59	65
EXCEPTION COUNTY: WALTON	106	114
NON METRO STATE: HAWAII	N/A	N/A
MSA: Honolulu, HI	N/A	N/A
NON METRO STATE: IDAHO	129	129
MSA: Boise City, ID	143	167
NON METRO STATE: ILLINOIS	119	128
MSA: Bloomington-Normal, IL	137	137
MSA: Champaign-Urbana, IL	111	111
MSA: Chicago, IL	268	287
MSA: Davenport-Moline-Rock Island, IA-IL	150	158
MSA: Decatur, IL	150	150
PMSA: Kankakee, IL	108	108
MSA: Peoria-Pekin, IL	205	224
MSA: Rockford, IL	202	214
MSA: St. Louis, MO-IL	109	126
MSA: Springfield, IL	131	140
EXCEPTION COUNTY: DE KALB	119	128
EXCEPTION COUNTY: GRUNDY	268	287
EXCEPTION COUNTY: KENDALL	268	287
NON METRO STATE: INDIANA	65	84
MSA: Bloomington, IN	69	69
MSA: Cincinnati, OH-KY-IN	132	139
MSA: Elkhart-Goshen, IN	96	96
MSA: Evansville-Henderson, IN-KY	88	94
MSA: Fort Wayne, IN	81	111
PMSA: Gary, IN	129	149
MSA: Indianapolis, IN	104	120
MSA: Kokomo, IN	96	109
MSA: Lafayette, IN	89	132
MSA: Louisville, KY-IN	94	103
MSA: Muncie, IN	70	79
MSA: South Bend, IN	109	115
MSA: Terre Haute, IN	69	86

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B 011394

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
EXCEPTION COUNTY: ADAMS	65	84
EXCEPTION COUNTY: BLACKFORD	73	84
EXCEPTION COUNTY: GIBSON	65	84
EXCEPTION COUNTY: GRANT	73	84
EXCEPTION COUNTY: HENRY	73	84
EXCEPTION COUNTY: JAY	73	84
EXCEPTION COUNTY: MARSHALL	74	84
EXCEPTION COUNTY: OHIO	65	84
EXCEPTION COUNTY: RANDOLPH	73	84
EXCEPTION COUNTY: SULLIVAN	66	78
EXCEPTION COUNTY: VERMILLION	66	78
EXCEPTION COUNTY: WAYNE	73	84
EXCEPTION COUNTY: WELLS	65	84
NON METRO STATE: IOWA	103	111
MSA: Cedar Rapids, IA	120	139
MSA: Davenport-Moline-Rock Island, IA-IL	151	158
MSA: Des Moines, IA	128	136
MSA: Dubuque, IA	120	150
MSA: Iowa City, IA	120	136
MSA: Omaha, NE-IA	112	131
MSA: Sioux City, IA-NE	116	116
MSA: Waterloo-Cedar Falls, IA	120	139
NON METRO STATE: KANSAS	91	103
MSA: Kansas City, MO-KS	104	127
MSA: Lawrence, KS	94	107
MSA: Topeka, KS	92	104
MSA: Wichita, KS	107	115
EXCEPTION COUNTY: JEFFERSON	87	100
EXCEPTION COUNTY: OSAGE	87	100
NON METRO STATE: KENTUCKY	80	88
MSA: Cincinnati, OH-KY-IN	132	138
MSA: Clarksville-Hopkinsville, TN-KY	86	93
MSA: Evansville-Henderson, IN-KY	87	93
MSA: Huntington-Ashland, WV-KY-OH	99	99
MSA: Lexington, KY	103	118
MSA: Louisville, KY-IN	93	102
MSA: Owensboro, KY	94	113
EXCEPTION COUNTY: GALLATIN	80	88
EXCEPTION COUNTY: GRANT	80	88
EXCEPTION COUNTY: PENDLETON	80	88

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

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SCHEDULE D - FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM) PAGE 62

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
NON METRO STATE: LOUISIANA	86	101
MSA: Alexandria, LA	86	102
MSA: Baton Rouge, LA	102	120
MSA: Houma, LA	85	100
MSA: Lafayette, LA	93	111
MSA: Lake Charles, LA	100	118
MSA: Monroe, LA	86	102
MSA: New Orleans, LA	108	124
MSA: Shreveport-Bossier City, LA	93	111
EXCEPTION COUNTY: ACADIA	86	101
EXCEPTION COUNTY: GRANT	82	97
EXCEPTION COUNTY: ST JAMES	86	101
EXCEPTION COUNTY: ST LANDRY	86	101
EXCEPTION COUNTY: WEBSTER	86	101
NON METRO STATE: MAINE	149	171
MSA: Bangor, ME	150	174
MSA: Lewiston-Auburn, ME	114	114
MSA: Portland, ME	188	215
PMSA: Portsmouth-Rochester, NH-ME	150	174
NON METRO STATE: MARYLAND	135 (1)	135 (1)
PMSA: Baltimore, MD	219	219
MSA: Cumberland, MD-WV	136	136
PMSA: Hagerstown, MD	208	208
PMSA: Washington, DC-MD-VA	209	209
PMSA: Wilmington-Newark, DE-MD	153	153
EXCEPTION COUNTY: ST MARYS	248	248
NON METRO STATE: MASSACHUSETTS	183	183
MSA: Barnstable-Yarmouth, MA	184	184
PMSA: Boston, MA-NH	177	191
PMSA: Brockton, MA	177	177
PMSA: Fall River, MA-RI	114	114
MSA: Fitchburg-Leominster, MA	136	136
PMSA: Lawrence, MA-NH	168	179
PMSA: Lowell, MA-NH	168	179
MSA: New Bedford, MA	158	158
MSA: Pittsfield, MA	172	172
PMSA: Salem-Gloucester, MA	177	191
MSA: Springfield, MA	134	134
MSA: Worcester, MA-CT	117	117

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

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SCHEDULE D - FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM) PAGE 63

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
NON METRO STATE: MICHIGAN	128	142
PMSA: Ann Arbor, MI	191	206
MSA: Benton Harbor, MI	131	146
PMSA: Detroit, MI	185	200
PMSA: Flint, MI	160	160
MSA: Grand Rapids-Muskegon-Holland, MI	120	129
MSA: Jackson, MI	131	131
MSA: Kalamazoo-Battle Creek, MI	138	142
MSA: Lansing-East Lansing, MI	154	179
MSA: Saginaw-Bay City-Midland, MI	140	140
EXCEPTION COUNTY: BARRY	104	122
EXCEPTION COUNTY: IONIA	128	142
EXCEPTION COUNTY: OCEANA	111	113
EXCEPTION COUNTY: SHIAWASSEE	149	149
EXCEPTION COUNTY: VAN BUREN	128	132
NON METRO STATE: MINNESOTA	91	91
MSA: Duluth-Superior, MN-WI	96	108
MSA: Fargo-Moorhead, ND-MN	149	168
MSA: Minneapolis-St. Paul, MN-WI	223	238
MSA: Rochester, MN	135	135
MSA: St. Cloud, MN	119	119
EXCEPTION COUNTY: POLK	140	158
NON METRO STATE: MISSISSIPPI	86	103
MSA: Biloxi-Gulfport-Pascagpula, MS	102	120
MSA: Jackson, MS	110	135
MSA: Memphis, TN-AR-MS	102	102
EXCEPTION COUNTY: STONE	86	103
NON METRO STATE: MISSOURI	72	79
MSA: Columbia, MO	104	112
MSA: Joplin, MO	73	80
MSA: Kansas City, MO-KS	104	127
MSA: St. Joseph, MO	107	116
MSA: St. Louis, MO-IL	109	126
MSA: Springfield, MO	75	81
EXCEPTION COUNTY: ANDREW	101	108
NON METRO STATE: MONTANA	N/A	N/A
MSA: Billings, MT	200	223

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

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SCHEDULE D - FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM) PAGE 64

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
MSA: Great Falls, MT	169	190
EXCEPTION COUNTY: BEAVERHEAD	159	177
EXCEPTION COUNTY: BIG HORN	159	177
EXCEPTION COUNTY: BLAINE	112	132
EXCEPTION COUNTY: BROADWATER	159	177
EXCEPTION COUNTY: CARBON	159	177
EXCEPTION COUNTY: CARTER	112	132
EXCEPTION COUNTY: CHOUTEAU	112	132
EXCEPTION COUNTY: CUSTER	159	177
EXCEPTION COUNTY: DANIELS	112	132
EXCEPTION COUNTY: DAWSON	159	177
EXCEPTION COUNTY: DEER LODGE	159	177
EXCEPTION COUNTY: FALLON	112	132
EXCEPTION COUNTY: FERGUS	112	132
EXCEPTION COUNTY: FLATHEAD	159	177
EXCEPTION COUNTY: GALLATIN	159	177
EXCEPTION COUNTY: GARFIELD	112	132
EXCEPTION COUNTY: GLACIER	112	132
EXCEPTION COUNTY: GOLDEN VALLE	112	132
EXCEPTION COUNTY: GRANITE	159	177
EXCEPTION COUNTY: HILL	112	132
EXCEPTION COUNTY: JEFFERSON	159	177
EXCEPTION COUNTY: JUDITH BASIN	112	132
EXCEPTION COUNTY: LAKE	159	177
EXCEPTION COUNTY: LEWIS+ CLARK	159	177
EXCEPTION COUNTY: LIBERTY	112	132
EXCEPTION COUNTY: LINCOLN	159	177
EXCEPTION COUNTY: MCCONE	112	132
EXCEPTION COUNTY: MADISON	159	177
EXCEPTION COUNTY: MEAGHER	159	177
EXCEPTION COUNTY: MINERAL	159	177
EXCEPTION COUNTY: MISSOULA	159	177
EXCEPTION COUNTY: MUSSELSHELL	159	177
EXCEPTION COUNTY: PARK	159	177
EXCEPTION COUNTY: PETROLEUM	112	132
EXCEPTION COUNTY: PHILLIPS	112	132
EXCEPTION COUNTY: PONDERA	112	132
EXCEPTION COUNTY: POWDER RIVER	159	177
EXCEPTION COUNTY: POWELL	159	177
EXCEPTION COUNTY: PRAIRIE	112	132
EXCEPTION COUNTY: RAVALLI	159	177
EXCEPTION COUNTY: RICHLAND	112	132
EXCEPTION COUNTY: ROOSEVELT	112	132
EXCEPTION COUNTY: ROSEBUD	159	177
EXCEPTION COUNTY: SANDERS	159	177
EXCEPTION COUNTY: SHERIDAN	112	132

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B 011394

SCHEDULE D - FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM) PAGE 65

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
EXCEPTION COUNTY: SILVER BOW	159	177
EXCEPTION COUNTY: STILLWATER	112	132
EXCEPTION COUNTY: SWEET GRASS	112	132
EXCEPTION COUNTY: TETON	112	132
EXCEPTION COUNTY: TOOLE	112	132
EXCEPTION COUNTY: TREASURE	159	177
EXCEPTION COUNTY: VALLEY	112	132
EXCEPTION COUNTY: WHEATLAND	112	132
EXCEPTION COUNTY: WIBAUX	112	132
EXCEPTION COUNTY: YL-ST-NT-PK	159	177
NON METRO STATE: NEBRASKA	94	115
MSA: Lincoln, NE	129	136
MSA: Omaha, NE-IA	112	131
MSA: Sioux City, IA-NE	116	116
NON METRO STATE: NEVADA	122	141
MSA: Las Vegas, NV-AZ	258	288
MSA: Reno, NV	258	288
NON METRO STATE: NEW HAMPSHIRE	134	149
PMSA: Lawrence, MA-NH	168	179
PMSA: Lowell, MA-NH	168	179
PMSA: Manchester, NH	154	171
PMSA: Nashua, NH	191	191
PMSA: Portsmouth-Rochester, NH-ME	150	174
NON METRO STATE: NEW JERSEY	143	143
MSA: Allentown-Bethlehem-Easton, PA	139	139
PMSA: Atlantic-Cape May, NJ	219	219
PMSA: Bergen-Passaic, NJ	302	304
PMSA: Jersey City, NJ	293	293
PMSA: Middlesex-Somerset-Hunterdon, NJ	344	344
PMSA: Monmouth-Ocean, NJ	263	319
PMSA: Newark, NJ	283	293
PMSA: Philadelphia, PA-NJ	243	243
PMSA: Trenton, NJ	213	213
PMSA: Vineland-Millville-Bridgeton, NJ	188	188
PMSA: Wilmington-Newark, DE-MD	153	153
NON METRO STATE: NEW MEXICO	112	131

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

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SCHEDULE D - FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM) PAGE 66

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
MSA: Las Cruces, NM	115	133
MSA: Albuquerque, NM	129	151
MSA: Santa Fe, NM	115	133
EXCEPTION COUNTY: SANDOVAL	121	137
NON METRO STATE: NEW YORK	167	167
MSA: Albany-Schenectady-Troy, NY	207	207
MSA: Binghamton, NY	124	124
PMSA: Buffalo-Niagara Falls, NY	150	150
PMSA: Dutchess County, NY	316	316
MSA: Elmira, NY	132	132
MSA: Glens Falls, NY	166	166
MSA: Jamestown, NY	167	167
PMSA: Nassau-Suffolk, NY	230	298
PMSA: New York, NY	239	239
PMSA: Newburgh, NY-PA	275	300
MSA: Rochester, NY	189	189
MSA: Syracuse, NY	152	152
MSA: Utica-Rome, NY	154	154
EXCEPTION COUNTY: WESTCHESTER	281	281
EXCEPTION COUNTY: TOMPKINS	195	195
NON METRO STATE: NORTH CAROLINA	60	74
MSA: Asheville, NC	86	102
MSA: Charlotte-Gastonia-Rock Hill, NC-SC	86	102
MSA: Fayetteville, NC	86	102
MSA: Goldsboro, NC	60	74
MSA: Greensboro--Winston-Salem--High Point, NC	86	102
MSA: Greenville, NC	60	74
MSA: Hickory-Morganton, NC	60	74
MSA: Jacksonville, NC	60	74
MSA: Raleigh-Durham-Chapel Hill, NC	86	102
MSA: Rocky Mount, NC	60	74
MSA: Wilmington, NC	86	102
EXCEPTION COUNTY: BRUNSWICK	64	76
EXCEPTION COUNTY: CURRITUCK	101	101
EXCEPTION COUNTY: HAYWOOD	77	77
EXCEPTION COUNTY: MADISON	64	76
NON METRO STATE: NORTH DAKOTA	120	139
MSA: Bismarck, ND	174	192
MSA: Fargo-Moorhead, ND-MN	153	173
MSA: Grand Forks, ND-MN	132	164

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B 011394

SCHEDULE D - FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM) PAGE 67

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
NON METRO STATE: OHIO	83	83
PMSA: Akron, OH	126	126
MSA: Canton-Massillon, OH	92	92
MSA: Cincinnati, OH-KY-IN	132	139
PMSA: Cleveland-Lorain-Elyria, OH	134	134
MSA: Columbus, OH	120	140
MSA: Dayton-Springfield, OH	92	92
PMSA: Hamilton-Middletown, OH	107	110
MSA: Huntington-Ashland, WV-KY-OH	100	100
MSA: Lima, OH	120	120
MSA: Mansfield, OH	112	112
MSA: Parkersburg-Marietta, WV-OH	100	100
MSA: Steubenville-Weirton, OH-WV	89	89
MSA: Toledo, OH	151	205
MSA: Wheeling, WV-OH	92	92
MSA: Youngstown-Warren, OH	112	112
EXCEPTION COUNTY: BROWN	83	83
EXCEPTION COUNTY: CHAMPAIGN	83	83
EXCEPTION COUNTY: OTTAWA	100	134
EXCEPTION COUNTY: PREBLE	83	83
EXCEPTION COUNTY: PUTNAM	83	83
EXCEPTION COUNTY: VAN WERT	83	83
NON METRO STATE: OKLAHOMA	82	89
MSA: Enid, OK	84	90
MSA: Fort Smith, AR-OK	37	40
MSA: Lawton, OK	85	93
MSA: Oklahoma City, OK	87	96
MSA: Tulsa, OK	93	102
EXCEPTION COUNTY: LE FLORE	35	38
EXCEPTION COUNTY: MAYES	82	89
NON METRO STATE: OREGON	165	174
MSA: Eugene-Springfield, OR	199	206
MSA: Medford-Ashland, OR	169	179
PMSA: Portland-Vancouver, OR-WA	228	252
PMSA: Salem, OR	199	206
NON METRO STATE: PENNSYLVANIA	98 (1)	98 (1)
MSA: Allentown-Bethlehem-Easton, PA	139	139
MSA: Altoona, PA	128	128
MSA: Erie, PA	128	128

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

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SCHEDULE D - FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM) PAGE 68

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
MSA: Harrisburg-Lebanon-Carlisle, PA	146	146
MSA: Johnstown, PA	128	128
MSA: Lancaster, PA	132	132
PMSA: Philadelphia, PA-NJ	241	241
PMSA: Pittsburgh, PA	102	102
MSA: Reading, PA	132	132
MSA: Scranton--Wilkes-Barre--Hazleton, PA	117	117
MSA: Sharon, PA	98	98
MSA: State College, PA	98	98
MSA: Williamsport, PA	98	98
MSA: York, PA	132	132
EXCEPTION COUNTY: MONROE	117	117
EXCEPTION COUNTY: PIKE	98	98
EXCEPTION COUNTY: SUSQUEHANNA	98	98
NON METRO STATE: RHODE ISLAND	149	149
PMSA: Fall River, MA-RI	114	114
MSA: New London-Norwich, CT-RI	158	158
PMSA: Providence-Fall River-Warwick, RI-MA	158	158
NON METRO STATE: SOUTH CAROLINA	67	67
MSA: Augusta-Aiken, GA-SC	90	93
MSA: Charleston-North Charleston, SC	86	86
MSA: Charlotte-Gastonia-Rock Hill, NC-SC	86	102
MSA: Columbia, SC	74	86
MSA: Florence, SC	67	67
MSA: Greenville-Spartanburg-Anderson, SC	74	74
MSA: Myrtle Beach, SC	67	67
MSA: Sumter, SC	67	67
NON METRO STATE: SOUTH DAKOTA	103	120
MSA: Rapid City, SD	104	122
MSA: Sioux Falls, SD	147	165
NON METRO STATE: TENNESSEE	67	67
MSA: Chattanooga, TN-GA	59	86
MSA: Clarksville-Hopkinsville, TN-KY	86	93
MSA: Johnson City-Kingsport-Bristol, TN-VA	93	93
MSA: Knoxville, TN	74	74
MSA: Memphis, TN-AR-MS	102	102
MSA: Nashville, TN	102	120
NON METRO STATE: TEXAS	71	89

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B 011394

SCHEDULE D - FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM) PAGE 69

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
NON METRO STATE: TEXAS	71	89
MSA: Abilene, TX	63	70
MSA: Amarillo, TX	118	124
MSA: Austin-San Marcos, TX	108	126
MSA: Beaumont-Port Arthur, TX	111	126
PMSA: Brazoria, TX	118	137
MSA: Brownsville-Harlingen-San Benito, TX	86	102
MSA: Bryan-College Station, TX	108	120
MSA: Corpus Christi, TX	90	120
MSA: Dallas, TX	84	109
MSA: El Paso, TX	122	138
PMSA: Fort Worth-Arlington, TX	84	109
PMSA: Galveston-Texas City, TX	114	127
PMSA: Houston, TX	121	141
MSA: Killeen-Temple, TX	111	120
MSA: Laredo, TX	75	93
MSA: Longview-Marshall, TX	102	117
MSA: Lubbock, TX	117	120
MSA: Mc Allen-Edinburg-Mission, TX	100	120
MSA: Odessa-Midland, TX	120	126
MSA: San Angelo, TX	102	111
MSA: San Antonio, TX	86	102
MSA: Sherman-Denison, TX	93	111
MSA: Texarkana, TX-Texarkana, AR	120	135
MSA: Tyler, TX	93	99
MSA: Victoria, TX	73	90
MSA: Waco, TX	96	111
MSA: Wichita Falls, TX	67	75
EXCEPTION COUNTY: CALLAHAN	61	67
EXCEPTION COUNTY: CLAY	65	71
EXCEPTION COUNTY: HENDERSON	70	89
EXCEPTION COUNTY: HOOD	71	89
EXCEPTION COUNTY: JONES	61	67
EXCEPTION COUNTY: WISE	71	89
NON METRO STATE: UTAH	N/A	N/A
MSA: Provo-Orem, UT	159	179
MSA: Salt Lake City-Ogden, UT	179	200
EXCEPTION COUNTY: BEAVER	112	132
EXCEPTION COUNTY: BOX ELDER	112	132
EXCEPTION COUNTY: CACHE	112	132
EXCEPTION COUNTY: CARBON	159	177
EXCEPTION COUNTY: DAGGETT	112	132
EXCEPTION COUNTY: DUCHESNE	112	132

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

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	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
EXCEPTION COUNTY: EMERY	159	177
EXCEPTION COUNTY: GARFIELD	112	132
EXCEPTION COUNTY: GRAND	159	177
EXCEPTION COUNTY: IRON	112	132
EXCEPTION COUNTY: JUAB	112	132
EXCEPTION COUNTY: KANE	112	132
EXCEPTION COUNTY: MILLARD	112	132
EXCEPTION COUNTY: MORGAN	112	132
EXCEPTION COUNTY: PIUTE	112	132
EXCEPTION COUNTY: RICH	112	132
EXCEPTION COUNTY: SAN JUAN	112	132
EXCEPTION COUNTY: SANPETE	112	132
EXCEPTION COUNTY: SEVIER	112	132
EXCEPTION COUNTY: SUMMIT	112	132
EXCEPTION COUNTY: TOOELE	108	120
EXCEPTION COUNTY: UINTAH	159	177
EXCEPTION COUNTY: WASATCH	112	132
EXCEPTION COUNTY: WASHINGTON	112	132
EXCEPTION COUNTY: WAYNE	112	132
NON METRO STATE: VERMONT	139	161
MSA: Burlington, VT	171	195
EXCEPTION COUNTY: CHITTENDEN	169	197
EXCEPTION COUNTY: FRANKLIN	144	166
EXCEPTION COUNTY: GRAND ISLE	158	181
EXCEPTION COUNTY: ORANGE	156	180
EXCEPTION COUNTY: WASHINGTON	172	200
EXCEPTION COUNTY: WINDHAM	208	240
EXCEPTION COUNTY: WINDSOR	224	256
NON METRO STATE: VIRGINIA	96 (1)	96 (1)
MSA: Charlottesville, VA	96	96
MSA: Danville, VA	96	96
MSA: Johnson City-Kingsport-Bristol, TN-VA	93	93
MSA: Lynchburg, VA	86	86
MSA: Norfolk-Virginia Beach-Newport News, VA-NC	137	137
MSA: Richmond-Petersburg, VA	135	135
MSA: Roanoke, VA	93	93
MSA: Washington, DC-MD-VA	209	209
EXCEPTION COUNTY: APPOMATTOX	83	83
EXCEPTION COUNTY: CLARKE	96	96
EXCEPTION COUNTY: CRAIG	90	90
EXCEPTION COUNTY: CULPEPER	96	96
EXCEPTION COUNTY: KING GEORGE	96	96

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B 011394

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	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
EXCEPTION COUNTY: WARREN	96	96
NON METRO STATE: WASHINGTON	142	165
MSA: Bellingham, WA	145	189
PMSA: Bremerton, WA	145	189
PMSA: Olympia, WA	145	189
PMSA: Portland-Vancouver, OR-WA	228	252
MSA: Richland-Kennewick-Pasco, WA	199	199
PMSA: Seattle-Bellevue-Everett, WA	193	273
MSA: Spokane, WA	160	179
PMSA: Tacoma, WA	172	204
MSA: Yakima, WA	160	168
NON METRO STATE: WEST VIRGINIA	93 (1)	93 (1)
MSA: Charleston, WV	101	101
MSA: Cumberland, MD-WV	136	136
MSA: Huntington-Ashland, WV-KY-OH	98	98
MSA: Parkersburg-Marietta, WV-OH	98	98
MSA: Steubenville-Weirton, OH-WV	88	88
MSA: Wheeling, WV-OH	90	90
EXCEPTION COUNTY: BERKELEY	133	133
EXCEPTION COUNTY: JEFFERSON	133	133
EXCEPTION COUNTY: MORGAN	133	133
EXCEPTION COUNTY: WIRT	90	90
NON METRO STATE: WISCONSIN	101	109
MSA: Appleton-Oshkosh-Neenah, WI	131	140
MSA: Duluth-Superior, MN-WI	96	108
MSA: Eau Claire, WI	122	132
MSA: Green Bay, WI	128	137
MSA: Janesville-Beloit, WI	128	137
PMSA: Kenosha, WI	146	158
MSA: La Crosse, WI-MN	115	126
MSA: Madison, WI	193	204
PMSA: Milwaukee-Waukesha, WI	152	163
MSA: Minneapolis-St. Paul, MN-WI	223	238
PMSA: Racine, WI	144	151
MSA: Sheboygan, WI	104	112
MSA: Wausau, WI	104	112
NON METRO STATE: WYOMING	N/A	N/A
MSA: Casper, WY	269	291

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B 011394

SCHEDULE D - FAIR MARKET RENTS FOR MANUFACTURED HOME SPACES (SECTION 8 EXISTING HOUSING PROGRAM)

	SINGLE WIDE SPACE	DOUBLE WIDE SPACE
MSA: Cheyenne, WY	159	192
EXCEPTION COUNTY: ALBANY	159	191
EXCEPTION COUNTY: BIG HORN	159	191
EXCEPTION COUNTY: CAMPBELL	266	289
EXCEPTION COUNTY: CARBON	266	289
EXCEPTION COUNTY: CONVERSE	266	289
EXCEPTION COUNTY: CROOK	159	191
EXCEPTION COUNTY: FREMONT	266	289
EXCEPTION COUNTY: GOSHEN	159	191
EXCEPTION COUNTY: HOT SPRINGS	159	191
EXCEPTION COUNTY: JOHNSON	159	191
EXCEPTION COUNTY: LARAMIE	159	191
EXCEPTION COUNTY: LINCOLN	159	191
EXCEPTION COUNTY: PARK	159	191
EXCEPTION COUNTY: PLATTE	159	191
EXCEPTION COUNTY: SHERIDAN	266	289
EXCEPTION COUNTY: SUBLETTE	159	191
EXCEPTION COUNTY: SWEETWATER	266	289
EXCEPTION COUNTY: TETON	159	191
EXCEPTION COUNTY: UINTA	159	191
EXCEPTION COUNTY: WASHAKIE	159	191
EXCEPTION COUNTY: WESTON	159	191

NOTE: TO IDENTIFY COUNTIES (AND NEW ENGLAND TOWNS) IN EACH MSA, SEE SCHEDULE B

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[FR Doc. 94–8212 Filed 4–5–94; 8:45 am]

BILLING CODE 4210–32–C

federal register

Wednesday
April 6, 1994

Part XIII

Department of Education

National Institute on Disability and Rehabilitation Research; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

AGENCY: Department of Education.

ACTION: Notice of Proposed Funding Priorities for Fiscal Years 1994–1995 for the Knowledge Dissemination and Utilization Program.

SUMMARY: The Secretary proposes funding priorities for the Knowledge Dissemination and Utilization (D&U) Program under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1994–1995. The Secretary takes this action to ensure that rehabilitation knowledge generated from projects and centers funded by NIDRR and others is utilized fully to improve the lives of individuals with disabilities and their families.

DATES: Comments must be received on or before May 6, 1994.

ADDRESSES: All comments concerning these proposed priorities should be addressed to David Esquith, U.S. Department of Education, 400 Maryland Avenue, SW., Switzer Building, room 3424, Washington, DC 20202–2601.

FOR FURTHER INFORMATION CONTACT: David Esquith. Telephone: (202) 205–8801. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–5516.

SUPPLEMENTARY INFORMATION: This notice contains six proposed priorities under the D&U program. These proposed priorities would train persons with rights and duties under the Americans With Disabilities Act (ADA). The six proposed priority areas are:

(1) Independent living centers;

(2) Family organizations;

(3) School districts;

(4) State and local ADA coordinators and policymakers;

(5) Hispanics with rights and duties under the ADA whose proficiency in English is limited; and

(6) Standards for accessible design.

Authority for the D&U program is contained in sections 202(b)(2) and 204(a) and 204(b)(6) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760–762). Under this program the Secretary makes awards to public and private organizations, including institutions of higher education and Indian tribes or tribal organizations. Under the regulations for this program (see 34 CFR 355.32), the Secretary may establish priorities by reserving funds to support particular activities.

These proposed priorities support the National Education Goals. National Education Goal 5 calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The Secretary will announce the final funding priorities in a notice in the **Federal Register**. The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the final priorities, the availability of funds, and the quality of the applications received. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priorities does not solicit applications. A notice inviting applications under these competitions will be published in the **Federal Register** concurrent with or following publication of the notice of final priorities.

General

Unless indicated otherwise in the proposed priority, the Secretary proposes that the following requirements apply to the training projects:

Applicants for the training projects must identify the target groups and organizations that will be selected for training as specified in each of the priorities and describe in detail how the project will schedule and provide training during national, regional, State, or local conferences and meetings of the selected organizations. Applicants must demonstrate knowledge of the extent to which the target groups and organizations have received prior training on the ADA.

Applicants for training projects must describe how the project will utilize a variety of training methods and deliver training in formats and styles that are accessible to individuals with a range of sensory, communication, cognitive, and learning disabilities.

Applicants for training projects must describe the training materials that the project will develop as well as identify existing training materials that the project will use.

Applicants must establish a timetable for beginning training activities and demonstrate that key staff and facilities will be available in order to achieve a comprehensive nationwide program within the period of the project.

The training project must consult with each of NIDRR's regional Disability and Business Technical Assistance Centers (DBTACs) during the development of its schedule of training activities. To the maximum extent feasible, the training project must conduct its training activities in collaboration with each of the DBTACs.

The training project must develop two schedules of regional training activities. The first schedule of training activities must be finalized and training must begin within six months after the award of the grant. The second schedule must be finalized within eighteen months after the award of the grant. The training project must carry out its training activities as equitably as possible across and within each region of the country.

The training project must have a staff with expertise on the ADA and training, and carry out its training activities using those staff persons. The training project must not rely primarily on subcontractors to carry out its training activities.

The training project must include individuals with disabilities or their family members or representatives to the maximum extent possible in all phases of the project's activities.

The training project must submit final drafts of the training materials it produces to NIDRR for review of their legal sufficiency. The training project must submit monthly status reports on its training activities through NIDRR's ADA Technical Assistance Coordination Contract to NIDRR. Each training project must submit its final report to the National Rehabilitation Information Center clearinghouse.

The training project must cooperate with other Federal agencies that provide technical assistance and training on the ADA, such as the Equal Employment Opportunity Commission (EEOC), the Department of Justice (DOJ), and the Architectural and Transportation Barriers Compliance Board (ATBCB).

Priority

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet the following priorities. The Secretary proposes to fund under this program only applications that meet these absolute priorities:

Proposed Priorities—Americans With Disabilities Act Training Projects

Background

Public Law 101–336, the Americans with Disabilities Act (ADA), which was enacted on July 26, 1990, prohibits discrimination against individuals with disabilities in employment, public accommodations, transportation, State and local government services, and

telecommunications. In 1991 NIDRR established an ADA technical assistance program made up of ten regional Disability and Business Technical Assistance Centers (DBTACs—previously, Disability and Business Accommodation Centers), two national training projects, three materials development projects, and an ADA technical assistance coordination contract. The two national training projects addressed the needs of persons affiliated with independent living centers and peer and family networks. These training projects' which were awarded for three years, will complete their activities in fiscal year (FY) 1994.

For FY 1994 Congress provided NIDRR with additional funding which it directed be used "for training activities related to the implementation of the Americans with Disabilities Act" (1994 Senate Appropriations Committee Report, p. 207). In accordance with this congressional directive, NIDRR proposes to establish six new training projects that will be supported by the additional funding that Congress provided as well as by existing NIDRR funds. The training projects will enhance the capacity of those with rights and duties under the ADA to facilitate its implementation.

NIDRR has consulted with a range of relevant Federal agencies, including, but not limited to, DOJ, EEOC, the Architectural and Transportation Barriers Compliance Board (ATBCB), the Department of Transportation, and the National Council on Disability, as well as representatives from disability organizations, to develop responsive and meaningful training projects that will complement the planned efforts of other public and private agencies. These priorities were developed on the basis of these consultations and relevant information from NIDRR projects, including the ADA technical assistance projects. NIDRR intends to continue to coordinate activities under this program with other Federal agencies and with other public and private initiatives to implement the ADA.

Proposed Priority 1: ADA Training for Independent Living Centers

Background

The more than 400 Independent Living Centers (ILCs) in the United States emphasize consumer control and peer services. These ILCs have a strong incentive to promote the successful implementation of the ADA. ILCs serve as resources not only to persons with disabilities in their communities, but also to individuals and entities with responsibilities under the Act.

Preliminary results from a survey conducted by the Independent Living Research Utilization Program (ILRU) of persons associated with ILCs from around the country indicate that knowledge concerning specific sections of the ADA is not high, even among persons who have a direct interest in effective ADA implementation. Initial analysis of these data suggests that a lack of training opportunities and high-turnover among the staff who are trained are factors in the current level of knowledge of persons associated with ILCs.

Some ILCs have had opportunities to participate in ADA training activities sponsored by Federal agencies, and many ILCs have developed into sophisticated community resources on the ADA. Training projects for the ILCs have generally taken the form of an ILC sending a representative to attend an intensive ADA training session over a number of days. This approach has some limitations in terms of impact due to the high turnover of ILC staff and multiple or shifting work responsibilities in the ILC.

Other ILCs, due in large part to their size or location, have not had ADA training opportunities sponsored by Federal agencies. This group of ILCs is the primary target audience for this training project. The secondary target group for the training project is composed of those ILCs who have lost their ADA-trained staff person. The project is intended to enable both of these groups of ILCs to become experts on the ADA so that their staff, associates and volunteers can answer technical questions, advise individuals on their rights or responsibilities, make referrals, increase awareness of the ADA in their community, and conduct ADA training activities for covered entities in their community.

Proposed Priority

An ADA training project for ILCs shall—

- Identify and select for training, ILCs that have either not received training from a NIDRR, EEOC, or DOJ ADA project, or lost their staff representative who was trained by a NIDRR, EEOC, or DOJ project;
- Develop a strategy and schedule for training as many of these ILCs as possible using a variety of approaches, including, but not limited to, on-site training, regional, State, and local meetings, teleconferences, and audioconferences;
- Utilizing existing federally-approved materials to the maximum extent appropriate, develop an array of training materials and activities that vary in length and content in order to accommodate the information and scheduling needs of selected organizations;
- Provide training to staff, associates, and volunteers from each selected ILC in order to enable them to answer technical questions on the ADA, advise individuals or entities on their rights or responsibilities, make referrals, increase awareness of the ADA in their community, and conduct ADA training activities for covered entities in their community;
- To the maximum extent possible, utilize as trainers those individuals with disabilities who are from the same approximate area of the country as the selected ILC and who have been trained as trainers on the ADA by a NIDRR, EEOC, or DOJ technical assistance or training project; and
- For the length of the project, provide selected ILCs with quarterly ADA information updates, before and after training, regarding legal and policy developments.

Proposed Priority 2: ADA Training for Family Organizations

Background

The National Rehabilitation Information Center (NARIC) publishes a National Directory of Information Sources on Disability that includes information on organizations serving the disability community. According to the NARIC staff who are updating this directory, there are a minimum of 411 organizations providing information or direct services to persons with disabilities and their families. These organizations disseminate information through national, State, and local conferences, as well as publications such as newsletters and brochures. They also provide training, using a variety of means and settings, to their professional staff as well as to their membership.

According to representatives of disability organizations, the extent to which national disability organizations, as well as their State and local affiliate organizations, have provided training or information to their members about the ADA varies according to the primary mission of the organization (e.g., provision of services or advocacy), resources available to the organization, and the interest of the membership and its leaders. As a result, knowledge about the ADA among these organizations can vary widely from one organization to another as well as from one affiliate to another within the same organization.

The purpose of this proposed priority is to provide training on the ADA to persons who are members or staff of

disability organizations that provide services and information primarily to persons with disabilities and their families by utilizing the existing training and information systems of these organizations.

Proposed Priority

An ADA training project for family organizations shall—

• Placing special emphasis on those organizations that have had limited access to ADA training and information, identify and select for training a range of disability organizations that provide services and information primarily to persons with disabilities and their families, including those organizations focused on developmental, cognitive, emotional, physical, or sensory disabilities;

• Develop a strategy and schedule for training the membership and staff of these organizations using a variety of approaches including, but not limited to, on-site training, regional, State, and local meetings, teleconferences, and audioconferences;

• Utilizing existing Federally approved materials to the maximum extent appropriate, develop an array of training materials and activities that vary in length and content in order to accommodate the information and scheduling needs of selected organizations;

• Provide training to the membership and staff of selected organizations on the provisions of the ADA and the resources available to them to facilitate the implementation of the ADA;

• To the maximum extent possible, utilize as trainers those individuals with disabilities who have been trained as trainers on the ADA by a NIDRR, EEOC, or DOJ technical assistance or training project; and

• For the length of the project, provide selected organizations with quarterly ADA information updates, before and after training, regarding legal and policy developments.

Proposed Priority 3: ADA Training for School Districts

Background

There are 15,173 regular school districts in the United States according to the U.S. Department of Education National Center for Education Statistics (1993 Digest of Education Statistics in the United States). These school districts are covered under Title II of the ADA. Title II of the ADA prohibits discrimination on the basis of disability in all services, programs, and activities of State and local governments. The Office for Civil Rights within the U.S. Department of Education (OCR/ED) has been designated to enforce Title II in public elementary and secondary educational systems and institutions, public institutions of higher education and vocational education (other than schools of medicine, dentistry, nursing, and other health-related schools) and public libraries.

Title II covers three major categories of programs or activities: Employment; activities involving general public contact as part of an entity's ongoing operation (e.g., telephone contacts, office walk-ins, interviews, and public use of the facilities); and activities or programs directly administered by the entity for program beneficiaries and participants (e.g., programs that provide State or local government services or benefits).

School districts that have received Federal funds have been covered by section 504 of the Rehabilitation Act since 1973. Title II is patterned after section 504, and many school districts need information and training to understand not only their responsibilities under the ADA, but also the relationship of section 504 to the ADA. OCR/ED and NIDRR have cooperated to produce a self-evaluation guide for school districts that includes information addressing the relationship between section 504 and the ADA.

One of the primary purposes of this training project will be to assist school districts to conduct their self-evaluations with this new self-evaluation guide and implement their plans to comply with the ADA. As part of this process, the project will enable trainees to understand not only their responsibilities under the ADA, but also the relationship of section 504 to the ADA. The project will place special emphasis on school districts where a majority of the students are from minority background because of their limited access to outside training opportunities. The project will train selected educational organizations whose membership have responsibility for complying with the ADA in school districts (e.g., superintendents, principals, special education directors, school boards, etc.), as well as selected individual school district's staffs.

Proposed Priority

An ADA training project for school districts shall—

• Placing special emphasis on school districts where a majority of the students are from minority background, identify and select for direct training a range of school districts, equitably distributed throughout the country, including those from urban, rural, and suburban areas;

• Identify and select for training the membership and staff of educational organizations whose members have responsibility for complying with the ADA in school districts;

• Develop a strategy and a schedule for directly training school districts as well as the membership and staff of selected organizations using a variety of approaches including, but not limited to, on-site training, regional, State, and local meetings, teleconferences, and audioconferences;

• Utilizing the OCR/ED self-evaluation guide and other existing federally-approved materials to the maximum extent appropriate, develop an array of training materials and activities that vary in length and content in order to accommodate the information and scheduling needs of selected school districts and organizations;

• Provide training to selected school districts and organizations on updating or conducting self-evaluations using the new guide, understanding the responsibilities of school districts under the ADA, on implementing changes to comply with the ADA, and on the resources available to them to facilitate the implementation of the ADA;

• To the maximum extent possible, utilize as trainers those individuals with disabilities who have been trained as trainers on the ADA by NIDRR, EEOC, or DOJ technical assistance or training project;

• For the length of the project, provide selected school districts and organizations with quarterly ADA information updates, before and after training, regarding legal and policy developments; and

• Coordinate training activities with the regional offices of OCR/ED.

Proposed Priority 4: ADA Training for State and Local ADA Coordinators and Policymakers

Background

Governors, mayors, city managers, city planners, county boards, agency directors, and other State and local government officials bear responsibility for ensuring compliance with Title II of the ADA. In addition § 35.107 of the ADA regulations (28 CFR part 35) requires that a public entity that employs 50 or more persons shall designate at least one employee to coordinate its efforts to comply with the ADA, including investigation of any complaint alleging its noncompliance or alleging any prohibited actions. Such persons are frequently identified as

"ADA Coordinators" by State or local governments. According to the most recent (1987) report of the U.S. Census Bureau, there are approximately 7,665 counties, municipalities, and townships that have 50 or more full-time employees.

Title II requires public entities to evaluate their current services, policies, and practices to identify and correct any that are not consistent with the requirements of Title II. State and local ADA Coordinators and government policymakers are responsible for ensuring that the self-evaluations are carried out. To ensure that these self-evaluations are appropriately carried out and the necessary changes made, State and local ADA Coordinators and government policymakers need information and training about the requirements of the ADA and policy developments in the field.

Proposed Priority

An ADA training project for State and local ADA coordinators and policymakers shall—

• Identify and select for direct training State and local ADA coordinators and government policymakers from every Federal Region of the country, including those from urban, rural, and suburban areas, and ensuring the broad representation of local governments where a majority of the citizens are from minority backgrounds;

• Identify and select for training organizations whose members are policymakers in State and local government with responsibilities for complying with the ADA;

• Develop a strategy and a schedule for directly training State and local ADA coordinators and policymakers as well as the membership and staff of selected organizations using a variety of approaches including, but not limited to, on-site training, regional, State, and local meetings, teleconferences, and audioconferences;

• Utilizing existing federally-approved materials to the maximum extent appropriate, develop an array of training materials and activities that vary in length and content in order to accommodate the information and scheduling needs of selected coordinators and organizations;

• Provide training to selected State and local ADA coordinators, policymakers and members of organizations on the responsibilities of State and local governments under Title II of the ADA and in order to assist State and local governments to undertake their self-evaluation plans and make the changes needed to comply with the ADA;

• To the maximum extent possible, utilize as trainers those individuals with disabilities who have been trained as trainers by a NIDRR, EEOC, or DOJ technical assistance or training project;

• For the length of the project provide selected coordinators, policymakers and organizations with quarterly ADA information updates, before and after training, regarding legal and policy developments.

Proposed Priority 5: ADA Training for Hispanics With Rights and Duties Under the ADA Whose Proficiency in English Is Limited

Background

The Hispanic population in the U.S. totals approximately 22 million people, or 9.0 percent of the population. By the year 2010, the Hispanic population is expected to become the second-largest racial/ethnic group (National Council of La Raza Census Information Center, Hispanic Population Factsheet, November 1993).

There are approximately 3,343,000 persons of Hispanic origin with a disability. In other words, one out of every fifteen Americans with a disability is Hispanic (McNeil, Americans with Disabilities: 1991–1992, Current Population Reports, U.S. Bureau of the Census, 1993).

In 1990, 17.4 million persons reported that they spoke Spanish at home. Of these persons, 8.3 million persons, or 50.8 percent, reported that they do not speak English "very well" (U.S. Census Bureau, Language Spoken at Home and Ability to Speak English for U.S. Regions and States, 1993).

Hispanics with disabilities whose proficiency in English is limited, as well as Hispanic business owners and service providers whose proficiency in English is limited, need to understand the requirements of the ADA. Federal agencies have made a number of their ADA publications available in Spanish, and NIDRR has piloted an effort with its Region 6 Southwest DBTAC to provide training and technical assistance to persons in the Spanish-speaking community. This pilot project has included the publication of additional documents in Spanish as well as efforts to provide popular Hispanic media with information about the ADA that is sensitive to cultural norms regarding disability. While these efforts have made certain ADA materials and technical assistance available to persons whose proficiency in English is limited, more needs to be done.

Reaching a target population that is broadly dispersed and as diverse as Hispanics whose proficiency in English is limited is particularly challenging. The Hispanic population includes people from different cultural backgrounds and different countries and regions of the world, such as Mexico (63.6 percent), Puerto Rico (10.6 percent), Cuba (4.7 percent), and Central and South America (14.0 percent) (National Council of La Raza Census Information Center, Hispanic Population Factsheet, November 1993). For the purposes of this priority, "Hispanics whose proficiency in English is limited" includes all persons from those countries and regions listed above who do not speak English very well, if at all.

In order to reach as wide an audience as possible a training project must collaborate with Hispanic organizations that currently provide training and information to their members. It must also utilize TV, radio, and print media that are popular in the targeted Hispanic community. Applicants for this project must demonstrate Spanish fluency, knowledge, cultural understanding, and experience in providing training and technical assistance to Hispanic organizations and individuals. Applicants must also include a substantial number of Hispanic individuals with disabilities in all phases of the project's activities.

Proposed Priority

An ADA training project for Hispanics with right or duties under the ADA whose proficiency in English is limited shall—

• Identify and select for training organizations that provide services and information to Hispanics with rights and duties under the ADA whose proficiency in English is limited;

• Develop a strategy and a schedule for training the membership and staff of selected organizations using a variety of approaches including, but not limited to, on-site training, regional, State, and local meetings, teleconferences, and audioconferences;

• Utilizing existing federally-approved materials to the maximum extent appropriate, develop an array of training materials and activities that vary in length and content in order to accommodate the information and scheduling needs of selected organizations;

• Provide training to the membership and staff of selected organizations on the provisions of the ADA and the resources available to them to facilitate the implementation of the ADA;

• To the maximum extent possible, utilize as trainers those individuals with disabilities who have been trained as trainers on the ADA by a NIDRR, EEOC, or DOJ technical assistance or training project;

• For the length of the project, provide selected organizations with quarterly ADA information updates, before and after training, regarding legal and policy developments; and

• Provide information about the ADA and technical assistance resources in areas with high concentrations of persons who are Spanish-speaking utilizing popular mass media such as local Hispanic TV and radio programming as well as Spanish print media.

Proposed Priority 6: ADA Training on Standards for Accessible Design

Background

Titles II and III of the ADA require that new governmental and commercial facilities be built in an accessible manner and require that, when existing governmental or commercial facilities are renovated or otherwise altered, the alterations be made in an accessible manner. In their regulations implementing Titles II and III of the ADA, the U.S. Department of Justice (DOJ) and the U.S. Department of Transportation (DOT) adopted Standards for Accessible Design for purposes of enforcing the ADA's non-discrimination requirements in the built environment. For commercial facilities and public transportation facilities, they adopted the ADA Accessibility Guidelines for Buildings and Facilities (ADAAG), developed by the Architectural and Transportation Barriers Compliance Board. For government facilities other than transportation facilities covered by DOT, DOJ currently permits the use of either the Uniform Federal Accessibility Standards or ADAAG as the "Standards for Accessible Design."

These Standards must be followed in new construction and alteration projects. They also serve as a guide for public accommodations undertaking to remove barriers in inaccessible existing facilities, as required under Title III. These Standards are complex and made up of scoping and technical provisions that contain many discrete requirements and necessitate referencing other technical provisions in order to make an element or space accessible.

NIDRR proposes a project to develop a series of audio/visual and complementary training materials on the Standards for Accessible Design that can be used across the country at the local level. Local organizations whose members include persons with disabilities, business owners, building managers, employers, government agency officials, city planners, architects, designers, or other relevant parties need access to reliable materials that explain the ADA Standards. NIDRR proposes to develop this series of materials in short discrete segments that could be used in meetings normally scheduled by professional or business organizations such as local chapters of the American Institute of Architects, local Chambers of Commerce, and other groups. These materials could also be used by the DBTACs in carrying out ADA training activities.

Grant applicants must be able to demonstrate knowledge, understanding, and experience in the following areas: in-depth knowledge of the ADA Standards for Accessible Design; thorough understanding of the rationale(s) underlying the Standards; understanding of the ways in which persons with disabilities use, or are unable to use, the built environment; experience in the development and dissemination of educational videos; and experience in using innovative and engaging video techniques such as animation and fade-ins or transformations from actual scenes to diagrammatic or conceptual material. Samples of an applicant's recent relevant work, including the use of animation or other innovative video techniques and the development of training materials related to the ADA Standards or training materials on accessible design, must be submitted with the grant application.

Based on the estimated size of the award that will be published in the notice inviting applications, applicants may propose to cover some, but not all of the topics. Grant applicants must propose an order of production of the videos and identify the topics that will be addressed in each video. Applicants must justify their order of production, based on the importance of the topic. Applicants must propose to group topics on each of the videos and explain the rationale for the groupings.

Proposed Priority

An ADA training project on the ADA Standards for Accessible Design shall—

• Develop, test, and disseminate a series of short, broadcast quality videos and complementary training materials that address the technical and scoping requirements of the ADA Standards for Accessible Design. These materials shall cover *as many of the following topics as possible* (emphasis added) as set out in the current Standards as well as new provisions that will be adopted: New construction; additions, alterations, and path of travel; historic buildings; parking and passenger loading zones; exterior accessible routes and curb ramps; drinking fountains; telephones and TDDs; ramps and stairs; platform lifts; entrances and exits (areas of rescue assistance); doors and gates; building lobbies and corridors (interior accessible routes); elevators; rooms and spaces; assembly areas; toilet rooms and bathrooms; bathtubs and showers; dressing and fitting rooms; signage; alarms; detectable warnings; automated teller machines; restaurants and cafeterias; medical care facilities; mercantile facilities; libraries; hotels, motels, inns, boarding houses, dormitories, and similar places; homeless shelters, halfway houses, transient group homes, and similar social services establishments; bus stops; fixed transportation facilities, bus and train terminals and stations; and airports. The project shall address the requirements of the standards from a Universal Design perspective;

• The videos shall illustrate how people with disabilities use the built environment and the rationale(s) that underlie specific technical and scoping provisions of the Standards and how discrete provisions in the Standards fit together with each other to ensure accessibility:

• Use innovative techniques, including animation, fade-ins or transformations to transition from footage showing a person using a space or element to footage showing design layouts and diagrams from the Standards relevant to that kind of space or element;

• Utilizing, as much as possible, materials that have been developed by Federal agencies, develop readily reproducible complementary training materials in conjunction with each video to supplement the video materials and to provide guidance on using the videos effectively;

• Identify organizations whose members include persons with disabilities, business owners, building managers, employers, government agency officials, city planners, architects, designers, and other relevant parties who would be an appropriate audience for the videos;

• Develop and implement a plan to disseminate the videos and complementary training materials to selected organizations;

• Produce the first video and complementary training material of the series within six months of the grant award;

• Coordinate with the Department of Justice and the Department of Transportation in the development and dissemination of the videos and complementary training materials;

• Ensure that the training videos and complementary training material are available in formats that accommodate persons with hearing impairments and vision impairments;

• Provide four one-inch NCSC standard fully mixed and open captioned edited master video tapes, including two master tapes and two safety dub tapes suitable for duplication, and four copies on VHS cassettes of each videotape produced, along with four reproducible copies of each set of complementary training materials to NIDRR for use by the Federal government.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding this proposed priority.

All comments submitted in response to this proposed priority will be available for public inspection, during and after the comment period, in room 3423, 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.

Applicable Program Regulations

34 CFR parts 350 and 355.

Program Authority: 29 U.S.C. 760–762.

Dated: March 8, 1994.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 94–8219 Filed 4–5–94; 8:45 am]

BILLING CODE 4000–01–U

federal register

Wednesday
April 6, 1994

Part XIV

Department of Energy

Intent To Prepare an Environmental Impact Statement for Waste Management at the Savannah River Site; Notices

DEPARTMENT OF ENERGY

Intent To Prepare an Environmental Impact Statement for Waste Management at the Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Energy (DOE) announces its intent to prepare an environmental impact statement (EIS) for waste management at the Savannah River Site, and to conduct a public scoping process pursuant to the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.).

The purpose of the Savannah River Site Waste Management EIS is to provide a basis for DOE to select a sitewide strategic approach to managing present and future Savannah River Site waste generated as a result of ongoing operations, environmental restoration activities, transition from nuclear production to other missions, and decontamination and decommissioning programs. This EIS will support project-level decisions on the operation of specific treatment, storage, and disposal facilities within the near term (10 years and less). In addition, this EIS will provide a baseline for analyses of future waste management activities and a basis for the evaluation of the specific waste management alternatives. The preparation of the Savannah River Site Waste Management EIS will be in accordance with the National Environmental Policy Act, the Council on Environmental Quality National Environmental Policy Act Regulations (40 CFR parts 1500–1508), and the DOE National Environmental Policy Act Regulations (10 CFR part 1021). Background information on the Savannah River Site and issues proposed to be considered in this EIS are presented in the Supplementary Information below.

DOE is also announcing today its intent to prepare a Supplemental Environmental Impact Statement on the Defense Waste Processing Facility at the Savannah River Site. (See the notice in this issue of the **Federal Register**.)

DOE invites individuals, organizations, and agencies to comment on issues to be considered, alternatives to be analyzed, and environmental impacts to be addressed in the Savannah River Site Waste Management EIS. Written and oral comments will be given equal weight. Written comments should be directed to Stephen R. Wright at the address below. Oral comments may be presented by voice mail at the telephone number below. Interested parties are invited to present comments at three public scoping meetings to be held at the dates and places indicated below. Additional notice will be given in appropriate local media. At the scoping meetings and informal information sessions to be held one month earlier, DOE also will provide the public with an opportunity to have information discussions with DOE representatives regarding waste management at the Savannah River Site. The scoping process and procedures are described in the Supplementary Information below.

DATES: The public scoping period for the Savannah River Site Waste Management EIS begins with the publication of this notice and continues until May 31, 1994. Written comments submitted by mail should be postmarked by that date to ensure consideration. DOE will consider comments mailed after that date to the extent practicable.

DOE will host a series of informal information sessions to provide the public with additional information on waste management at the Savannah River Site and the proposed actions and alternatives discussed in this Notice of Intent. These sessions are intended to promote conversation with DOE representatives available to answer questions. These informal sessions are scheduled at the following times and locations:

April 12, 1994; 1–4 and 6–9 p.m.; North Augusta Community Center, 495 Brookside Avenue, North Augusta, South Carolina.

April 19, 1994; 1–4 and 6–9 p.m.; DeSoto Hilton Hotel, 15 Liberty Street, Savannah, Georgia.

April 21, 1994; 1–4 and 6–9 p.m.; Holiday Inn Coliseum at University of South Carolina, 630 Assembly Street, Columbia, South Carolina.

Information sessions on two related EISs—the EIS for Interim Management of Nuclear Materials at the Savannah River Site (see the Notice of Intent published in the **Federal Register** on March 17, 1994; 59 FR 12588) and the Defense Waste Processing Facility Supplemental EIS at the Savannah River Site—will be held at the same dates and locations.

DOE will then conduct public scoping meetings to assist in defining the appropriate scope of the Savannah River Site Waste Management EIS and identifying significant environmental issues to be addressed. DOE representatives will be available at the meetings to discuss, in informal conversations, Savannah River Site waste management. These meetings are scheduled at the following times and locations:

May 12, 1994; 1–4 and 6–9 p.m.; Coastal Georgia Center for Continuing Education, 305 Martin Luther King Boulevard (Battlefield Park), Savannah Georgia.

Mat 17, 1994; 1–4 and 6–9 p.m.; North Augusta Community Center, 495 Brookside Avenue, North Augusta, South Carolina.

May 19, 1994; 1–4 and 6–9 p.m.; Holiday Inn Coliseum at University of South Carolina, 630 Assembly Street, Columbia, South Carolina.

Scoping meetings on the EIS for Interim Management of Nuclear Materials at the Savannah River Site and the Defense Waste Processing Facility Supplemental EIS will be held at the same dates and locations. DOE will publish additional notices of the information sessions and scoping meetings in the local media in advance of the scheduled dates.

ADDRESSES: Comments on the scope of the Savannah River Site Waste Management EIS, requests to speak at the public scoping meetings, and requests for copies of the EIS Implementation Plan or draft EIS (when available) should be directed to: Mr. Stephen R. Wright, U.S. DOE, Savannah River Operations Office, P.O. Box 5031, Aiken, SC 29804–5031; (803) 725–3957 or (800) 242–8269. Envelopes should be marked: "Savannah River Site Waste Management EIS".

FOR FURTHER INFORMATION CONTACT: Questions regarding the Savannah River Site Waste Management EIS should be addressed to: Virginia L. Gardner, Environmental Restoration Division, U.S. DOE, Savannah River Operations Office, P.O. Box A, Aiken, SC 29802; (803) 725–5752.

Questions regarding the DOE National Environmental Policy Act process should be addressed to: Carol M. Borgstrom, Director, Office of National Environmental Policy Act Oversight (EH–25), U.S. DOE, 1000 Independence Avenue, SW., Washington, DC 20585; (202) 586–4600 or leave a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION:

Background

The Savannah River Site occupies approximately 300 square miles adjacent to the Savannah River, principally in Aiken and Barnwell Counties of South Carolina, approximately 25 miles southeast of Augusta, Georgia, and 20 miles south of Aiken, South Carolina. Since its establishment, the mission of the Savannah River Site has been to produce nuclear materials that support

the defense, research, and medical programs of the United States. The Savannah River Site production process facilities include fuel and target fabrication facilities, nuclear production reactors, separation facilities, product preparation facilities, and waste management facilities. These facilities have generated a variety of low-level radioactive, high-level radioactive, hazardous, mixed (hazardous and radioactive), and transuranic wastes.

At present, the Savannah River Site is in transition to other missions; the new missions include an increased emphasis on waste management, environmental restoration, and decontamination and decommissioning. DOE is examining its current integrated waste management program and the suitability of existing and planned facilities in light of these recent mission changes.

Two DOE-wide programmatic environmental impact statements, one for Environmental Restoration and Waste Management (Notice of Intent published in the **Federal Register** on October 22, 1990; 55 FR 42693) and one for Reconfiguration of the Weapons Complex (Notice of Intent published in the Federal Register on February 11, 1991; 56 FR 5590), may result in decisions to transfer certain waste management activities to or from the Savannah River Site. The alternatives for the Savannah River Site Waste Management EIS will be coordinated with the alternatives for the Programmatic EISs. The alternatives for the Savannah River Site Waste Management EIS will also bound the range of waste management activities resulting from the Federal Facility Compliance Act Site Treatment Plan now under development. The Site Treatment Plan will describe the development of treatment capacities and technologies for mixed (a combination of radioactive and hazardous) wastes.

DOE prepared an Environmental Assessment and issued a subsequent Finding of No Significant Impact on the Consolidated Incineration Facility in 1992. In response to a public request, DOE took a "fresh look" into the suitability of constructing and operating the Consolidated Incineration Facility. DOE decided that while completing construction, DOE would propose to include the operation of the Consolidated Incineration Facility within the scope of the Savannah River Site Waste Management EIS. Under the proposed action, the Consolidated Incineration Facility would be the preferred facility for the treatment of only those wastes for which under Environmental Protection Agency regulations incineration is the specified technology or Best Demonstrated Available Technology. The proposed action also will evaluate incineration and other treatment alternatives for wastes where incineration is not the specified technology or Best Demonstrated Available Technology. In addition, the proposed action will include the incineration of low-level radioactive waste for volume reduction and the EIS will consider other volume reduction and treatment alternatives. DOE will not conduct any trial burns at the Consolidated Incineration Facility until DOE completes this EIS and issues a Record of Decision.

In 1982, DOE published an EIS and a Record of Decision for the design, construction, and operation of the Defense Waste Processing Facility, which would immobilize liquid high-level radioactive waste in glass (vitrification). The vitrified waste would then be encapsulated in stainless steel canisters and stored onsite until a geologic repository is available for final disposal. DOE then modified the Defense Waste Processing Facility to improve facility efficiency and safety. A Supplement Analysis was prepared to determine whether modifications as of 1990, primarily the introduction of the In-Tank Precipitation process and manufacture and disposal of saltstone, required the preparation of a supplement to the Defense Waste Processing Facility EIS. On the basis of the Supplement Analysis, DOE concluded in 1991 that a Supplemental EIS was not needed.

Further modifications to the Defense Waste Processing Facility system have now been proposed and are in various stages of implementation, including process safety enhancement and a Late-Wash Facility. In view of the accumulated changes and the near-term (estimated 1996) initial operation of the facility, DOE believes that a focused EIS-level review of the environmental impacts of the facility as now envisioned would be timely and appropriate.

DOE proposes to perform the Defense Waste Processing Facility review in a supplement to the 1982 EIS for the Defense Waste Processing Facility. Although the analysis could be included in the Savannah River Site Waste Management EIS, DOE believes public review and DOE's decision making process would be facilitated by preparing a separate document because the Defense Waste Processing Facility is a very specialized operation with limited connections to the activities to be covered in the Waste Management EIS. Where there are interconnections, duplicate discussions within both documents may be required or the documents may cross reference one another.

Activities at the Defense Waste Processing Facility have proceeded on the basis of the 1982 EIS and Record of Decision. Construction of the Defense Waste Processing Facility is almost complete, testing of the system with cold chemicals has begun and processing runs of simulated (non-radioactive) material will begin in the next few months. DOE committed in an agreement with the Environmental Protection Agency and the state of South Carolina to adhere to a schedule that provides for radionuclide testing at the Defense Waste Processing Facility to begin in December, 1995. In order to support that schedule and to manage efficiently the high level radioactive wastes contained in the tank farms, in-tank precipitation must begin in late 1994 or early 1995. A supplemental EIS focussing on the changes to the Defense Waste Processing Facility can be completed in time to meet this schedule, while the Waste Management EIS is expected to take several more months to prepare. These two EISs will be closely coordinated. Delay of start-up for the Defense Waste Processing Facility would cost approximately $21,000,000 per month.

The Supplemental EIS will examine all reasonably foreseeable impacts of operating the Defense Waste Processing Facility, including alternative methods of managing the waste streams from the facility. DOE believes that this will provide sufficient information to decide whether to proceed with operation of the facility in advance of completion of the Savannah River Waste Management EIS.

The proposed scope for the Savannah River Site Waste Management EIS does not include management of spent nuclear fuel and other materials that have historically been the feed materials for Savannah River Site materials production and reprocessing programs. Such nuclear materials are being addressed in several National Environmental Policy Act documents under preparation by DOE: (1) The Programmatic EIS for Spent Nuclear Fuel Management will include, among other issues, a programmatic analysis of the transportation, receipt, processing, and storage of spent nuclear fuel at DOE sites, including the Savannah River Site; (2) the Environmental Assessment for Urgent Relief Acceptance of Foreign Research Reactor Nuclear Spent Fuel and a subsequent broader scope EIS (Notice of Intent published October 21, 1993; 58 FR 54336) will analyze the proposed adoption and implementation

of a policy for the acceptance of as many as 15,000 spent nuclear fuel elements from foreign research reactors; and (3) the EIS for the Interim Management of Nuclear Materials at the Savannah River Site (Notice of Intent published March 17, 1994; 59 FR 12588), will evaluate and determine materials that can safely remain in their current form for an interim period (approximately five years) until disposition decisions can be made and materials that require near-term stabilization to help maintain the health and safety of workers and the public and to maintain environmental quality. In addition, DOE will also evaluate converting some material into a useable form.

Environmental Restoration and Waste Management Programmatic EIS

The Savannah River Site Waste Management EIS will be prepared at the same time as, and in close coordination with, the DOE Environmental Restoration and Waste Management Programmitic EIS, which will address DOE complex-wide issues and alternatives for environmental restoration and waste management policies and practices. Alternatives under that Programmatic EIS will include decentralization, regionalization, and centralization of waste management functions.

The alternatives analysis in the Savannah River Site Waste Management EIS will be consistent with the DOE complex-wide policies and practices that will be analyzed in the Programmatic EIS. The Savannah River Site Waste Management EIS will be supplemented, as necessary, to maintain consistency with decisions reached on broader programmatic issues.

Site Treatment Plan

The Savannah River Site Waste Management EIS will also be coordinated with the development of the Savannah River Site Treatment Plan that DOE is preparing in compliance with the Federal Facility Compliance Act of 1992. The Conceptual Site Treatment Plan issued in October 1993 identifies waste treatment needs, capabilities, and options for Savannah River Site mixed waste. The Draft Site Treatment Plan scheduled to be issued in August 1994 will identify DOE's preferred options for treating the Savannah River Site mixed wastes and proposed schedules for constructing treatment capacity. The preferred options will correspond to the proposed action in the Savannah River Site Waste Management EIS.

Waste Types To Be Addressed in the Savannah River Site Waste Management EIS

Solid low-level radioactive waste forms include operating and laboratory wastes (for example protective clothing, plastic sheeting, gloves, analytical wastes, decontamination residues), contaminated equipment, reactor and reactor fuel hardware, spent lithium-aluminum targets from which tritium has been extracted, and spent deionizer resin from reactor areas. The Analytical Laboratories, Reactor Materials, Reactors, Separations, Savannah River Technology Center, Tritium facilities, and waste management and environmental restoration activities generate the Savannah River Site low-level radioactive waste.

High-level radioactive waste includes the highly radioactive material resulting from the reprocessing of spent nuclear fuel, including the liquid waste that contains fission products in sufficient concentrations. In the production of nuclear materials, DOE used the F- and H-Area chemical separations plants to separate and purify plutonium-238 and -239 produced in Savannah River Site reactors and to reclaim fissionable material (uranium-235) from onsite and offsite sources (e.g., research reactor fuel and material from disassembled retired weapons) for recycling. These processes dissolved target elements in nitric acid and separated them into (1) a solution of plutonium, uranium, and neptunium, and (2) liquid high-level radioactive waste. Further processing separated and purified the metals in solution, and converted the plutonium to solid form for shipment and the other materials for storage or reuse. The liquid high-level radioactive waste is stored in steel tanks in the F- and H-Area Tank Farms.

Hazardous waste and mixed waste include materials such as lead, solvents, paints, tritiated mercury, tritiated oil contaminated with mercury, other mercury-contaminated materials and equipment from the tritium facilities in H-Area, filter paper takeup rolls from the Liquid Effluent Treatment Facility, cadmium-plated high-efficiency particulate air filters, and contaminated soils. The Analytical Laboratories, Reactor materials, Reactors, and Separations facilities and waste management and environmental restoration activities generate the Savannah River Site hazardous and mixed waste.

Transuranic wastes include job control wastes (e.g., paper, wipes, cloth, rags, tools, instruments), sludges, resins, filters, and various other miscellaneous wastes. Transuranic waste contains radioactive isotopes with atomic numbers greater than 92 and half-lives longer than 20 years at concentrations exceeding 100 nanocuries per gram. Savannah River Site also manages low-level radioactive waste with transuranic radionuclides at concentration of 10 to 100 nanocuries per gram in a manner similar to transuranic waste. The Savannah River Technology Center, F-Area laboratories, and F- and H-Area separations facilities generate the Savannah River Site transuranic waste.

Preliminary Description of Savannah River Site Waste Management EIS Alternatives

(1) The "No-Action" Alternative

DOE will analyze a no-action alternative that would assume continued waste generation and current waste management practices. DOE would continue ongoing activities and implement planned actions, including high-level radioactive waste management, for which National Environmental Policy Act review has been completed and decisions made. Further, decisions reached through ongoing National Environmental Policy Act reviews that are completed before the issuance of a Record of Decision for this EIS will be incorporated into the no-action alternative. Although the no-action alternative may not be a reasonable alternative in all respects, its analysis will establish a baseline for comparison of the environment impacts of the proposed action and its alternatives.

DOE would continue waste management practices that are now in effect, including packaging and disposal of low-level radioactive waste in the Solid Waste Disposal Facility, storage of liquid high-level radioactive waste in the F- and H-Area Tank Farm, disposal of salt solution at the Saltstone Facility, preparation for vitrification in the Defense Waste Processing Facility, storage of liquid high-level radioactive waste in the F- and H-Area Tank Farm, disposal of salt solution at the Saltstone Facility, preparation for vitrification in the Defense Waste Processing Facility, storage of hazardous waste in hazardous waste storage buildings and the solid waste storage pads, and continued storage of mixed waste. Drums of transuranic waste on mounded pads would be retrieved, overpacked, and stored with existing transuranic waste drums on concrete pads; DOE would leave undisturbed the transuranic waste that is in stored in below-grade culverts or in culverts on mounded pads.

Also included as part of the no-action alternative are operation of the already-

constructed Solid Waste Disposal Facility Expansion Vaults for disposal of low-level radioactive waste (E-Area) and continued construction, but not operation, of the Consolidated Incineration Facility.

(2) The Proposed Action Alternative

The proposed action is comprised of the no-action alternative activities plus programmatic and project-level actions to enhance waste management operations over the next 10 years, comply with regulatory requirements, protect human health and the environment, and support Savannah River Site missions. Project specific National Environmental Policy Act review that supplements this EIS might be required to reach final decisions on some of these activities.

DOE will consider various combinations of pollution prevention, waste minimization, treatment, storage and disposal technologies, with pollution prevention and waste minimization as the highest priority. For each waste type, DOE will identify the optimal mix of technologies for the protection of human health and the environment, cost-effectiveness, and waste minimization. DOE will identify the preferred strategy for each waste type that will contain the optimum approaches developed for specific individual waste streams at the Savannah River Site. Any potential shipments to or from the Savannah River Site of DOE weapons complex waste and establishment of onsite waste treatment capabilities would be examined in a manner that is consistent with the Site Treatment Plan for mixed waste and the two DOE-wide Programmatic EISs.

Programmatic considerations regarding the Site Treatment Plan, land use planning, technology development, and pollution prevention would be included in the proposed action alternative. DOE will ensure that these strategies are consistent with those identified in the Environmental Restoration and Waste Management Programmatic EIS. Although specific environmental restoration and decontamination and decommissioning activities would be subject to separate National Environmental Policy Act review, as appropriate, DOE will provide its best current estimate of waste streams anticipated from the environmental restoration of existing waste sites and the decontamination and decommissioning of surplus facilities. Similarly, DOE will base the proposed action on this best current estimate of waste streams that might be received from offsite under decisions resulting from the Environmental Restoration and Waste Management and Reconfiguration Programmatic EISs and the Federal Facility Compliance Act/ Site Treatment Plan process.

Low-Level Radioactive Waste

DOE proposes to reduce the volume of solid nonhazardous low-level radioactive waste. DOE would package the low-level radioactive waste in accordance with the Waste Acceptance Criteria established for the Solid Waste Disposal Facility (E-Area) Expansion Vaults (operation of the E-Area vaults is based on completed National Environmental Policy Act reviews and is included in the no-action alternative). As part of the proposed action alternative, volume reduction technology(ies) would replace existing Savannah River Site compactors, which are reaching the end of their useful lives. The immediate requirement is to process contact-handled waste; the proposed facility(ies) would have limited capability to volume-reduce equipment. Subsequently, DOE would develop the capability to volume-reduce remotely handled waste. DOE would also develop treatment capabilities for liquid low-level radioactive waste (e.g., tritiated oil).

Liquid High-Level Radioactive Waste

The management of liquid high-level radioactive waste including storage in the F- and H-Area Tank Farm, disposal of salt solution at the Saltstone Facility, and preparation for vitrification in the Defense Waste Processing Facility is the same for the proposed action as for the no-action alternative. The examination of the potential environmental impacts of operating the Defense Waste Processing Facility and associated high-level radioactive waste facilities at the Savannah River Site as they are presently designed will be done in the Defense Waste Processing Facility Supplemental EIS. The cumulative impacts of liquid high-level radioactive waste management, including the results from the Defense Waste Processing Facility Supplemental EIS, will be incorporated into the Savannah River Site Waste Management EIS.

Hazardous Waste/Mixed Waste

The Draft Site Treatment Plan will consider the Consolidated Incineration Facility a "planned" facility for mixed waste treatment. As part of the proposed action, this EIS will consider other alternatives for waste for which incineration has not been established as the Best Demonstrated Available Technology or specified technology, including potential offsite options and commercialization, for incinerable Savannah River Site hazardous and mixed wastes. For example, DOE could construct and operate a new facility permitted under the Resource Conservation and Recovery Act at the Savannah River Site to receive, handle, treat, and repackage hazardous and mixed waste. This facility could also provide size reduction and repackaging of hazardous and mixed wastes in preparation for treatment at the Consolidated Incineration Facility. The proposed treatment building would be able to handle waste that DOE could not treat elsewhere on the Savannah River Site or send such waste offsite for treatment and disposal. DOE would also evaluate treatment options for non-incinerable hazardous and mixed wastes.

Transuranic Waste

Under the proposed action, DOE would prepare both currently-stored and newly-generated transuranic waste for certification and disposal at the Waste Isolation Pilot Plant or for reclassification and disposal as low-level radioactive waste. Facilities would be provided to sort, characterize, and repackage drums of low-activity (less than a total of 0.5 curie per 55-gallon drum) transuranic waste in preparation for direct shipment to the Waste Isolation Pilot Plant or for storage until treatment to a final waste form. Portions of these activities are included in the no-action alternative because they are covered in the completed Environmental Assessment for Management Activities for Retrieved and Newly Generated Transuranic Waste (DOE/EA–0315).

DOE would provide treatment, such as vitrification or stabilization, for retrievably stored transuranic wastes with activity greater than 0.5 curie per container if required to meet future criteria of the Waste Isolation Pilot Plant or another Federal repository. The proposed action would provide the capability to treat high-activity waste drums, boxes, etc., for shipment to the Waste Isolation Pilot Plant or another repository. DOE would design treatment facilities when it has a better understanding of Waste Isolation Pilot Plant acceptance requirements for the transuranic waste stream.

(3) The "Minimum Treatment, Storage, and Disposal" Alternative

The alternative represents a lower-bound of waste management activities at the Savannah River Site. The quantities and characteristics of the waste would be based on reasonable lower-bound estimates of ongoing operations, onsite

environmental restoration and decontamination and decommissioning waste, and wastes that DOE might receive from offsite as a result of Federal Facility Compliance Act, Environmental Restoration and Waste Management Programmatic EIS, and Reconfiguration Programmatic EIS decisions. Also consistent with alternatives being considered in the Environmental Restoration and Waste Management Programmatic EIS, certain quantities of waste in storage and newly generated waste would be shipped offsite.

(4) The "Maximum Treatment, Storage, and Disposal" Alternative

This alternative represents a condition where the Savannah River Site would manage more waste than that anticipated under the proposed action. The quantities and characteristics of the waste would be based on reasonable upper-bound estimates of ongoing operations, on site environmental restoration and decontamination and decommissioning waste, and wastes that DOE might receive from offsite as a result of Federal Facility Compliance Act, Environmental Restoration and Waste Management Programmatic EIS, and Reconfiguration Programmatic EIS decisions. Under this alternative, DOE would augment its waste treatment, storage, and disposal facilities at the Savannah River Site. This increase will be described and analyzed in terms of an increment above the current and projected quantities used in the analysis of the proposed action.

Identification of Environmental and Other Issues

DOE has identified the following issues to be addressed in the analysis of proposed and alternative actions in the EIS. Additional issues may be identified as a result of the scoping process.

1. Public and worker safety and health risk assessment: radiological and nonradiological impacts of the proposed action and alternatives, including projected effects on workers and the public from construction, normal operation, and potential accidents.

2. Impacts from releases to air, water, and soil.

3. Impacts to plants, animals, and habitat, including impacts to wetlands, and threatened or endangered species and their habitat.

4. The consumption of natural resources and energy including water, natural gas, and electricity.

5. Impacts of the transportation of construction and operation supplies, materials, equipment, products, and wastes to, from, and within the site.

6. Socioeconomic impacts to affected communities from construction and operation labor forces and support services

7. Environmental Justice: disproportionately high or adverse human health and environmental effects on minority and low-income populations.

8. Impacts to cultural resources such as historic, archaeological, scientific, or culturally important sites.

9. Accuracy of projected waste volumes.

10. Status of compliance with applicable Federal, state, and local statutes and regulations.

11. Cumulative impacts from the proposed action and other past, present, and reasonably foreseeable actions at the Savannah River Site.

12. Potential irreversible and irretrievable commitments of resources.

13. Pollution prevention, waste minimization, and potential mitigative measures.

Related Documentation

Completed and ongoing environmental reviews may affect the scope of this EIS. Background information listed below on past, present, and future waste management activities at the Savannah River Site is available in the public reading rooms listed below.

(1) Final Environmental Impact Statements, Environmental Assessments, and Other National Environmental Policy Act Documents

Waste Management Operations, ERDA–1537, 1977.

Long-Term Management of Defense High-Level Radioactive Wastes (Research and Development Program for Immobilization), DOE/EIS–0023, 1979.

Double-Shell Tanks for Defense High-Level Radioactive Waste Storage, DOE/EIS–0062, 1980.

Defense Waste Processing Facility, DOE/EIS–0082, 1982.

Waste Form Selection for Savannah River Plant High-Level Waste, DOE/EA–179, 1982.

Waste Management Activities for Groundwater Protection DOE/EIS–0120, 1987.

Management Activities for Retrieved and Newly Generated Transuranic Waste, Savannah River Plant, DOE/EA–0315, 1988.

Continued Operation of K-, L-, and P-Reactors, Savannah River Site, DOE/EIS–0147, 1990.

Consolidated Incineration Facility, DOE/EA–0400, 1992.

Implementation Plan; Nuclear Weapons Reconfiguration Programmatic Environmental Impact Statement, DOE/EIS–0161IP, February 1992.

Nonnuclear Consolidation Environmental Assessment, DOE/EA–0792, 1993.

Implementation Plan; Environmental Restoration and Waste Management Programmatic Environmental Impact Statement, DOE/EIS–0200, January 1994

(2) Other Documents

Facility Pollution Prevention Guide, EPA/600/R–92/088, May 1992.

Savannah River Site Environmental Report for 1992, Volumes 1 and 2, WSRC–TR–93 075, 1993.

Interim Mixed Waste Inventory Report: Waste Streams, Treatment Capacities and Technologies, DOE/NBM–1100, 1993.

Land Disposal Restrictions Federal Facility Compliance Agreement, between the U.S. Environmental Protection Agency, Region IV and the U.S. DOE, March 13, 1991. Amended April 27, 1992 and April 2, 1993.

Federal Facility Agreement for the Savannah River Site, and Responsiveness Summary, between the U.S. Environmental Protection Agency, Region IV; U.S. DOE; and South Carolina Department of Health and Environmental Control, effective August 16, 1993.

Savannah River Site Conceptual Site Treatment Plan, ESH–FSS–93–0744, 1993.

Public Meetings

DOE will host a series of informal information sessions to provide the public with additional information on waste management at the Savannah River Site and the proposed actions and alternatives discussed in this Notice of Intent. These sessions are intended to promote conversation with DOE representatives available to answer questions.

Oral and written comments will be received at public scoping meetings to be held at the locations and times indicated above. The meetings will be chaired by a presiding officer and attended by DOE officials. The public scoping meetings will not be conducted as evidentiary hearings; speakers will not be cross-examined, although the presiding officer and DOE representatives present may ask clarifying questions. The DOE panel members will respond to comments and questions from the public. In addition DOE representatives will be available to discuss the Savannah River Site waste management program in informal conversations.

To facilitate scheduling of speakers, requests to speak at these meetings may be made in advance by calling 1–800–242–8269 between 8:30 a.m. and 5 p.m. Eastern Time, Monday through Friday, or by calling Mr. Stephen R. Wright at 803–725–3957 at least two days before the designated meeting. To ensure that everyone has an adequate opportunity to speak, five minutes will be allotted each speaker. Depending on the number of persons who request an opportunity to speak, the presiding officer may allow more time for speakers representing multiple parties or organizations.

Persons wishing to speak on behalf of organizations should identify the organization in their request. Persons who have not submitted an advance request to speak may register at the meetings and will be called on to speak in the order of registration as time permits. Written comments also will be accepted at the meetings, and speakers are encouraged to provide written versions of their oral comments for the record.

DOE will prepare transcripts of the scoping meetings. Individuals may review the transcripts, other National Environmental Policy Act documents, and unclassified background information on waste management at the Savannah River Site at the following DOE public reading rooms during normal business hours:

U.S. DOE Reading Room, University of South Carolina, Aiken Campus, University Library—2nd Floor, University Parkway, Aiken, SC 29801; (803) 648–6851.

U.S. DOE, Freedom of Information Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585; (202) 586–6020.

Development of the Savannah River Site Waste Management EIS

DOE will consider comments and suggestions received during the scoping period in its preparation of the draft EIS. Results of the scoping process (including a summary of comments received, DOE's response to public comments, and an outline of the intended scope and environmental issues to be discussed in the EIS) will be presented in a publicly available Implementation Plan. On completing the draft EIS, DOE will announce its availability in the Federal Register and local media, and will again solicit public comments. DOE will consider comments on the draft EIS in its preparation of the final EIS.

The preliminary schedule for issuance of the Savannah River Site Waste Management EIS is shown below.

Availability of Implementation Plan: June 1994.

Availability of Draft EIS: October 1994.

Draft EIS Public Comment Period: November 1994 through December 1994.

Availability of Final EIS: April 1995.

Record of Decision: June 1995.

Issued in Washington, DC on April 1, 1994.

Tara O'Toole,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 94–8312 Filed 4–5–94; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Notice of Intent To Prepare a Supplemental Environmental Impact Statement, for the Defense Waste Processing Facility, at the Savannah River Site, Aiken, SC

AGENCY: Department of Energy.

ACTION: Notice of Intent to Prepare a Supplemental Environmental Impact Statement.

SUMMARY: The Department of Energy (DOE) announces its intent to prepare a Supplemental Environmental Impact Statement (EIS) and to conduct a public scoping process pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*), to examine the environmental impacts of the modifications made to the Defense Waste Processing Facility and associated high-level waste facilities at the Savannah River Site. The Supplemental EIS will supplement the Final Environmental Impact Statement (EIS) that DOE issued in 1982 (DOE/EIS–0082), and will evaluate whether and how to proceed with the Defense Waste Processing Facility in light of the changes in processes and facilities that have occurred since the 1982 EIS was issued. That EIS, its Record of Decision, and a subsequent Environmental Assessment, *Waste Form Selection for Savannah River Plant High-Level Waste* (DOE/EA–0179), supported the preferred alternative for the construction and operation of the Defense Waste Processing Facility. The specific process and facility modifications that have been introduced or are being implemented in the Defense Waste Processing Facility system since the Record of Decision are discussed in the Supplementary Information section of this Notice of Intent. Background information on the Savannah River Site and issues proposed to be considered in this Supplemental EIS are presented in the Supplementary Information below as well.

DOE also is announcing today its intent to prepare an Environmental Impact Statement for Waste Management at the Savannah River Site. (See the notice in this issue of the **Federal Register**.)

DOE invites individuals, organizations, and agencies to comment on issues to be considered, alternatives to be analyzed, and environmental impacts to be addressed in the Supplemental EIS. Written and oral comments will be given equal weight. Written comments should be directed to Stephen R. Wright at the address below. Oral comments may be presented by voice mail at the telephone number below. Interested parties are invited to present comments at three public scoping meetings to be held at the dates and places indicated below. Additional notice will be given in appropriate media. At the scoping meetings and at informal information sessions held one month earlier, DOE also will provide the public with an opportunity to engage in informal discussions with DOE representatives regarding the Defense Waste Processing Facility. The scoping process and procedures are described in the Supplementary Information below.

DATES: The public scoping period for the Supplemental EIS begins with the publication of this notice and continues until May 31, 1994. Written comments submitted by mail should be postmarked by that date to ensure consideration. DOE will consider comments mailed after that date to the extent practicable.

DOE will host a series of informal information sessions to provide the public with additional information on the Defense Waste Processing Facility and the proposed actions and alternatives discussed in this Notice of Intent. These sessions are intended to promote conversation with DOE representatives available to answer questions. These informal sessions are scheduled at the following times and locations:

April 12, 1994; 1–4 and 6–9 p.m.; North Augusta Community Center, 495 Brookside Avenue, North Augusta, South Carolina.

April 19, 1994; 1–4 and 6–9 p.m.; DeSoto Hilton Hotel, 15 Liberty Street, Savannah, Georgia.

April 21, 1994; 1–4 and 6–9 p.m.; Holiday Inn Coliseum at University of South Carolina, 630 Assembly Street, Columbia, South Carolina.

Information sessions on two related EISs—the Interim Waste Management of Nuclear Materials at the Savannah River Site EIS (Notice of Intent published March 17, 1994; 59 FR 12588), and the Savannah River Site Waste Management EIS—will be held at the same dates and locations.

DOE will then conduct public scoping meetings to assist in defining the appropriate scope of the Defense Waste Processing Facility Supplemental EIS and identifying significant environmental issues to be addressed. DOE representatives will be available at the meetings to discuss, in informal conversations, the Defense Waste Processing Facility. These meetings are scheduled at the following times and locations:

May 12, 1994; 1–4 and 6–9 p.m.; Coastal Georgia Center for Continuing Education, 305

Martin Luther King Boulevard (Battlefield Park), Savannah, Georgia.

May 17, 1994; 1–4 and 6–9 p.m.; North Augusta Community Center, 495 Brookside Avenue, North Augusta, South Carolina.

May 19, 1994; 1–4 and 6–9 p.m.; Holiday Inn Coliseum at the University of South Carolina, 630 Assembly Street, Columbia, South Carolina.

Scoping meetings on the Interim Management of Nuclear Materials at the Savannah River Site EIS and the Savannah River Site Waste Management EIS will be held at the same dates and locations. DOE will publish additional notices of the information sessions and scoping meetings in the local media in advance of the scheduled dates.

ADDRESSES: Comments on the scope of the Defense Waste Processing Facility Supplemental EIS, requests to speak at the public scoping meetings, and requests for copies of the EIS Implementation Plan or draft Supplemental EIS (when available) should be directed to: Mr. Stephen R. Wright, U.S. Department of Energy, Savannah River Operations Office, P.O. Box 5031, Aiken, SC 29804–5031; (803) 725–3957 or (800) 242–8269. Envelopes should be marked: "Savannah River Site Defense Waste Processing Facility Supplemental EIS."

FOR FURTHER INFORMATION CONTACT: Questions regarding the Supplemental EIS should be addressed to: Karen Poore, High Level Waste Division, U.S. Department of Energy, Savannah River Operations Office, P.O. Box A, Aiken, SC 29802; (803) 725–2827.

Questions regarding the DOE NEPA process should be addressed to: Carol M. Borgstrom, Director, Office of NEPA Oversight (EH–25), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20855; (202) 586–4600 or leave a message at (800) 472–2765.

SUPPLEMENTARY INFORMATION:

Background

The Savannah River Site occupies approximately 300 square miles adjacent to the Savannah River, primarily in Aiken and Barnwell Counties in South Carolina. The Site is approximately 25 miles southeast of Augusta, Georgia, and 20 miles south of Aiken, South Carolina. Since its establishment, the mission of the Savannah River Site has been to produce nuclear materials that support the defense, research, and medical programs of the United States.

At present, the Savannah River Site is in transition to other missions, which include increased emphasis on waste management, environmental restoration, and decontamination and decommissioning. With these mission changes in mind, DOE is examining its integrated waste management program and the suitability of existing and planned facilities. The Defense Waste Processing Facility is one of the vital components of the waste management program at Savannah River Site.

In 1982 DOE published an EIS and a Record of Decision documenting its decision to construct and operate the Defense Waste Processing Facility, which would immobilize liquid high-level radioactive waste in glass (vitrification). The vitrified waste would then be encapsulated in stainless steel canisters and stored onsite until a geologic repository is available for final disposal. DOE then modified the Defense Waste Processing Facility to improve facility efficiency and safety. A Supplement Analysis was prepared to determine whether modifications as of 1990, primarily the introduction of the In-Tank Precipitation process and manufacture and disposal of saltstone, required the preparation of a supplement to the Defense Waste Processing Facility EIS. On the basis of the Supplement Analysis, DOE concluded in 1991 that a Supplemental EIS was not needed.

Further modifications to the Defense Waste Processing Facility system have now been proposed and are in various stages of implementation, including process safety enhancement and a Late Wash Facility. In view of the accumulated changes and the near-term (estimated 1996) initial operation of the facility, DOE believes that a focused EIS-level review of the environmental impacts of the facility as now envisioned would be timely and appropriate.

The specific process and facility modifications that are being implemented in the Defense Waste Processing Facility system since the Record of Decision include:

In-Tank Precipitation—The original Defense Waste Processing Facility design used ion exchange to separate soluble radionuclides from salt solution. Research and development efforts indicated that an in-tank precipitation process would remove more than 99.9 percent of the radioactivity in salt solution. DOE has incorporated the In-Tank Precipitation process as a replacement for ion exchange as a Defense Waste Processing Facility modification.

Saltstone Manufacturing and Disposal—The process of salt solution disposal originally involved dewatering decontaminated salt solution, mixing it with concrete to form "saltcrete," and burying it in an engineered trench. The present design would blend decontaminated salt solution from the in-tank precipitation process with a waste concentrate stream from the F- and H-Area Effluent Treatment Facility, mix it with cement-flyash grout to form "saltstone," and dispose of it in reinforced concrete vaults.

Late-Wash Facility—This new facility would give precipitate slurry from the In-Tank Precipitation process a final wash to reduce the concentration of nitrite and radiolysis products. The result would be the ability to process precipitate in the Defense Waste Processing Facility vitrification process.

Nitric Acid Introduction—This process would add nitric rather than formic acid to the sludge in the Sludge Receipt and Adjustment Tank to bring nitrate concentrations to the desired levels.

Hydrogen Modifications—These modifications to the ventilation system would provide additional dilution air to components in the vitrification facility to mitigate the potential formation of hydrogen gas in flammable concentrations.

Ammonia Mitigation Modification—The installation of ammonia-reducing scrubbers at several locations in the process vessel ventilation system would mitigate a potential safety hazard from the accumulation of solid ammonium nitrate.

Benzene Treatment—The proposed treatment option for benzene generated at the Defense Waste Processing Facility is the Consolidated Incineration Facility. Environmental Protection Agency regulations name incineration as the current Best Demonstrated and Available Technology for benzene. The Supplemental EIS will evaluate alternatives to this treatment option for benzene from the Defense Waste Processing Facility.

Related EISs

The Savannah River Waste Management EIS, also announced in this issue of the **Federal Register**, will address treatment, storage, and disposal alternatives for a variety of wastes, whereas the Defense Waste Processing Facility Supplemental EIS will evaluate the cumulative impacts of specific modifications to the Defense Waste Processing Facility system. The Waste Management EIS will include waste facilities associated with Defense Waste Processing Facility, such as the treatment of waste water discharges in the F- and H-Area Effluent Treatment Facility, F- and H-Area Tank Farm, and the construction and operation of a high-level radioactive waste evaporator

in the H-Area Tank Farm. The Waste Management EIS also will evaluate alternatives to the Consolidated Incineration Facility technology for mixed waste (includes radioactive constituents in addition to hazardous constituents such as benzene). The documents will be prepared in close coordination.

DOE proposes to perform the Defense Waste Processing Facility review in a supplement to the 1982 EIS for the Defense Waste Processing Facility. Although the analysis could be included in the Savannah River Site Waste Management EIS, DOE believes public review and DOE's decision making process would be facilitated by preparing a separate document, because the Defense Waste Processing Facility is a very specialized operation with limited connections to the activities to be covered in the Waste Management EIS. Where there are interconnections, duplicate discussions within both documents may be required or the documents will cross reference one another.

Activities at the Defense Waste Processing Facility have proceeded on the basis of the 1982 EIS and Record of Decision. Construction of the Defense Waste Processing Facility is almost complete, testing of the system with chemicals has begun, and processing runs of simulated (non-radioactive) material will begin in the next few months. DOE committed in an agreement with the Environmental Protection Agency and the State of South Carolina to adhere to a schedule that provides for testing with radionuclides to begin in December, 1995. In order to support that schedule and to manage efficiently the high level radioactive waste contained in the tank farms, in-tank precipitation must begin in late 1994 or early 1995. A supplemental EIS focussing on the changes to the Defense Waste Processing Facility can be completed in time to meet this schedule, while the Waste Management EIS is expected to take several more months to prepare. Delay of start-up for the Defense Waste Processing Facility would cost approximately $21,000,000 per month.

The Supplemental EIS will examine all reasonably foreseeable impacts of operating the Defense Waste Processing Facility, including alternative methods of managing the waste streams from the facility. DOE believes that this will provide sufficient information to decide whether to proceed with operation of the facility in advance of completion of the Waste Management EIS.

Preliminary Description of Defense Waste Processing Facility Supplemental EIS Alternatives

(1) The Proposed Action Alternative

Since completion of the 1982 EIS and as a result of the Defense Waste Processing Facility modifications, new information about the Defense Waste Processing Facility process has become available to which the public has not yet had full access. The proposed action of this Supplemental EIS is to continue construction and begin operation of Defense Waste Processing Facility as currently designed. DOE would continue the Defense Waste Processing Facility process and facility modifications that are currently underway, would complete startup testing activities, and would operate the facility upon completion of startup testing. Analysis of the proposed action will allow DOE to determine whether the decisions reached as a result of the 1982 EIS remain valid in light of process and facility modifications over the last 12 years.

(2) The Alternative Actions

DOE will examine whether there are other reasonable system alternatives for the Defense Waste Processing Facility (in the context of its current state of construction) such as mitigation measures, pollution prevention efforts, and facility design or process modifications that could reduce the risk of operation. Conclusions reached in the 1982 EIS concerning alternatives to constructing and operating the Defense Waste Processing Facility will also be reviewed to assess whether technology developments have occurred that might influence those decisions.

(3) The "No Action" Alternative

DOE will analyze a no-action alternative under which current waste generation and waste management practices would continue. That is, high-level liquid radioactive waste would remain in the tanks. Although the no-action alternative may not be a reasonable alternative in all respects, its analysis will establish a baseline for comparison of the environmental impacts of the proposed action and its alternatives.

Identification of Environmental Issues

The Supplemental EIS will analyze the following environmental issues applicable to the operation of the Defense Waste Processing Facility, consistent with discussion above in the Background section. Modifications to this list might occur as a result of the scoping process.

1. Public and worker safety and health risk assessment: radiological and nonradiological impacts of the proposed action and alternatives, including projected effects on workers and the public from construction, normal operation, and potential accidents.
2. Impacts from releases to air, water, and soil.
3. Impacts to plants, animals, and habitat, including impacts to wetlands, and threatened or endangered species and their habitat.
4. The consumption of natural resources and energy including water, natural gas, and electricity.
5. Impacts of the transportation of construction and operation supplies, materials, equipment, products, and wastes to, from, and within the site.
6. Socioeconomic impacts to affected communities from construction and operational labor forces and expenditures.
7. Environmental Justice: Disproportionately high or adverse human health and environmental effects on minority and low-income populations.
8. Impacts to cultural resources such as historic, archaeological, scientific, or culturally important sites.
9. Accuracy of projected waste volumes.
10. Status of compliance with applicable Federal, state, and local statutes and regulations.
11. Cumulative impacts from the proposed action and other past, present, and reasonably foreseeable future actions at Savannah River Site.
12. Potential irreversible and irretrievable commitments of resources.
13. Pollution prevention, waste minimization, and potential mitigative measures.

Related Documentation

Completed and ongoing environmental reviews may affect the scope of the Defense Waste Processing Facility Supplemental EIS. DOE has published or is preparing several NEPA documents on waste management activities at Savannah River Site, including the following:

Waste Management Operations, ERDA-1537, 1977.

Long-Term Management of Defense High-Level Radioactive Wastes (Research and Development Program for Immobilization), DOE/EIS-0023, 1979.

Defense Waste Processing Facility, DOE/EIS-0082, 1982.

Waste Form Selection for Savannah River Plant High-Level Waste, DOE/EA-0179, 1982.

Waste Management Activities for Groundwater Protection, DOE/EIS-0120, 1987.

Consolidated Incineration Facility, DOE/EA-0400, 1992.

Interim Management of Nuclear Materials at the Savannah River Site, EIS being developed.

Waste Management at the Savannah River Site, EIS being developed.

Public Meetings

DOE will host a series of informal information sessions to provide the public with additional information on the Defense Waste Processing Facility and the proposed actions and alternatives discussed in this Notice of Intent. These sessions are intended to promote conversation with DOE representatives available to answer questions.

Oral and written comments will be received at public scoping meetings to be held at the locations and times indicated above. The meetings will be chaired by a presiding officer and attended by DOE officials. The public scoping meetings will not be conducted as evidentiary hearings; speakers will not be cross-examined, although the presiding officer and DOE representatives present may ask clarifying questions. The DOE panel members will respond to comments and questions from the public. In addition, DOE representatives will be available to discuss the Defense Waste Processing Facility in informal conversations.

To facilitate scheduling of speakers, requests to speak at these meetings may be made in advance by calling (800) 242–8269 between 8:30 a.m. and 5:00 p.m. Eastern Time, Monday through Friday, or by calling Mr. Stephen R. Wright at (803) 725–3957 at least two days before the designated meeting. To ensure that everyone has an adequate opportunity to speak, five minutes will be allotted each speaker. Depending on the number of persons who request an opportunity to speak, the presiding officer may allow more time for speakers representing multiple parties or organizations. Persons wishing to speak on behalf of organizations should identify the organization in their request. Persons who have not submitted an advance request to speak may register at the meetings and will be called on to speak in the order of registration as time permits. Written comments also will be accepted at the meetings, and speakers are encouraged to provide written versions of their oral comments for the record. DOE will prepare transcripts of the scoping meetings. Individuals may review the transcripts, other NEPA documents, and background information on Defense Waste Processing Facility at the following DOE public reading rooms during normal business hours.

U.S. Department of Energy Reading Room, University of South Carolina, Aiken Campus, University Library—2nd Floor, University Parkway, Aiken, SC 29801; (803) 648–6851.

U.S. Department of Energy, Freedom of Information Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585; (202) 586–6020.

Development of the Defense Waste Processing Facility Supplemental EIS

DOE will consider comments and suggestions received during the scoping period in its preparation of the draft Supplemental EIS. Results of the scoping process (including a summary of comments received, DOE's response to public comments, and an outline of the intended scope and environmental issues to be discussed in the Supplemental EIS) will be presented in a publicly available Implementation Plan. Upon completing the draft Supplemental EIS, DOE will announce its availability in the **Federal Register** and local media, and will again solicit public comments. DOE will consider comments on the draft Supplemental EIS in its preparation of the final Supplemental EIS.

Schedule. The preliminary schedule for preparation of this Supplemental EIS is as follows:

Availability of Implementation Plan: June 1994.

Availability of draft Defense Waste Processing Facility Supplemental EIS: July 1994.

Draft Supplemental EIS Public Comment Period: August–September 1994.

Availability of final Defense Waste Processing Facility Supplemental EIS: October 1994.

Record of Decision: November 1994.

Issued in Washington, DC, on April 1, 1994.

Tara O'Toole,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 94–8313 Filed 4–5–94; 8:45 am]

BILLING CODE 6450–01–P

federal register

Wednesday
April 6, 1994

Part XV

The President

Proclamation 6661—National Day of Reconciliation

Proclamation 6662—Transfer of Functions of the ACTION Agency to the Corporation for National and Community Service

Federal Register
Vol. 59, No. 66
Wednesday, April 6, 1994

Presidential Documents

Title 3—

The President

Proclamation 6661 of April 3, 1994

National Day of Reconciliation

By the President of the United States of America

A Proclamation

In this season of Easter and Passover, as we mark the twenty-sixth anniversary of the death of Dr. Martin Luther King, Jr., I call upon every American to reflect on the meaning of his teachings, to measure the progress we have made in achieving the dream he shared, and to rededicate ourselves to the end of violence and to the true spirit of community for which he lived and died. We must remain a Nation that is not too cynical to restore hope, not too frightened to face our problems, and not too intolerant to seek reconciliation.

Too many of our children hunger for lives with order and meaning. They are easy prey to anger and narrow-mindedness, to violence, and to impulses that debase their own lives and others. Too many, in their own struggle to survive, cannot imagine a world that is safe, secure and full of hope. We must do better than this.

Happily, most of our children still face the world with courage and hope. They want to grow up to be good parents and good citizens. They want to have good marriages, good friendships. They want to make the world a better place.

They remain our greatest hope. Let us resolve to teach them as Dr. King did, not so much by eloquent words as by meaningful actions.

Let us lead them by example, as we respect all people, draw strength from our diversity, and face our challenges with determination and goodwill so that Dr. Martin Luther King's dream of equality for our children will never be lost.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Monday, April 4, 1994, as a "National Day of Reconciliation." On this day, let us pause to reflect upon what our divisiveness, our intolerance and our insecurity teach our children. Let us remember and recognize that each of us bears the profound responsibility of bringing Dr. King's message of unity, compassion and equality to our schools and our playgrounds, our places of work and worship, our seats of governance, and into our homes and our hearts. And when we are judged, not by the rich or powerful, but by history and by our children, let it be said that we overcame our differences for the sake of our children. We shared a common dream for the future.

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

William J. Clinton

[FR Doc. 94–8425
Filed 4–5–94; 10:42 am]
Billing code 3195–01–P

Editorial note: For the President's remarks concerning the National Day of Reconciliation, see his radio address in No. 14 of the *Weekly Compilation of Presidential Documents.*

Presidential Documents

Proclamation 6662 of April 4, 1994

Transfer of Functions of the ACTION Agency to the Corporation for National and Community Service

By the President of the United States of America

A Proclamation

On September 21, 1993, I had the honor of signing into law the National and Community Service Trust Act of 1993, which created the Corporation for National and Community Service. The Corporation was designed to involve Americans of all ages and backgrounds in community projects to address many of our Nation's most important needs—from educating our children to ensuring public safety to protecting our environment. It was chartered to foster civic responsibility, strengthening the ties that bind us together as a people, while providing educational opportunity for those who make the commitment to serve.

In the few short months since the Corporation's establishment, enormous progress has been made toward the achievement of these invaluable goals. Final regulations have been published governing the Corporation's new grant programs, grant application packages have been developed, and a national recruitment effort has begun. As a result of intensive outreach efforts, most states have already established State Commissions on National and Community Service, and many local programs, national nonprofit organizations, institutions of higher education, and Federal agencies are eager to participate. Grant competitions have begun for a summer program that will focus on our Nation's public safety concerns, and all community service grant competitions will be completed by this summer. Finally, the Corporation has established the National Civilian Community Corps, which will take advantage of closed and down-sized military bases to launch environmental clean-up and preservation efforts.

The ACTION Agency, provided for by the Domestic Volunteer Service Act of 1973, has worked closely with the Corporation, sharing its many years of experience in engaging Americans in service to their communities. Because the Corporation's initiatives and those programs operated by the ACTION Agency involve similar goals, the National and Community Service Trust Act calls for the merger of ACTION with the Corporation no later than March 22, 1995. To build upon the tremendous accomplishments already achieved by the Corporation, and to facilitate the further development of community service programs across the country, I am pleased to order that the functions of the Director of the ACTION Agency be transferred to the Corporation for National and Community Service.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to sections 203(c)(2) and (d)(1)(B) of the National and Community Service Trust Act of 1993, proclaim that all functions of the Director of the ACTION Agency are hereby transferred to the Corporation for National and Community Service, effective April 4, 1994.

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

William J. Clinton

[FR Doc. 94-8427
Filed 4-5-94; 11:01 am]
Billing code 3195-01-P

federal register

Wednesday
April 6, 1994

Part XVI

Advisory Committee on Human Radiation Experiments

Open Meeting; Notice

ADVISORY COMMITTEE ON HUMAN RADIATION EXPERIMENTS

Open Meeting

ACTION: Notice of open meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770), notice is hereby given on the following meeting:

DATE AND TIME:

April 21, 1994, 9:30 a.m.–5 p.m.
April 22, 1994, 9 a.m.–3 p.m.

PLACE: The Ramada Plaza Hotel, 10 Thomas Circle, NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Anna Mastroianni, The Advisory Committee on Human Radiation Experiments, 1726 M Street, NW., suite 600, Washington, DC 20036, Telephone: (202) 254–9797.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: The Advisory Committee on Human Radiation Experiments was established by the President, Executive Order No. 12891, January 15, 1994, to provide advice and recommendations on the ethical and scientific standards applicable to human radiation experiments carried out or sponsored by the United States Government. The Advisory Committee on Human Radiation Experiments reports to the Human Radiation Interagency Working Group, the members of which include the Secretary of Energy, the Secretary of Defense, the Secretary of Health and Human Services, the Secretary of Veterans Affairs, the Attorney General, the Administrator of the National Aeronautics and Space Administration, the Director of Central Intelligence, and the Director of the Office of Management and Budget.

Tentative Agenda

Thursday, April 21, 1994

9:30 a.m. Call to Order and Opening Remarks
10 a.m. Briefing, Human Radiation Interagency Working Group
10:45 a.m. Break
11 a.m. Briefing, Human Radiation Interagency Working Group (continued)
12 p.m. Lunch
1:15 p.m. Briefing, Human Radiation Interagency Working Group (continued)
3 p.m. Break
3:15 p.m. Public Input/Comment
5 p.m. Meeting Adjourned

Friday, April 22, 1994

9 a.m. Opening Remarks
9:30 a.m. Discussion of Committee Goals/Objectives/Strategies
12 p.m. Lunch
1:15 p.m. Discussion of Committee Goals/Objectives/ Strategies (continued)
2:30 p.m. Future Meeting(s)
3 p.m. Meeting Adjourned

A final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. The Chairperson 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 Advisory Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should contact the Advisory Committee at the address or telephone number listed above. Requests must be received at least five business days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcript: Available for public review and copying at the offices of the Advisory Committee at the address listed above between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Dated: April 5, 1994.

Stephen R. Neuwirth,

Associate Counsel to the President.

[FR Doc. 94–8502 Filed 4–5–94; 3:19 pm]

BILLING CODE 3195–01–M

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H.R. 3345/P.L. 103–226

Federal Workforce Restructuring Act of 1994 (Mar. 30, 1994; 108 Stat. 111; 14 pages)

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