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Contents

Federal Register
Vol. 59, No. 112
Monday, June 13, 1994

Administrative Office of United States Courts
NOTICES
Court interpreters; Spanish, Cantonese, Mandarin, Korean, Arabic, Hebrew, Italian, Mien, Polish, and Russian examinations, 30333–30334

Agency for Toxic Substances and Disease Registry
NOTICES
Meetings:
Medical surveillance programs in communities exposed to hazardous substances; workshop to assist in development criteria for establishment, 30365

Agriculture Department
See Forest Service

Centers for Disease Control and Prevention
NOTICES
Meetings:
Lead in blood, measurement; innovative technology development, 30365
Neurobehavioral health risks in farmworkers; NIOSH meeting, 30365

Coast Guard
PROPOSED RULES
Ports and waterways safety:
Lake Michigan, IL; safety and security zone; correction, 30389
Naval Air Station, Jacksonville, FL; security zone; correction, 30389

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Czech Republic, 30346
Slovak Republic, 30346–30347

Consumer Product Safety Commission
NOTICES
Meetings; Sunshine Act, 30384

Customs Service
RULES
North American Free Trade Agreement (NAFTA); implementation:
Express consignments; formal and informal merchandise entries; administrative exemptions, 30289–30296
NOTICES
Meetings:
Automated export system development, 30383

Defense Department
NOTICES
Committees; establishment, renewal, termination, etc.:
Defense Intelligence Agency Performance Review Committee, 30347
Meetings:
Science Board task forces, 30347–30348

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Grant and cooperative agreement awards:
Southern Company Services, Inc., 30348
University of—
Illinois, 30348–30349

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Pennsylvania, 30302–30305
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States; and air quality planning purposes; designation of areas:
West Virginia, 30326–30331
Hazardous waste:
Underground storage tanks—
Lender liability, 30448–30466
NOTICES
Municipal solid waste landfill permit programs; adequacy determinations:
Ohio, 30353–30356

Federal Aviation Administration
RULES
Airworthiness directives:
Airbus Industrie, 30283–30285
Boeing, 30277–30278, 30285–30288
McDonnell Douglas, 30278–30282
SAAB, 30282–30283
Class D airspace, 30288
Class D and Class E airspace, 30288–30289
NOTICES
Airport surface movement sensors; RTCA DO-221 guidelines; availability, 30381–30382
Environmental statements; availability, etc.:
Greater Rockford Airport, IL, 30380–30381
Meetings:
Aircraft Noise Federal Interagency Committee, 30382
Aviation Rulemaking Advisory Committee, 30381
RTCA, Inc., 30380

Federal Communications Commission
RULES
Radio services, special:
Private land mobile services—
Special industrial radio service; CFR correction, 30304–30305
PROPOSED RULES
Television broadcasting:
Children's television programming, 30331–30332
NOTICES
Agency information collection activities under OMB review, 30356–30357

Federal Deposit Insurance Corporation
PROPOSED RULES
Corporate powers extension:
State nonmember savings banks; mutual-to-stock conversions, 30316–30326

NOTICES
State nonmember savings banks; mutual-to-stock conversions, 30357–30363

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Southern California Edison Co. et al., 30349–30350
Meetings; Sunshine Act, 30384–30386
Applications, hearings, determinations, etc.:
Algonquin LNG, Inc., 30351
Columbia Gas Transmission Corp., 30351
National Fuel Gas Supply Corp., 30351
Northern Natural Gas Co., 30352
Pacific Interstate Transmission Co., 30352
Southern Natural Gas Co., 30352–30353
Tennessee Gas Pipeline Co., 30353
Williston Basin Interstate Pipeline Co., 30353

Federal Highway Administration
RULES
Engineering and traffic operations:
Intermodal Surface Transportation Efficiency Act—
Public lands highway program; forest highway portion revision, 30296–30302
Truck size and weight—
Longer combination vehicles (LCV's) and vehicles with two or more cargo-carrying units; restrictions, 30392–30446
Right-of-way and environment:
Obsolete and redundant right-of-way requirements removed
Correction, 30302

Federal Reserve System
PROPOSED RULES
Home mortgage disclosure (Regulation C):
Annual reporting requirements; instructions and forms, 30310–30316
NOTICES
Applications, hearings, determinations, etc.:
Banco Bilbao Vizcaya, S.A., 30363–30364
BNCCORP, Inc., 30364
FirsTier Financial, Inc., et al., 30364–30365

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Surety companies acceptable on Federal bonds:
Omaha Property & Casualty Insurance Co., 30383

Forest Service
RULES
National recreation areas:
Hells Canyon National Recreation Area, OR and ID; private lands maintenance, 30492–30500
NOTICES
Animal damage management; policy availability and comment request, 30334–30337

Health and Human Services Department
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See Health Care Financing Administration
See National Institutes of Health
See Public Health Service
See Social Security Administration

Health Care Financing Administration
RULES
Medicare:
Physician attestation responsibilities; annual physician acknowledgement requirement changes
Correction, 30389

Health Resources and Services Administration
See Public Health Service

Housing and Urban Development Department
RULES
Public and Indian housing:
Vacancy reduction program, 30472–30481
NOTICES
Grants and cooperative agreements; availability, etc.:
Public and Indian housing—
Vacancy reduction program, 30482–30489
Vacancy reduction program; technical correction, 30367–30368

Interior Department
See Interior Department
See Land Management Bureau
See National Park Service
NOTICES
Administrative Dispute Resolution Act; implementation, 30368–30373

International Development Cooperation Agency
See Overseas Private Investment Corporation

International Trade Administration
NOTICES
Antidumping:
Calcium aluminate flux from—
France, 30337
Steel wire rod from—
Belgium, 30337–30339

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
Pickens Railway Corp., Inc., 30374
Railroad services abandonment:
CSX Transportation, Inc., 30374

Justice Department
See Prisons Bureau

Labor Department
See Occupational Safety and Health Administration
NOTICES
Meetings:
Glass Ceiling Commission, 30374

Land Management Bureau
NOTICES
Realty actions; sales, leases, etc.:
Nevada, 30373

Legal Services Corporation
NOTICES
Meetings; Sunshine Act, 30386–30388

National Institutes of Health
NOTICES
Meetings:
National Cancer Institute, 30366

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Bering Sea and Aleutian Islands groundfish, 30307
Marine mammals:
Commercial fishing operations—
Tuna or tuna product that is not dolphin safe; prohibition, 30305–30307
Pacific Halibut Commission, International:
Pacific halibut fisheries, 30307
PROPOSED RULES
Fishery conservation and management:
Gulf of Mexico reef fish; correction, 30389
NOTICES
Coastal Zone Management Act:
Public participation; policy guidance, 30339–30340
Grants and cooperative agreements; availability, etc.:
National Estuarine Research Reserve System; research funding, 30340–30344
Marine mammals:
Unusual mortality events; national contingency plan for response, 30344–30345
Meetings:
Monterey Bay National Marine Sanctuary Advisory Council, 30345
Permits:
Marine mammals, 30345–30346

National Park Service
NOTICES
Meetings:
Delaware and Lehigh Navigation Canal National Heritage Corridor Commission, 30374

Nuclear Regulatory Commission
PROPOSED RULES
Rulemaking petitions:
Ohio Citizens for Responsible Energy, Inc., 30308–30310
NOTICES
Meetings:
Nuclear Waste Advisory Committee, 30374–30375
Organization of Agreement States managers; workshop, 30375
Applications, hearings, determinations, etc.:
Bauer, Dr. James E., 30376

Occupational Safety and Health Administration
PROPOSED RULES
Safety and health standards, etc.:
Cargo handling and related activities conducted aboard vessels and marine terminals
Correction, 30389

Overseas Private Investment Corporation
NOTICES
Meetings; Sunshine Act, 30388

Prisons Bureau
RULES
Inmate control, custody, care, etc.:
Inmate restraints application and use of force, 30468–30470

Public Health Service
See Agency for Toxic Substances and Disease Registry
See Centers for Disease Control and Prevention
See National Institutes of Health
NOTICES
Organization, functions, and authority delegations:
National Institutes of Health, 30366–30367

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Municipal Securities Rulemaking Board, 30376–30379

Social Security Administration
RULES
Social security benefits:
Disability and blindness determinations—
Cardiovascular system listing; revised medical criteria; correction, 30389
NOTICES
Meetings:
1994 Social Security Advisory Council, 30367

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

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

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
NOTICES
Aviation proceedings:
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 30380

Treasury Department
See Customs Service
See Fiscal Service
NOTICES
Agency information collection activities under OMB review, 30382–30383

Separate Parts In This Issue

Part II
Department of Transportation, Federal Highway Administration, 30392–30446

Part III
Environmental Protection Agency, 30448–30466

Part IV
Department of Justice, Bureau of Prisons, 30468–30470

Part V
Department of Housing and Urban Development, 30472–30489

Part VI
Department of Agriculture, Forest Service, 30492–30500

Reader Aids

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

Electronic Bulletin Board

Free **Electronic Bulletin Board** service for Public Law numbers, **Federal Register** finding aids, and a list of documents on public inspection is available on 202–275–1538 or 275–0920.

CFR PARTS AFFECTED IN THIS ISSUE

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

CFR

Proposed Rules:
9.....30308

12 CFR

Proposed Rules:
203.....30310
333.....30316

14 CFR
39 (5 documents).....30277, 30278, 30282, 30283, 30285
71 (2 documents).....30288

19 CFR
10.....30289
101.....30289
111.....30289
123.....30289
128.....30289
141.....30289
143.....30289
145.....30289
148.....30289
159.....30289

20 CFR
404.....30389

23 CFR
657.....30392
658.....30392
660.....30296
710.....30302
712.....30302
713.....30302
720.....30302

24 CFR
968.....30472

28 CFR
552.....30468

29 CFR

Proposed Rules:
1910.....30389
1917.....30389
1918.....30389

33 CFR

Proposed Rules:
165 (2 documents).....30389

36 CFR
292.....30492

40 CFR
52.....30302

Proposed Rules:
52.....30326
81.....30326
280.....30448
281.....30448

42 CFR
412.....30389

47 CFR
90.....30304

Proposed Rules:
73.....30331

50 CRR
216.....30305
301.....30307
675.....30307

Proposed Rules:
641.....30389

Rules and Regulations

Federal Register
Vol. 59, No. 112
Monday, June 13, 1994

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

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–182–AD; Amendment 39–8932; AD 94–12–04]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that requires repetitive inspections to detect cracking in certain fuselage skin lap joints, and repair, if necessary. This amendment is prompted by the results of extensive pressure fatigue tests conducted by the manufacturer. The actions specified by this AD are intended to detect and repair fatigue cracking in certain lap joints, which will ensure safe operation of airplanes that have exceeded their economic design goal.

DATES: Effective July 13, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 13, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Steven C. Fox, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2777; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes was published in the **Federal Register** on December 17, 1993 (58 FR 65943). That action proposed to require repetitive high frequency eddy current (HFEC) inspections to detect cracking in certain fuselage skin lap joints, and repair, if necessary.

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

One commenter supports the proposed rule.

One commenter requests that Revision 1 of Boeing Service Bulletin 747–53–2367, dated January 27, 1994, be included as an additional source of service information. The FAA concurs. Since the issuance of the proposal, the FAA has reviewed and approved Revision 1 of Boeing Service Bulletin 747–53–2367, dated January 27, 1994, which clarifies the procedures for accomplishment of the inspections described in the Initial Release of the service bulletin, dated December 18, 1991 (which was referenced in the proposal as the sole source of appropriate service information). Therefore, paragraphs (a) and (c) of the final rule have been revised to reference Revision 1 of the service bulletin as an additional source of service information.

This same commenter requests that the proposed rule be revised to include a reporting requirement to keep Boeing and the FAA advised of findings of cracks. The FAA does not concur. The FAA has determined that the unsafe condition addressed by this AD (which is to detect and repair fatigue cracking in certain lap joints) will be adequately addressed by paragraph (a) of the final rule, which requires the inspection of certain lap joints, and paragraph (c) of the final rule, which requires the repair of all cracks found during the inspection. Therefore, since the final rule requires repetitive inspections to detect cracks and repair of all findings of cracks, the FAA finds that a reporting requirement would unduly burden operators.

This commenter further requests that the proposed rule be revised to compensate for operators that fly with cabin pressure differentials of 2.0 psi or less when calculating the number of flight cycles to determine the compliance time. The FAA does not concur. The FAA finds that operating at cabin pressure differentials of 2.0 psi or less is applicable to only one operator. Since there are numerous factors that affect the calculation of flight cycles, such as total number of low pressure cycles, amount of thrust, number of gross weight flight cycles, etc., the FAA has determined that these mitigating factors could be best evaluated through requests for alternative methods of compliance, as provided for in paragraph (d) of the final rule.

One commenter requests that the proposed compliance time of 22,000 flight cycles be extended to 25,000 flight cycles to inspect the lap joints in areas outside of Stringer 14 since data indicate that cracking in these areas did not occur until after 25,000 flight cycles. The FAA does not concur. In developing an appropriate compliance time for this AD, the FAA not only evaluated the fatigue test data that was provided by the manufacturer, but took into consideration the size of the test sample: the test results were based upon just one airplane that had no loads and was not pressurized. Based on this data, the FAA determined that 22,000 flight cycles represented a conservative threshold for initiating inspections so as to ensure that any cracking initiation would be found in a timely manner.

Another commenter requests that the proposed compliance time of 3,000 flight cycles to perform the repetitive inspections be extended to 4,300 flight cycles to coincide with operators' regularly scheduled maintenance periods. The FAA does not concur. The FAA has determined that the compliance time, as proposed, represents the maximum interval of time allowable for the affected airplanes to continue to operate without compromising safety. In developing this inspection interval, the FAA evaluated the reliability of the inspection method and the results of fatigue test data. The FAA found that extending this interval by more than one-third would allow cracks to propagate undetected, which

would adversely affect the structural integrity of the airplane.

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

There are approximately 723 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 183 airplanes of U.S. registry will be affected by this AD, that it will take approximately 14 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $140,910, or $770 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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

For the reasons discussed above, I certify that this action: (1) Is not a "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) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

94–12–04 Boeing: Amendment 39–8932. Docket 93–NM–182–AD.

Applicability: Model 747–100, -200, -300, 747SP, and 747SR series airplanes, as listed in Boeing Service Bulletin 747–53–2367, dated December 18, 1991, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure in the fuselage due to fatigue cracking in certain lap joints, accomplish the following:

(a) Prior to the accumulation of 22,000 full pressure flight cycles (or, if the external skin panel of an affected lap joint has been replaced: Prior to the accumulation of 22,000 full pressure flight cycles since skin replacement), or within 1,000 landings after the effective date of this AD, whichever occurs later, perform an external surface high frequency eddy current (HFEC) inspection of the skin around the upper row of fasteners in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–53–2367, dated December 18, 1991; or Revision 1, dated January 27, 1994.

(b) If no crack is found, repeat the inspection at intervals not to exceed 3,000 full pressure flight cycles.

(c) If any crack is found, accomplish paragraphs (c)(1) and (c)(2) of this AD.

(1) Prior to further flight, perform an open hole HFEC inspection to detect cracking in the upper row fastener holes between the adjacent frames in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–53–2367, dated December 18, 1991; or Revision 1, dated January 27, 1994. Prior to further flight, repair any crack found in accordance with the 747 Structural Repair Manual, Chapter 53–30–03.

(2) Repeat the inspection required by paragraph (a) of this AD at intervals not to exceed 3,000 full pressure flight cycles.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspections shall be done in accordance with Boeing Service Bulletin 747–53–2367, dated December 18, 1991; or Boeing Service Bulletin 747–53–2367, Revision 1, dated January 27, 1994. 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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on July 13, 1994.

Issued in Renton, Washington, on May 31, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–13626 Filed 6–10–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 93–NM–90–AD; Amendment 39–8933; AD 94–12–05]

Airworthiness Directives; McDonnell Douglas Model DC–10 Series Airplanes and Model KC–10A (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all McDonnell Douglas Model DC–10 series airplanes and Model KC–10A (military) airplanes, that requires inspections to detect cracks in wing stringer number 41; installation of a repair, if necessary; and modification of that stringer. This amendment is prompted by reports of fatigue cracks in outer wing stringer number 41. The actions specified by this AD are intended to prevent reduced structural integrity of the wing.

DATES: Effective July 13, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 13, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California

90801–1771, Attention: Business Unit Manager, Technical Administrative Support, Dept. L51, M.C. 2–98. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Maureen Moreland, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5238; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to all McDonnell Douglas Model DC–10 series airplanes and Model KC–10A (military) airplanes was published in the **Federal Register** on September 24, 1993 (58 FR 49946). That action proposed to require inspections to detect cracks in wing stringer number 41; installation of a repair, if necessary; and modification of that stringer.

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

One commenter supports the proposed rule.

The Air Transport Association (ATA) of America, on behalf of one of its members, requests that the FAA include a flow diagram in the proposal since its provisions are complex. The FAA does not concur. The FAA considers that the requirements of this AD are presented in a reasonably clear manner in the text of the final rule. In addition, McDonnell Douglas DC–10 Service Bulletin 57–114, Revision 1, dated July 26, 1993, which is referenced in the AD as the appropriate source of service information, provides corresponding guidance for accomplishment of the actions required by this AD.

ATA also suggests that, prior to issuance of the final rule, the FAA should verify that the service bulletin will not create problems for operators, and that accomplishment of the service bulletin should be verified by an operator before the AD is finalized. One ATA member experienced difficulty accomplishing the permanent repair specified in the service bulletin because parts listed did not fit, drawings were erroneous, and fastener grip lengths were inadequate for the repair. The FAA concurs with the commenter's request. The FAA has conveyed these concerns to the manufacturer, and has verified that the initial problems expressed by the commenter have been corrected in Revision 1 of the service bulletin. Since Revision 1 of the service bulletin was cited in the proposal as the appropriate source of service information, the FAA finds that no change to the AD is necessary.

One commenter requests that the FAA allow visual inspection methods to be used in lieu of the proposed eddy current inspection methods. The commenter indicates that fastener accessibility enables accomplishment of a visual inspection and provides an equivalent level of crack detection. The FAA does not concur. Based on the results of crack growth analysis, the FAA has determined that a visual inspection of the stringer cannot provide an acceptable level of crack detection. In addition, the FAA based the repetitive inspection intervals on the crack growth analysis results based upon the minimum crack length detectable by eddy current inspection.

The commenter also requests that credit be given for general visual inspections accomplished previously. A second commenter supports the proposed rule, but requests that the AD be revised to state that inspections accomplished within 1,500 landings prior to the effective date of the AD are acceptable in lieu of the initial inspection. The commenters provide no justification for these requests. Since the FAA has determined that a visual inspection of the stringer does not provide an acceptable level of crack detection, as discussed previously, the FAA considers that the requirement for eddy current inspections is appropriate and credit cannot be extended for general visual inspections accomplished previously. However, the phrase "unless accomplished previously," which appears in the "Compliance" paragraph of the final rule, provides credit for operators that have accomplished the required inspection prior to the effective date of this AD in accordance with McDonnell Douglas DC–10 Service Bulletin 57–114, Revision 1, dated July 26, 1993.

One commenter requests that the first inspection accomplished to comply with this AD be required during the airplane's next heavy maintenance visit if a general visual inspection has been accomplished prior to the effective date of the AD. The FAA does not concur. A general visual inspection of the stringer does not provide an acceptable level of crack detection, as discussed previously. In developing an appropriate initial compliance time for this action, the FAA considered the safety implications and normal maintenance schedules for timely accomplishment of the inspection. In consideration of these items, the FAA has determined that 6,500 total landings or 1,500 landings after the effective date of the AD, whichever occurs later, represents the maximum interval of time allowable wherein the inspection can reasonably be accomplished and an acceptable level of safety can be maintained.

The same commenter states that the service bulletin cited in the AD specifies that one reason for accomplishing the actions described in the service bulletin is to prevent unscheduled maintenance downtime for replacement of a cracked stringer; therefore, the commenter questions the need for this AD. The commenter adds that, to date, stringer 41 cracking has not impacted its maintenance due to the viable maintenance program currently in place. The commenter states that imposing an AD at this time would only complicate its maintenance program and would contribute little toward ensuring that the airplane wing structure is operating in good condition.

The FAA does not concur. As explained in the preamble of the proposal, the FAA has received reports of fatigue cracks in outer wing stringer number 41 and, in one case, complete failure of the stringer. Such fatigue cracking presents an unsafe condition in airplanes, since it could eventually lead to failure of the stringer and reduced structural integrity of the wing. The FAA has determined that this unsafe condition could exist or eventually develop on Model DC–10 series airplanes and Model KC–10A (military) airplanes, and that repetitive inspections of the affected area must be mandated to ensure that safety is not degraded. The appropriate vehicle for mandating such action to correct an unsafe condition is the airworthiness directive.

One commenter requests that the proposed compliance time for accomplishment of the initial inspection specified in paragraph (b)(1) of the proposal be changed from "[p]rior to the accumulation of 6,500 total landings, or within 1,500 landings after the effective date of the AD, whichever occurs later," to "[p]rior to the accumulation of 6,500 total landings, or within one year after the effective date of this AD, whichever occurs later." The commenter operates

Model DC–10–40 series airplanes of non-U.S. registry for training flights for cockpit crews. The commenter explains that, during one training flight period of a few weeks, the number of flight cycles accumulated may be more than 1,500 landings. The commenter adds that the proposed inspections and modifications require entry into the fuel tanks; therefore, the commenter plans to accomplish the initial inspections and the modifications during regularly scheduled maintenance.

The FAA does not concur with the commenter's request. Compliance times for AD's are normally based on a parameter related to failure of a particular component. In this case, fatigue cracking in outer wing stringer number 41 and subsequent failure of the stringer are undoubtedly related to the number of landings. The FAA has determined, in this case, that there is no apparent direct relationship between failure of the stringer and calendar time. In light of this, and in consideration of the average utilization rate of the affected U.S. operators and the practical aspects of orderly inspections of the U.S. fleet during regular maintenance periods, the FAA established the compliance times specified in this AD. The FAA maintains that those compliance times are appropriate. However, the FAA would consider a request for adjustment of the compliance time, in accordance with the provisions of paragraph (c) of this AD, provided that, for example, continued operational safety of the airplane could be assured until the required action is accomplished.

One commenter requests that, in order for the AD requirements to align with the actions described in the service bulletin, accomplishment of the preventative modification should be considered optional, and that operators should be permitted to accomplish repetitive inspections at intervals of 4,000 landings in lieu of the preventative modification. The FAA does not concur. The degree of assurance necessary as to the adequacy of inspections needed to maintain the safety of the aging transport airplane fleet, coupled with a better understanding of the human factors associated with numerous repetitive inspections, has caused the FAA to place less emphasis on repetitive inspections and more emphasis on design improvements and material replacement. Thus, in lieu of its previous position of continual inspection, and repair or modification on condition if cracks are found, the FAA has decided to require, whenever practicable, airplane modifications necessary to remove the source of the particular aging phenomena.

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

There are approximately 426 Model DC–10 series airplanes and Model KC–10A (military) airplanes of the affected design in the worldwide fleet. The FAA estimates that 121 Model DC–10–10 and –15 series airplanes of U.S. registry will be affected by this AD, that it will take approximately 13.6 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts for Model DC–10–10 and –15 series airplanes will cost approximately $586 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators of Model DC–10–10 and –15 series airplanes is estimated to be $161,414, or $1,334 per airplane.

The FAA estimates that 148 Model DC–10–30 and –40 series airplanes and Model KC–10A (military) airplanes of U.S. registry will be affected by this AD, that it will take approximately 13.6 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts for Model DC–10–30 and –40 series airplanes and Model KC–10A (military) airplanes will cost approximately $1,420 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators of Model DC–10–30 and –40 series airplanes and Model KC–10A (military) airplanes is estimated to be $320,864, or $2,168 per airplane.

Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $482,278. The total cost impact figure is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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

For the reasons discussed above, I certify that this action: (1) Is not a "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) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

94–12–05 McDonnell Douglas: Amendment 39–8933. Docket 93–NM–90–AD.

Applicability: All Model DC–10–10, –10F, –15, –30, –30F, –40, and –40F series airplanes and Model KC–10A (military) airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the wing, accomplish the following:

(a) For Model DC–10–10, –10F, and –15 series airplanes: Accomplish paragraphs (a)(1), (a)(2), (a)(3), and (a)(4) of this AD in accordance with McDonnell Douglas DC–10 Service Bulletin 57–114, Revision 1, dated July 26, 1993.

(1) Prior to the accumulation of 6,500 total landings, or within 1,500 landings after the effective date of this AD, whichever occurs later: Perform an eddy current surface inspection or an eddy current bolt hole inspection to detect cracks on stringer number 41 on the left- and right-hand wings, in accordance with the service bulletin.

(2) If no crack is found, repeat the inspection thereafter at intervals not to exceed 4,000 landings.

(3) If any crack is found, prior to further flight, accomplish paragraph (a)(3)(i), (a)(3)(ii), or (a)(3)(iii) of this AD, as applicable.

(i) If any crack is found that extends upward from the fastener hole, and if that crack is outside the limits specified in Condition 2 of the service bulletin, accomplish a temporary repair in accordance with Condition 2, Phase I of the service bulletin, or a permanent repair in accordance with Condition 2, Phase II of the service bulletin. If the temporary repair is accomplished, prior to the accumulation of 5,000 landings after accomplishing that temporary repair, accomplish the permanent repair in accordance with Condition 2, Phase II of the service bulletin. After accomplishment of the permanent repair, no further action is required by this AD.

(ii) If any crack is found that extends downward from the fastener hole, and if that crack is outside the limits specified in Condition 2 of the service bulletin, accomplish the permanent repair in accordance with Condition 2, Phase II of the service bulletin. After such repair, no further action is required by this AD.

(iii) If any crack is found in a fastener hole, and if that crack is within the limits specified in Condition 2 of the service bulletin, accomplish the preventative modification in accordance with Condition 1, Option II of the service bulletin. If the crack was detected using techniques other than the eddy current bolt hole inspection described in the service bulletin, prior to accomplishing the preventative modification, perform an eddy current bolt hole inspection to detect cracks, in accordance with the service bulletin, and accomplish paragraph (a)(3)(iii)(A), (a)(3)(iii)(B), or (a)(3)(iii)(C) of this AD, as applicable.

(A) If any crack is found that extends upward from the fastener hole, and if that crack is outside the limits specified in Condition 2 of the service bulletin, accomplish the requirements of paragraph (a)(3)(i) of this AD.

(B) If any crack is found that extends downward from the fastener hole, and if that crack is outside the limits specified in Condition 2 of the service bulletin, accomplish the requirements of paragraph (a)(3)(ii) of this AD.

(C) If any crack is found that is within the limits specified in Condition 2 of the service bulletin, accomplish the preventative modification in accordance with Condition 1, Option II of the service bulletin. After accomplishment of the preventative modification, no further action is required by this AD.

(4) Except for airplanes on which the preventative modification (Condition 1, Option II) or the permanent repair (Condition 2, Phase II) has been accomplished, prior to the accumulation of 6,500 total landings, or within 5 years after the effective date of this AD, whichever occurs later: Perform an eddy current bolt hole inspection to detect cracks in the fastener holes in accordance with the service bulletin.

(i) If no crack is found, or if any crack is found that is within the limits specified in Condition 2 of the service bulletin, prior to further flight, accomplish the preventative modification in accordance with Condition 1, Option II of the service bulletin. After accomplishment of the preventative modification, no further action is required by this AD.

(ii) If any crack is found that exceeds the limits specified in Condition 2 of the service bulletin, prior to further flight, accomplish a permanent repair in accordance with Condition 2, Phase II of the service bulletin. After accomplishment of the permanent repair, no further action is required by this AD.

(b) For Model DC-10-30, -30F, -40, and -40F series airplanes and Model KC-10A (military) airplanes: Accomplish paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) of this AD in accordance with McDonnell Douglas DC-10 Service Bulletin 57-114, Revision 1, dated July 26, 1993.

(1) Prior to the accumulation of 6,500 total landings, or within 1,500 landings after the effective date of this AD, whichever occurs later: Perform an eddy current surface inspection or an eddy current bolt hole inspection to detect cracks on stringer number 41 on the left- and right-hand wings in accordance with the service bulletin.

(2) If no crack is found, repeat the inspection thereafter at intervals not to exceed 3,200 landings.

(3) If any crack is found, prior to further flight, accomplish paragraph (b)(3)(i), (b)(3)(ii), or (b)(3)(iii) of this AD, as applicable.

(i) If any crack is found that extends upward from the fastener hole, and if that crack is outside the limits specified in Condition 2 of the service bulletin, accomplish a temporary repair in accordance with Condition 2, Phase I of the service bulletin, or a permanent repair in accordance with Condition 2, Phase II of the service bulletin. If the temporary repair is accomplished, prior to the accumulation of 5,000 landings after accomplishing that temporary repair, accomplish the permanent repair in accordance with Condition 2, Phase II of the service bulletin. After accomplishment of the permanent repair, no further action is required by this AD.

(ii) If any crack is found that extends downward from the fastener hole, and if that crack is outside the limits specified in Condition 2 of the service bulletin, accomplish the permanent repair in accordance with Condition 2, Phase II of the service bulletin. After such repair, no further action is required by this AD.

(iii) If any crack is found in a fastener hole, and if that crack is within the limits specified in Condition 2 of the service bulletin, accomplish the preventative modification in accordance with Condition 1, Option II of the service bulletin. If the crack was detected using techniques other than the eddy current bolt hole inspection described in the service bulletin, prior to accomplishing the preventative modification, perform an eddy current bolt hole inspection to detect cracks, in accordance with the service bulletin, and accomplish paragraph (b)(3)(iii)(A), (b)(3)(iii)(B), or (b)(3)(iii)(C) of this AD, as applicable.

(A) If any crack is found that extends upward from the fastener hole, and if that crack is outside the limits specified in Condition 2 of the service bulletin, accomplish the requirements of paragraph (b)(3)(i) of this AD.

(B) If any crack is found that extends downward from the fastener hole, and if that crack is outside the limits specified in Condition 2 of the service bulletin, accomplish the requirements of paragraph (b)(3)(ii) of this AD.

(C) If any crack is found that is within the limits specified in Condition 2 of the service bulletin, accomplish the preventative modification in accordance with Condition 1, Option II of the service bulletin. After accomplishment of the preventative modification, no further action is required by this AD.

(4) Except for airplanes on which the preventative modification (Condition 1, Option II) or the permanent repair (Condition 2, Phase II) has been accomplished, prior to the accumulation of 6,500 total landings, or within 5 years after the effective date of this AD, whichever occurs later: Perform an eddy current bolt hole inspection to detect cracks in the fastener holes in accordance with the service bulletin.

(i) If no crack is found, or if any crack is found that is within the limits specified in Condition 2 of the service bulletin, prior to further flight, accomplish the preventative modification in accordance with Condition 1, Option II of the service bulletin. After accomplishment of the preventative modification, no further action is required by this AD.

(ii) If any crack is found that exceeds the limits specified in Condition 2 of the service bulletin, prior to further flight, accomplish a permanent repair in accordance with Condition 2, Phase II of the service bulletin. After accomplishment of the permanent repair, no further action is required by this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with Federal Aviation Regulations (FAR) § 21.197 and § 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspections, repairs, and modification shall be done in accordance with McDonnell Douglas DC-10 Service Bulletin 57-114, Revision 1, dated July 26, 1993. 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 McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90801-1771, Attention: Business Unit Manager,

Technical Administrative Support, Dept. L51, M.C. 2-98. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on July 13, 1994.

Issued in Renton, Washington, on May 31, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-13627 Filed 6-10-94; 8:45 am]

BILLING CODE 4910-13-U

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14 CFR Part 39

[Docket No. 93-NM-233-AD; Amendment 39-8929; AD 94-12-02]

Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes, that requires an inspection of the elevator and aileron coves, and further inspections and repair, if necessary. This amendment is prompted by a report of delamination between the composite structure and the aluminum foil on the elevator cove on a Model SAAB SF340B series airplane. The actions specified by this AD are intended to prevent jamming of the aileron or elevator.

DATES: Effective July 13, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 13, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S-581.88, Linköping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055-4056; telephone (206) 227-2145; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes was published in the **Federal Register** on February 4, 1994 (59 FR 5361). That action proposed to require an inspection of the elevator and aileron coves to verify the type of antistatic protection applied to the coves. For coves that are found without conductive paint or expanded aluminum foil, that action proposed to require a detailed visual inspection and delamination tap test to detect aluminum foil delamination on the coves; and either a temporary repair and repetitive detailed visual inspections and delamination tap tests of the coves, or a permanent repair of the coves. Accomplishment of the permanent repair terminates the repetitive detailed visual inspections and delamination tap tests.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 152 airplanes of U.S. registry will be affected by this AD, that it will take approximately 20 work hours per airplane to accomplish the inspection, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $167,200, or $1,000 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

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

For the reasons discussed above, I certify that this action: (1) Is not a "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) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

94-12-02 SAAB Aircraft AB: Amendment 39-8929. Docket 93-NM-233-AD.

Applicability: Model SAAB SF340A series airplanes, serial numbers -004 through -159, inclusive; and Model SAAB 340B series airplanes, serial numbers -160 through -260, inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent jamming of the aileron or elevator, accomplish the following:

(a) Within 500 hours time-in-service or 90 days after the effective date of this AD, whichever occurs first, perform an inspection of the elevator and aileron coves to verify the type of antistatic protection applied to the coves, in accordance with Saab Service Bulletin 340-51-012, dated November 10, 1993.

(b) If a cove has conductive paint or expanded aluminum foil (stretched metal—aluminum net), no further action is required by this AD for that cove.

(c) If a cove does not have conductive paint or expanded aluminum foil (stretched metal—aluminum net), prior to further flight, perform a detailed visual inspection and delamination tap test to detect aluminum foil delamination on the elevator or aileron cove.

in accordance with the Saab Service Bulletin 340–51–012, dated November 10, 1993.

(1) If no delamination is found, repeat the detailed visual inspection and delamination tap test thereafter at intervals not to exceed 800 hours time-in-service in accordance with the service bulletin.

(2) If any delamination is found, prior to further flight, accomplish either paragraph (c)(2)(i) or (c)(2(ii) of this AD.

(i) Perform a temporary repair of the cove in accordance with the service bulletin. Thereafter, repeat the detailed visual inspection and delamination tap test required by paragraph (c) of this AD at intervals not to exceed 800 hours time-in-service. Or

(ii) Perform a permanent repair of the cove in accordance with the service bulletin. Accomplishment of this permanent repair constitutes terminating action for the repetitive inspection required by this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspections and repairs shall be done in accordance with Saab Service Bulletin 340–51–012, dated November 10, 1993. 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 Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on July 13, 1994.

Issued in Renton, Washington, on May 26, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–13373 Filed 6–10–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 94–NM–63–AD; Amendment 39–8931; AD 94–10–51]

Airworthiness Directives; Airbus Industrie Model A300, A300–600, and A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) T94–10–51 that was sent previously to all known U.S. owners and operators of certain Airbus Model A300, A300–600, and A310 series airplanes by individual telegrams. This AD requires a detailed visual inspection to detect cracks, delamination, or discoloration of the bus bar of certain aft fixed side cockpit windows; and deactivation of the window heating system and repetitive detailed visual inspections, or replacement of the window with a modified window, if necessary. This amendment is prompted by a report of fracture of a fixed cockpit window that led to electrical arcing in the bus bar area of the window heating system on a Model A300 series airplane. The actions specified by this AD are intended to prevent decompression of the fuselage during flight due to failure of a window.

DATES: Effective June 28, 1994, to all persons except those persons to whom it was made immediately effective by telegraphic AD T94–10–51, issued May 3, 1994, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 28, 1994.

Comments for inclusion in the Rules Docket must be received on or before August 12, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 94–NM–63–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The applicable service information may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sam Grober, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1187; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: On May 3, 1994, the FAA issued telegraphic AD T94–10–51, which is applicable to certain Airbus Industrie Model A300, A300–600, and A310 series airplanes. That action was prompted by a report of fracture of a fixed cockpit window on the right-hand aft side of the cockpit of a Model A300 series airplane. Embrittlement of the fixed cockpit window and simultaneous rupture of the two main plies of the window have been attributed to electrical arcing in the bus bar area of the window heating system. This condition, if not corrected, could result in decompression of the fuselage during flight.

Since the subject windows installed on Model A300–600 and A310 series airplanes are similar in design to those on Model A300 series airplanes, the FAA has determined that these airplanes are also subject to the addressed unsafe condition.

Airbus Industrie has issued All Operators Telex (AOT) 56–01, Revision 1, dated April 29, 1994, that describes procedures for a detailed visual inspection to detect discoloration (black or brown burnt spots) of the bus bar of certain aft fixed side windows; and either deactivation of the window heating system coupled with repetitive detailed visual inspections, or replacement of the window with a modified window, if necessary. The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, classified this AOT as mandatory and issued French telegraphic airworthiness directive N 94–104–160(B), dated April 26, 1994, in order to assure the continued airworthiness of these airplanes in France.

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the FAA issued telegraphic AD T94–10–51 to require a detailed visual inspection to detect cracks, delamination, or discoloration (black or brown burnt spots) of the bus bar of certain aft fixed side windows; and either deactivation of the window heating system and repetitive detailed visual inspections, or replacement of the window with a modified window, if necessary. The actions are required to be accomplished in accordance with the AOT described previously.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on May 3, 1994, to all known U.S. owners and operators of certain Airbus Model A300, A300–600, and A310 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of the Federal Aviation Regulations (14 CFR 39.13) to make it effective as to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–NM–63–AD." The postcard will be date stamped and returned to the commenter.

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

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

94–10–51 Airbus Industrie: Amendment 39–8931. Docket 94–NM–63–AD.

Applicability: Model A300, A300–600, and A310 series airplanes; as listed in Airbus Industrie All Operators Telex (AOT) 56–01, Revision 1, dated April 29, 1994; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent decompression of the fuselage during flight, accomplish the following:

(a) Within 15 days after the effective date of this AD, perform a detailed visual inspection to detect cracks, delamination, or discoloration (black or brown burnt spots) of the bus bar of the aft fixed windows, in accordance with Airbus Industrie AOT 56–01, Revision 1, dated April 29, 1994.

(b) If any crack or delamination is found during the inspection required by paragraph (a) of this AD, prior to further flight, replace the affected window with a modified window, in accordance with Airbus Industrie AOT 56–01, Revision 1, dated April 29, 1994.

(c) If no cracks, delamination, or discoloration is found during the inspection required by paragraph (a) of this AD, accomplish either paragraph (c)(1) or (c)(2) of this AD in accordance with Airbus Industrie AOT 56–01, Revision 1, dated April 29, 1994.

(1) Within 7 days after accomplishing the inspection required by paragraph (a) of this AD, and thereafter at intervals not to exceed 7 days, repeat the inspection required by paragraph (a) of this AD; or

(2) Prior to further flight, deactivate the side window heating system in accordance with the AOT.

(d) If any discoloration is found during the inspections required by paragraph (a) or (c) of this AD, and that discoloration measures less than 10mm in diameter, accomplish paragraphs (d)(1), (d)(2), and (d)(3) of this AD in accordance with Airbus Industrie AOT 56–01, Revision 1, dated April 29, 1994.

(1) Prior to further flight, deactivate the side window heating system on the affected side, in accordance with the AOT.

(2) 7 days after deactivating the window heating system, inspect the affected window to detect cracks or delamination formation around the discolored area, in accordance with the AOT.

(3) If any crack or delamination is found during the repeat inspection required by paragraph (d)(2) of this AD, prior to further flight, replace the window with a modified window, in accordance with the AOT.

(e) If any discoloration is found during the inspection required by paragraph (a) or (c) of this AD, and that discoloration measures 10mm or more in diameter, accomplish paragraphs (e)(1), (e)(2), and (e)(3) of this AD, in accordance with Airbus Industrie AOT 56–01, Revision 1, dated April 29, 1994.

(1) Prior to further flight, deactivate the side window heating system on the affected side, in accordance with the AOT.

(2) Thereafter, at daily intervals, inspect the affected window to detect cracks or delamination formation around the

discoloration area, in accordance with the AOT.

(3) If any crack or delamination is found during the inspections required by paragraph (e)(2) of this AD, prior to further flight, replace the window with a modified window in accordance with the AOT.

(f) Replacement of the aft fixed side window in accordance with Airbus Industrie AOT 56–01, Revision 1, dated April 29, 1994, constitutes terminating action for the requirements of this AD.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(h) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(i) The inspections, deactivation, and replacement, shall be done in accordance with Airbus Industrie All Operators Telex (AOT) 56–01, Revision 1, dated April 29, 1994. 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 Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(j) This amendment becomes effective on June 28, 1994, to all persons except those persons to whom it was made immediately effective by telegraphic AD T94–10–51, issued May 3, 1994, which contained the requirements of this amendment.

Issued in Renton, Washington, on May 31, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–13625 Filed 6–10–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 93–NM–139–AD; Amendment 39–8937; AD 94–12–09]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that requires inspections to detect fatigue-related skin cracks and corrosion of the skin lap joints in the fuselage upper lobe, and repair, if necessary. This amendment also requires modification of certain lap joints and inspections of modified lap joints. This amendment is prompted by a structural review of Model 747 series airplanes. The actions specified by this AD are intended to prevent rapid decompression of the airplane and the inability to carry fail-safe loads, due to the problems associated with fatigue cracking and corrosion.

DATES: Effective July 13, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 13, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Steven Fox, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2777; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes was published in the **Federal Register** on February 24, 1994 (59 FR 8875). That action proposed to require inspections to detect fatigue-related skin cracks and corrosion of the skin lap joints in the fuselage upper lobe, and repair, if necessary. That action also proposed to require modification of certain lap joints and inspections of modified lap joints.

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

One commenter supports the proposal.

One commenter requests that proposed inspection requirements be revised. This commenter requests that, if the visual inspection [proposed in paragraph (a)(1) of the AD] reveals any evidence of corrosion, operators should be allowed to perform a low frequency eddy current (LFEC) inspection of the entire length of the lap joint to determine if corrosion exceeds 10% of the skin thickness. If this LFEC inspection is accomplished, the commenter also requests that the visual inspection repetitive interval specified in paragraph (a)(1) be extended from the proposed 2,000 landings to 3,000 landings so that the interval corresponds with other major structural inspection intervals. The FAA cannot concur with this request, since the commenter provided neither specific inspection instructions nor data to justify the effectiveness of the proposed procedures. Under the provisions of paragraph (i) of the final rule, however, operators may apply for the approval of an alternative method of compliance with the AD, or adjustment of the compliance time, if sufficient justification is presented to the FAA.

Two commenters request that proposed paragraph (a) be clarified with regard to the inspections and inspection interval required after a lap joint has been modified. These commenters request that, for lap joints that have been modified by either the full or partial modification procedures described in the referenced Boeing service bulletin, operators be allowed a period of time during which no inspections are required for those lap joints. The referenced Boeing service bulletin, as well as proposed paragraph (f), state that post-modification inspections are to start at 10,000 cycles, 7,000 cycles, or 5,000 cycles after modification of the skin lap joints, depending upon the type of modification that has been accomplished. However, as worded in paragraph (a) of the proposal, the same inspections meant to detect cracks and corrosion in unmodified skin lap joints would be required to be performed on modified skin lap joints until the inspections specified in proposed paragraph (f) begin. The FAA concurs that clarification of this requirement is necessary. It was not the FAA's intent to require that the initial-type of inspections of unmodified lap joints be performed on modified lap joints. Accordingly, paragraphs (a)(1) and (a)(3) have been revised to indicate that the inspections of the specified lap joints are to continue at repetitive intervals only until the lap joints are modified in

accordance with the requirements of paragraph (e).

Several commenters request that the compliance time for accomplishing the "full" modification on certain lap joints, as specified in paragraph (b)(2), be extended from the proposed 15 months to 18 months. Additionally, these commenters request that the compliance time for a similar requirement specified in paragraph (c)(2) be extended from the proposed 30 months to 36 months. The commenters state that, by extending these compliance times, operators would be able to accomplish the modification during a scheduled maintenance interval ("C" check), and thereby eliminate the need to schedule special times for the accomplishment of this modification, at additional expense. The FAA concurs. It was the FAA's intent that the modification be performed at a main base during regularly scheduled maintenance where special equipment and trained maintenance personnel will be available if necessary. Accordingly, the final rule has been revised to specify compliance times as requested by the commenters. The FAA has determined that this extension will not adversely affect safety since the affected lap joints will be subject to repetitive inspections in the interim.

Two commenters request that paragraph (e) be revised to extend the compliance time for accomplishment of the "full" modification of the specified skin lap joints from the proposed 1,000 cycles (for airplanes that have accumulated nearly or more than 20,000 total flight cycles) to 4 years after the effective date of the final rule. These commenters consider the proposed compliance time to be too short and not consistent with compliance times provided for similar actions in other AD's pertaining to aging aircraft issues. The FAA does not concur. The 1,000 flight cycle compliance time is consistent with the mandatory modification of a lap joint that has been found to have corrosion or cracking, as required by paragraph (b)(2) of this AD. Cold bonded lap joints such as these have a history of numerous findings of fatigue cracks and corrosion. In light of this, and the fact that fatigue cracking is cycle-related, the FAA has determined that modification of these lap joints cannot be delayed any further than 1,000 flight cycles, especially on those airplanes that already have accumulated 20,000 flight cycles, without compromising safety.

One commenter requests that the applicability of proposed paragraphs (f)(1), (f)(2), and (f)(3) be revised to clarify that it is the "lap joint," rather than the "airplane," on which the particular modification has been accomplished. The FAA concurs and has revised wording of the final rule to clarify this point.

One commenter requests that all references in the rule to "landings" be changed to "cycles." The FAA concurs that the reference should be revised. The FAA has reviewed the applicable service information related to this action and finds that the majority of references to recommended compliance times are stated in "flight cycles." Although the FAA normally uses the terms "landings" and "flight cycles" interchangeably, the FAA considers that it is appropriate in this case to change the verbiage of the AD to match that of the cited service bulletins. Therefore, in this final rule, the FAA has substituted the term "flight cycles" for the term "landings."

Another commenter, a non-U.S. operator, requests that the proposed rule be revised to include a provision specifying that pressurization cycles of 2.0 psi or less need not be counted as a flight cycle when determining the number of flight cycles relative to the proposed compliance thresholds. This commenter states that a pressurization cycle of 2.0 psi or less is a typical pressure used during flight training, and causes little fatigue damage of the kind addressed by this AD action. The FAA does not concur. The FAA does not consider it appropriate to include various provisions in an AD applicable to a single operator's unique use of an affected airplane. Paragraph (i) of this AD provides for the approval of alternative methods of compliance to address these types of unique circumstances. Further, this commenter does not compile data for each of its airplanes so that an individual airplane's pressurization cycles could be determined; instead, it uses a fleet average to calculate the equivalent number of pressurization cycles. The FAA does not consider it appropriate to use approximations for determining compliance with this AD.

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

There are approximately 200 Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 116 airplanes of U.S. registry will be affected by this proposed AD.

The required inspections will entail 100 work hours per airplane per inspection, at an average labor rate of $55 per work hour. (This figure does not include the time necessary for gaining access and closing up.) Based on these figures, the total cost impact of this requirement on U.S. operators is estimated to be $638,000, or $5,500 per airplane, per inspection.

The required "full" modification will entail approximately 96 work hours for each 200-inch length of uncracked and uncorroded lap joint, at an average labor rate of $55 per work hour. (This figure does not include the time necessary for gaining access and closing up.) There are 100 lap joint sections per airplane, each with a length of 200 inches. The cost of required parts is expected to be negligible. Based on these figures, the total cost impact of this requirement on U.S. operators is estimated to be $61,248,000, or $528,000 per airplane.

The initial high frequency eddy current (HFEC) inspection following modification will entail approximately 56 work hours, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of this requirement AD on U.S. operators is estimated to be $357,280, or $3,080 per airplane.

Based upon the figures discussed above, the total cost impact of this AD on U.S. operators is expected to be $62,243,280, or $536,580 per airplane. This total cost figure includes the inspections and modification, for the first year of the average five-year inspection cycle. Additionally, the total cost figure indicated is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The FAA recognizes that the obligation to maintain aircraft in an airworthy condition is vital, but sometimes expensive. Because AD's require specific actions to address specific unsafe conditions, they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain aircraft in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining safe aircraft, most prudent operators would accomplish the required actions even if they were not required to do so by the AD.

A full cost-benefit analysis has not been accomplished for this AD. As a

matter of law, in order to be airworthy, an aircraft must conform to its type design and be in a condition for safe operation. The type design is approved only after the FAA makes a determination that it complies with all applicable airworthiness requirements. In adopting and maintaining those requirements, the FAA has already made the determination that they establish a level of safety that is cost-beneficial. When the FAA, as in this AD, makes a finding of an unsafe condition, this means that this cost-beneficial level of safety is no longer being achieved and that the required actions are necessary to restore that level of safety. Because this level of safety has already been determined to be cost-beneficial, a full cost-benefit analysis for this AD would be redundant and unnecessary.

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

For the reasons discussed above, I certify that this action (1) is not a "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) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

94–12–09 Boeing: Amendment 39–8937. Docket 93–NM–139–AD.

Applicability: Model 747 series airplanes, line positions 001 through 200 inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent rapid decompression of the airplane and the inability to carry fail-safe loads, accomplish the following:

(a) Within 1,000 flight cycles after the effective date of this AD, and thereafter at the intervals specified in paragraphs (a)(1), (a)(2), and (a)(3) of this AD, perform inspections at the upper lobe skin panel lap joints in accordance with Boeing Service Bulletin 747–53–2307, Revision 2, dated October 14, 1993:

(1) Perform a detailed external visual inspection to detect cracks and evidence of corrosion (bulging skin between fasteners, blistered paint, dished fasteners, popped rivet heads, or loose fasteners) in accordance with the service bulletin. Repeat that inspection thereafter at intervals not to exceed 2,000 flight cycles until the modification required by paragraph (e) of this AD is accomplished.

(2) Perform a high frequency eddy current inspection (HFEC) to detect cracks in the skin at the upper row of fasteners of the skin panel lap joints forward of body station (BS) 1000 in accordance with the service bulletin. Repeat that inspection thereafter at intervals not to exceed 4,000 flight cycles until the modification required by paragraph (e) of this AD is accomplished.

(3) Perform a HFEC inspection to detect cracks in the skin at the upper row of fastener holes of the skin panel lap joints aft of BS 1480 to 2360 in accordance with the service bulletin. Repeat that inspection thereafter at intervals not to exceed 6,000 flight cycles until the modification required by paragraph (e) of this AD is accomplished.

(b) If any crack is found during any inspection required by this AD, or if any corrosion is found for which material loss exceeds 10 percent of the material thickness, accomplish paragraphs (b)(1) and (b)(2) of this AD in accordance with Boeing Service Bulletin 747–53–2307, Revision 2, dated October 14, 1993.

(1) Prior to further flight, repair any crack or corrosion found, in accordance with the service bulletin.

(2) Within 18 months after accomplishing the repair, accomplish the "full" modification described in the service bulletin for the remainder of any skin panel lap joint in which a crack is found, or in which corrosion is found that exceeds 10 percent of the material thickness.

(c) If no crack is found during any inspection required by this AD, but corrosion is found for which the material loss does not exceed 10 percent of the material thickness: Accomplish paragraph (c)(1) and (c)(2) of this AD for the entire affected skin panel lap joint in accordance with Boeing Service Bulletin 747–53–2307, Revision 2, dated October 14, 1993.

(1) Within 500 flight cycles after accomplishing the inspection during which the corrosion was found, and thereafter at intervals not to exceed 500 flight cycles until the "full" modification required by paragraph (c)(2) of this AD is accomplished: Perform a HFEC inspection to detect cracks of the corroded skin panel lap joint, in accordance with the service bulletin.

(2) Within 36 months after accomplishing the inspection during which the corrosion was found: Accomplish the "full" modification in accordance with the service bulletin.

(d) The inspections required by this AD shall be performed by removing the paint and using an approved chemical stripper; or by ensuring that each fastener head is clearly visible.

(e) Except as provided in paragraph (g) of this AD, prior to the accumulation of 20,000 total flight cycles, or within the next 1,000 flight cycles after the effective date of this AD, whichever occurs later: Accomplish the modification described in the service bulletin as a "full" modification of the skin panel lap joints at the locations specified in paragraphs (e)(1) and (e)(2) of this AD, as applicable, in accordance with Boeing Service Bulletin 747–53–2307, Revision 2, dated October 14, 1993. Accomplishment of this modification terminates the repetitive inspection requirements of paragraph (a) of this AD.

(1) For airplane line numbers 001 through 058, inclusive: Modify the skin panel lap joints at Stringer 12 (left and right), station 520 to 1,000; and Stringer 19 (left and right), station 520 to 740.

(2) For airplane line numbers 59 through 200, inclusive: Modify the skin panel lap joints at Stringer 12 (left and right), station 740 to 1,000; and Stringer 19 (left and right), station 520 to 740.

(f) Perform an external HFEC inspection to detect skin cracks of any modified skin panel lap joints at the times specified in paragraphs (f)(1), (f)(2), and (f)(3) of this AD, as applicable, in accordance with Boeing Service Bulletin 747–53–2307, Revision 2, dated October 14, 1993. Repeat that inspection thereafter at intervals not to exceed 3,000 flight cycles.

(1) For skin panel lap joints on which the "full" modification has been accomplished: Within 10,000 flight cycles after accomplishment of that modification.

(2) For skin panel lap joints on which the "optional" (partial) modification has been accomplished: Within 7,000 flight cycles after accomplishment of that modification.

(3) For skin panel lap joints having deep countersink fasteners located at Section 42 on which the "full" modification, as described in the original issue of the service bulletin, has been accomplished: Within 5,000 flight cycles after accomplishment of that modification.

(g) In lieu of the "full" modification required by paragraph (e) of this AD, the "optional" (partial) modification described in Boeing Service Bulletin 747–53–2307,

Revision 2, dated October 14, 1993, may be accomplished for skin panels that have an outer thickness of 0.090 inches or less, and that do not have any cracks, corrosion, or an existing structural repair on the skin panel lap joint. The "optional" (partial) modification shall not be accomplished at deep countersink fastener locations.

(h) Accomplishment of the requirements of this AD terminates the requirements of AD 90-15-06, amendment 39-6653.

(i) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(j) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(k) The actions shall be done in accordance with Boeing Service Bulletin 747-53-2307, Revision 2, dated October 14, 1993. 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 Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(l) This amendment becomes effective on July 13, 1994.

Issued in Renton, Washington, on June 2, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-13852 Filed 6-10-94; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 71

[Airspace Docket No. 94-AWP-9]

Revocation of Class D Airspace; Victorville, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes the Class D airspace area at Victorville, CA due to the closure of George AFB. An operational airport traffic control tower is required to retain Class D airspace. The airport traffic control tower is closed, and, therefore, the FAA is revoking this Class D airspace area.

EFFECTIVE DATE: 0901 u.t.c., December 8, 1994.

FOR FURTHER INFORMATION CONTACT: Scott Speer, Airspace Specialist, System Management Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 297-0697.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) revokes the Class D airspace area at Victorville, George AFB, CA. An operational airport traffic control tower is required to retain Class D airspace. The airport traffic control tower is closed. Consequently, the FAA is revoking this Class D airspace area. Because this action is a minor technical amendment in which the public would not be particularly interested, I find that notice and public procedure under U.S.C. 553(b) are unnecessary.

The coordinates for this airspace docket are based on North American Datum 83. Class D airspace designations are published in paragraph 5000 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 D airspace designation listed in this document will be published subsequently in the Order.

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; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 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 5000—General

* * * * *

AWP CA D Victorville, CA [Removed]

Victorville, George AFB, CA
(Lat. 34°35'03" N., long. 117°23'03" W.)

* * * * *

Issued in Los Angeles on May 27, 1994.

Richard R. Lien,

Manager, Air Traffic Division.

[FR Doc. 94-14289 Filed 6-10-94; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 94-AWP-12]

Revocation and Modification of Class D Airspace; Establishment of Class E Airspace; Imperial County, CA and El Centro NAF, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes the Class D airspace area and establishes a Class E airspace area at Imperial County Airport and modifies the El Centro NAF Class D airspace area. The airspace at Imperial County Airport was inadvertently classified as Class D airspace. Imperial County Airport does not have an airport traffic control tower which is required for Class D airspace, and, therefore, the FAA is revoking this Class D airspace area.

EFFECTIVE DATE: 0901 u.t.c., December 8, 1994.

FOR FURTHER INFORMATION CONTACT: Scott Speer, Airspace Specialist, System Management Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 297-0697.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) revokes the Class D airspace area and establishes Class E airspace at Imperial County Airport, CA. The El Centro NAF, CA, Class D airspace area description is modified to reflect this change. An operational airport traffic control tower is required to retain Class D airspace. Imperial County Airport does not have an airport traffic control tower. Consequently, the FAA is revoking this Class D airspace area. Because this action is a minor technical amendment in which the public would not be particularly interested, I find that notice and public procedure under U.S.C. 553(b) are unnecessary.

The coordinates for this airspace docket are based on North American Datum 83. Class D and Class E airspace designations are published in Paragraphs 5000 and 6002, respectively, 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 D and Class E airspace designations listed in this document will be published subsequently in the Order.

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; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 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 5000—General

* * * * *

AWP CA D Imperial County, CA [Removed]

Imperial County, CA
(Lat. 32°50′03″ N., long. 115°34′43″ W.)

* * * * *

AWP CA D El Centro NAF, CA [Revised]

El Centro NAF, CA
(lat. 32°49′45″ N., long. 115°40′18″W.)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 4.3-mile radius of El Centro NAF, excluding that airspace east of long. 115°37′18″ W. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002—Class E airspace areas designated as a surface area for an airport

* * * * *

AWP CA E Imperial County, CA [New]

Imperial County, CA
(lat. 32°50′03″ N., long 115°34′43″ W.)

That airspace extending upward from the surface within a 4-mile radius of the Imperial County Airport. This Class E airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Director

* * * * *

Issued in Los Angeles on May 31, 1994.

Richard R. Lien,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 94–14290 Filed 6–10–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 10, 101, 111, 123, 128, 141, 143, 145, 148, 159

[T.D. 94–51]

RIN 1515–AB53

Express Consignments; Formal and Informal Entries of Merchandise; Administrative Exemptions

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

ACTION: Interim regulations; solicitation of comments.

SUMMARY: The amendments contained in this document are being published as interim regulations to implement certain statutory amendments to the Customs laws regarding administrative exemptions. These statutory amendments are contained in the Customs modernization provisions of the North American Free Trade Agreement Implementation Act. Also, the interim regulations clarify the procedures for shipments brought into the United States by express consignment operators or carriers and make clear that all shipments carried into the United States by express consignment operators or carriers are required to be entered, unless specifically exempt from entry. These interim regulations also implement the Customs modernization provisions in the North American Free Trade Agreement Implementation Act exempting from entry certain merchandise (undeliverable shipments, railway freight locomotives and cars, and instruments of international traffic).

DATES: Interim rule effective July 28, 1994; comments must be received on or before July 13, 1994.

ADDRESSES: Written comments (preferably in triplicate) must be submitted to U.S. Customs Service, ATTN: Regulations Branch, Franklin Court, 1301 Constitution Avenue, NW., Washington, DC 20229, and may be inspected at the Regulations Branch, 1099 14th Street, NW., suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William G. Rosoff, Office of Regulations and Rulings, (202–482–7040).

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, the President signed into law Public Law 103–182, the North American Free Trade Agreement Implementation Act (107 Stat. 2057). Title VI of this Act, popularly known as

the Customs Modernization Act (the Act) amended certain Customs laws. Section 651 of the Act amended section 321, Tariff Act of 1930, as amended (19 U.S.C. 1321).

Before its amendment by the Act, section 321 authorized administrative exemptions from duty and taxes on articles such as gifts and personal and household goods, and in certain other situations. Specifically, section 321 authorized the Secretary of the Treasury, in order to avoid expense and inconvenience to the Government disproportionate to the amount of revenue that would otherwise be collected, to disregard a difference of less than $10 between the duty actually due on an entry and the estimated duties deposited. On the same basis, section 321 authorized the Secretary to admit free of duty and tax any article the value of which was less than $50 in the case of bona fide gifts ($100 if the gift was from certain island possessions) sent from persons in foreign countries to persons in the United States. Section 321 authorized the Secretary to admit free of duty and tax any article the value of which was less than $25 in the case of personal or household articles accompanying the traveler. In all other cases (*i.e.*, if not a bona fide gift sent from a person in a foreign country to a person in the United States or a personal or household article accompanying a traveler), the Secretary was authorized to admit free of duty and tax any article the value of which was less than $5.

In the last three cases (*i.e.*, bona fide gifts, personal or household articles, and all other cases), the exemptions were subject to the condition that the aggregate fair retail value in the country of shipment of articles imported by one person on one day could not exceed the authorized amount. Also, the exemptions in these cases were not to be granted in any case in which merchandise covered by a single order or contract was forwarded in separate lots to secure the benefit of the provision.

The Secretary was authorized to prescribe regulations to implement these provisions. Section 321 specifically authorized the Secretary to diminish any of the dollar amounts referred to above.

Section 651 of the Act increased the dollar amounts described and, instead of setting maximum dollar amounts below which the Secretary was authorized to make the exemptions applicable, authorized the Secretary to make the exemptions applicable to an amount to be specified in regulations, but not less than a stated amount. That is, the amended section 321 now provides minimum dollar amounts for the exemptions.

In the case of the difference between duty actually due on an entry and the estimated duties deposited, the dollar amount was increased to a minimum of $20. Also, this provision was changed to authorize Customs to apply the exemption to the total of duties, fees, and taxes, instead of only duties and taxes, as had been the case. In the case of bona fide gifts, personal or household articles, and all other cases, the dollar amounts were respectively increased to $100 ($200, if the gift is from one of the named island possessions), $200, and $200, respectively.

Section 651 removed from § 321 the specific authorization to, by regulation, diminish any of the dollar amounts specified in the provision. Section 651 retained the specific authorization in section 321 for regulations to prescribe exceptions to any exemption whenever the Secretary finds such action is consistent with the purpose of the provisions or is necessary to protect the revenue or to prevent unlawful importations.

The provision in the Customs Regulations containing the authorization to disregard a difference of less than $10 between the duty actually due on an entry and the estimated duties deposited is found in 19 CFR 159.6. The provisions in the Customs Regulations pertaining to the administrative exemption for bona fide gifts are found in 19 CFR 10.152 and 145.32 and the provision for personal or household articles is found in 19 CFR 148.51 (see also §§ 148.12, 148.64). The provisions in the Customs Regulations pertaining to the $5 administrative exemption for all other articles are found in 19 CFR 10.151 and 145.31. Conditions for the exemptions provided for in 19 CFR 10.151 and 10.152 are currently found in 19 CFR 10.153.

Provisions pertaining to the administrative exemptions under section 321 are also found in part 128 of the Customs Regulations, which relates to express consignments. Section 128.24(d) of that part refers to low value shipments (*i.e.*, shipments valued at $5 or less) and provides that such shipments must be segregated from shipments valued at more than $5 when the special informal entry procedures provided for in part 128 are used. This provision was intended to cover articles which could be administratively exempted from duties and taxes under section 321(a)(2)(C) (see T.D. 89–53, published in the **Federal Register** on May 8, 1989 (54 FR 19561)).

These interim regulations conform the Customs Regulations to the changes made to section 321 by section 651 of the Act. In addition, the interim regulations clarify entry procedures applicable to merchandise subject to section 321. The dollar amounts currently provided for in 19 CFR 10.151 through 10.153, 145.31, 145.32, 148.12, 148.51, 148.64 and 159.6 are changed to the minimums provided for in the amended section 321.

The interim regulations amend part 143 to clarify the procedures for entries of shipments qualifying for the administrative exemptions in section 321(a)(2). Shipments covered in section 321(a)(2) are included in the merchandise which may be entered under the procedures provided for by regulation under 19 U.S.C. 1498. That provision authorizes the Secretary of the Treasury to prescribe rules and regulations for the declaration and entry of the merchandise described in the section. Entries which may be provided for by regulation under section 1498 are distinguished from entries which are required to be filed under 19 U.S.C. 1484 (*i.e.*, formal entries). As authorized by section 1498, these amendments provide that the person who may make entry of shipments covered by section 321(a)(2) is the owner, purchaser, or consignee of the merchandise or, when appropriately designated by one of these persons, a Customs broker licensed under 19 U.S.C. 1641. Under the same authority, an amendment to part 143 makes it clear that the person who may make entry of other merchandise (*i.e.*, merchandise not qualifying for the administrative exemptions in section 321(a)(2)) which qualifies for informal entry is the owner or purchaser of the merchandise or, when appropriately designated by the owner, purchaser, or consignee of the merchandise, a Customs broker licensed under 19 U.S.C. 1641.

A corresponding amendment to part 111, concerning Customs brokers, is added to the list of transactions for which a broker's license is not required. The new provision provides that a person entering merchandise qualifying for and entered under the informal entry procedures authorized by 19 U.S.C. 1498 is not required to be licensed as a broker unless required to be so licensed by regulations issued under the authority of section 1498. A reference to the provision included in part 143 is included in the new provision.

Also under the authority of 19 U.S.C. 1498, amendments are made to part 143 to clearly provide the procedures for entries of the merchandise covered in section 321(a)(2). Shipments of such

merchandise may be entered by presenting the bill of lading (or a manifest listing each bill of lading) or other document used to file or support entry. Manifest information is required consisting of the country of origin of the merchandise, shipper name, address and country, ultimate consignee name and address, specific description of the merchandise, quantity, and value. Cross references are provided to section §§ 148.12 and 148.62 to make it clear that entry by oral declaration continues to be allowed.

No amendment to the regulations is being promulgated at this time to implement the new subsection (a)(3) of section 321, added by section 651 of the Act. This provision allows Customs to waive the collection of duties, fees, and taxes due on entered merchandise when such duties, fees, or taxes are less than $20, in order to avoid expense and inconvenience to the Government disproportionate to the amount of revenue that would otherwise be collected. Regulations implementing this provision are being delayed pending an analysis of the expense and inconvenience to the Government in view of the revenue involved.

Section 159.6, authorizing Customs to disregard a difference of less than $10 (now $20 under the amended section 321(a)(1)) between duties deposited and duties actually due on an entry, is amended to authorize Customs to apply the exemption to the total of duties, fees, and taxes, as provided for in section 321(a)(1), as amended by section 651 of the Act.

Customs also is making amendments to the Customs Regulations in part 128 relating to express consignments. These amendments are intended to make it clear that all shipments carried into the United States by express consignment operators and carriers are required to be entered, unless specifically exempt from entry.

Basically, a 3-tier approach applies to such shipments. That is, shipments valued in excess of $1250 are required to be formally entered, as provided for under 19 U.S.C. 1484 in parts 141, 142, and 143 (except subpart C) of the Customs Regulations. Shipments valued between $200 and $1250 may be entered under the informal entry procedures, as provided for under 19 U.S.C. 1498 (unless the shipments consist of merchandise which may not be entered under those procedures). These procedures consist of the filing of a Customs Form 3461, either modified to cover all importations under the special procedures for express consignment operator or carrier importations or all such importations on a daily or flight basis, and the advance filing of the manifest information provided for in 19 CFR 128.21. This information consists of the country of origin, shipper name, address and country, ultimate consignee name and address, specific description of the merchandise and the tariff classification of the merchandise, quantity, shipping weight, and value. An entry summary (Customs Form 7501) and estimated duties are required to be filed with Customs within 10 days of release of these shipments.

The third tier is for shipments valued at $200 or less. These shipments also may be entered under the informal entry procedures, as provided for under 19 U.S.C. 1498 (unless the shipments consist of merchandise which may not be entered under those procedures). The procedures for these shipments are the same as those for the second-tier shipments (valued between $200 and $1250), except that the tariff classification of the merchandise is not required for the shipments and no entry summary or estimated duties is required to be filed.

An amendment to 19 CFR 101.1, adding a definition of "shipment", makes it clear that the monetary exemption for third-tier shipments is based on the bill of lading or other evidence used to file or support entry, or oral declaration when applicable. For example, if the document used to file or support entry is an individual bill of lading to the ultimate consignee in the United States, the monetary limitation is applied on the basis of the value of the shipment on the individual bill of lading. This is so whether the document used to file or support entry is itself the bill of lading or an advance manifest, as described in 19 CFR 128.21, listing each of the individual bills of lading. On the other hand, if the document used to file or support entry is a master bill of lading (as opposed to each individual bill of lading), the monetary limitation is applied on the basis of the total value of the shipments on the master bill of lading. The same is true of the application of the monetary limitation in section 321(a)(2) for other importations (*i.e.*, those not involving an express consignment entity). This is so because the definition of "shipment" is for general purposes in chapter I of title 19 of the CFR, unless the context of the term requires a different meaning (see 19 CFR 101.1).

As is true generally under these amendments, the person who may make entry for the shipments valued between $200 and $1250 which may be entered under the informal entry procedures is the owner or purchaser of the shipment or, when appropriately designated by the owner, purchaser, or consignee of the shipment, a Customs broker licensed under 19 U.S.C. 1641. The person who may make entry for the shipments valued $200 or less which may be entered under the informal entry procedures is the owner, purchaser, or consignee or, when appropriately designated by one of these persons, a Customs broker licensed under 19 U.S.C. 1641. As discussed above, the authority for this distinction is that these entries are made under 19 U.S.C. 1498 and the Secretary of the Treasury is specifically authorized to prescribe rules and regulations for the declaration and entry of such shipments.

Amendments are also made to part 141. Section 141.4 is amended to clarify that shipments subject to the administrative exemptions under § 321(a)(2) must be entered under special informal entry procedures for lower value shipments. Only merchandise specifically exempt from entry (*i.e.*, so-called intangibles, under General Note 13 (formerly General Note 4), HTSUS, and certain vessels) is exempt from all forms of entry. Also, a conforming amendment to the citation of the General Note in § 141.4 is necessary because of the redesignation of the General Note (*i.e.*, General Note 4, HTSUS, the predecessor to General Note 13, was redesignated as General Note 13; see Presidential Proclamation 6641, December 15, 1993, published in the **Federal Register** on December 20, 1993 (58 FR 67032, 66867)).

Undeliverable Shipments

The North American Free Trade Agreement Implementation Act amended General Note 4 (now General Note 13) by adding other articles which are exempt from entry (section 681 of Pub. L. 103–182). The newly added articles are articles which are returned as undeliverable to the United States within 45 days of their departure from the United States. The articles may not have left the custody of either the carrier or foreign customs service during that time. The departure from the United States of articles for which the exemption is granted may not be treated as satisfying any requirement for exportation in order to receive a benefit from, or meet an obligation to, the United States.

The amendment to § 141.4 implements this provision. The amendment requires the person claiming the exemption to certify that the merchandise complies with the provision. In addition, the amendment requires the person claiming the exemption to provide, upon request by

Customs, any evidence necessary to support the claim.

Other Exemptions From Entry

Section 681 of the Act also added a provision to the tariff schedule exempting from entry and release requirements railway locomotives (provided for in headings 8601 and 8602, HTSUS) and railway freight cars (provided for in heading 8606, HTSUS) on which no duty is owed (Additional U.S. Note 1, Chapter 86, HTSUS). Also, section 681 of the Act provided for the addition of a Note to Chapter 99, HTSUS, under which certain Canadian railway freight cars provided duty-free treatment in subheadings 9905.86.05 and 9905.86.10, HTSUS, are exempt from entry and release requirements. The railway freight cars provided for in subheading 9905.86.05, HTSUS, are those produced before July 1, 1991, or if entered after July 1, 1994, produced not less than 3 years before the date of importation, and provided for in heading 8606, HTSUS. The railway freight cars provided for in subheading 9905.86.10, HTSUS, are those imported for temporary use in transportation in the United States and certified by the importer to be exported within 1 year from the date of importation and provided for in heading 8606, HTSUS. In the case of both Notes (to be added to chapter 86 and 99, HTSUS), the Secretary of the Treasury is authorized by regulation to establish appropriate reporting requirements and to require that a bond be posted to ensure compliance.

The amendment to § 141.4 implements these provisions. In the case of railway locomotives and freight cars which are exempt from entry on the basis that no duty is owed on them and they are classified in headings 8601, 8602, or 8606, HTSUS (*i.e.*, without reference to subheading 9905.86.05 or 9905.86.10, HTSUS), no special evidentiary requirement is imposed because duty-free treatment is not conditioned on any special condition (other than duty-free status because of origin).

In the case of railway freight cars which are exempt from entry by virtue of subheading 9905.86.05 or 9905.86.10, HTSUS, because there are conditions other than the absence of duty being owed on the freight cars, the amendment contains special evidentiary requirements. The requirements, concerning the time of production of the freight car and the duration of the stay in the United States of the freight car, shall be met by a certification (documentary or electronic), subject to Customs verification. In the case of the requirement to export the freight car within 1 year from the date of importation, in subheading 9905.86.10, HTSUS, the amendment specifically provides that a freight car admitted into the United States under this provision which is not exported within the 1 year period becomes subject to entry and the payment of any applicable duties.

As authorized by the statutory provision, the amendment provides that locomotives and freight cars described in Additional U.S. Note 1 of Chapter 86, HTSUS, and freight cars described in subheading 9905.86.05 or 9905.86.10, HTSUS, may be released only after the importer has filed a bond on Customs Form 301, containing either the basic importation and entry conditions (19 CFR 113.62) or the international carrier bond conditions (19 CFR 113.64). Amendments to 19 CFR 123.12 are added concerning the entry of foreign locomotives and equipment in international traffic, to add references to the provisions implementing these provisions.

Instruments of International Traffic

Section 681 of the Act added a provision to the tariff schedule exempting from formal entry procedures instruments of international traffic, such as containers, lift vans, rail cars and locomotives, truck cabs and trailers, etc. The provision also provided for the periodic reporting and payment of fees associated with the importation of such instruments of international traffic.

The exemption from entry for instruments of international traffic is already provided for in the Customs Regulations (see 19 CFR 10.41a). There are no fees associated with the importation of instruments of international traffic. Therefore, no substantive amendment to the Customs Regulations is necessary to implement this provision. However, to alert the public to the exemption from entry for instruments of international traffic, a provision is added referring to this exemption from entry and 19 CFR 10.41a in the list of exceptions from the general rule in § 141.4.

Accordingly, Customs is promulgating on an interim basis amendments as described above and set forth below.

Delayed Effective Date and Public Comment Requirements

The agency intends that these interim regulations become effective on the 45th day following the date of publication, *i.e.*, 15 days after the close of the comment period. The agency believes it has good cause under 5 U.S.C. 553(d) (1) and (3) of the Administrative Procedure Act (APA) (5 U.S.C. 553) to promulgate interim regulations because the regulations provide an immediate benefit to both the Government and the public by increasing exemptions which already exist. These interim regulations are intended to implement Congressional intent embodied in 19 U.S.C. 1321, as amended, that these exemptions, when granted, should exist at statutory minimums.

Furthermore, existing rights and obligations are not otherwise changed. The agency believes the public wants these new statutory minimums to become effective as soon as possible as the public should benefit from the efficiencies and savings resulting therefrom. In addition, the agency does not believe the public needs time to conform its conduct so as to avoid violation of these regulations. The due and timely execution of the agency's responsibilities would be unnecessarily impeded by a time consuming notice and comment period. The agency believes such delay is unnecessary because it does not expect the public to object to the regulations being promulgated as they merely provide the relief that Congress intended.

Even though, based on the discussion set forth above, Customs believes the amendments in this document may be promulgated on an interim basis and could be effective immediately, Customs is providing a 45-day delayed effective date, with a 30 day comment period preceding that effective date. This represents a practical compromise between the need for temporal urgency and the desirability of public participation in the rulemaking process.

In the spirit of the APA, the agency is soliciting public comment regarding its decision to promulgate these interim regulations and in delaying their effective date only for that period of time necessary to review any relevant comments regarding that decision. Unless the comments show that there exists good cause for not making the regulations effective on an interim basis, the regulations will become effective on an interim basis on the 45th day following the date of publication.

Comments

Consequently, the agency hereby solicits comments on both the substance of these regulations and their intended effective date. The comments should clearly state whether they address the substance of the interim rule or the agency's determination to make the rule effective on an interim basis. If, based on the comments, good cause is shown that the regulations should not become effective on an interim basis, a document will be issued withdrawing

the interim regulations before their effective date. If no such good cause is shown, the interim regulations will go into effect. The agency will then be able to gain experience with the interim regulation, fully consider substantive comments, and decide whether the interim regulation needs amendment before its promulgation as a final rule.

Consideration will be given to any written comments (preferably in triplicate) that are timely submitted to Customs. All such comments received from the public pursuant to this notice of rulemaking will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), during regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, 1099 14th Street, NW., suite 4000, Washington, DC.

Regulatory Flexibility Act and Executive Order 12866

Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This document is not a "significant regulatory action" under E.O 12866.

Paperwork Reduction Act

The collections of information contained in this interim rulemaking were previously approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1980 under control numbers 1515–0069 (§§ 128.21, 128.23, 128.24) and 1515–0065 (§§ 141.4, 143.23).

Drafting Information

The principal author of this document was Russell Berger, Regulations Branch, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 10

Alterations, Bonds, Customs duties and inspection, Exports, Foreign relations, Imports, Preference programs, Repairs, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 101

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

19 CFR Part 111

Administrative practice and procedure, Brokers, Customs duties and inspection, Imports.

19 CFR Part 123

Administrative practice and procedure, Aircraft, Bonds, Canada, Customs duties and inspection, Imports, Mexico, Reporting and recordkeeping requirements, Trade agreements, Vehicles, Vessels.

19 CFR Part 128

Carriers, Couriers, Customs duties and inspection, Express Consignments, Imports.

19 CFR Part 141

Customs duties and inspection, Entry procedures, Invoices, Reporting and recordkeeping requirements.

19 CFR Part 143

Automated broker interface, Customs duties and inspection, Electronic entry filing, Imports, Invoice requirements.

19 CFR Part 145

Customs duties and inspection, Imports, Postal Service.

19 CFR Part 148

Customs duties and inspection, Reporting and recordkeeping requirements.

19 CFR Part 159

Liquidation of entries for merchandise, Suspension of liquidation pending disposition of American manufacturer's cause of action.

Amendments

Title 19, chapter I, parts 10, 101, 111, 123, 128, 141, 143, 145, 148, and 159 of the Customs Regulations (19 CFR parts 10, 101, 111, 123, 128, 141, 143, 145, 148 and 159) is amended as set forth below:

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority for part 10 is revised to read as follows, and the specific section authority for §§ 10.152 and 10.153 is removed:

Authority: 19 U.S.C. 66, 1202, 1321, 1481, 1484, 1498, 1508, 1623, 1624;

* * * * *

2. Part 10 is amended by revising the center heading preceding § 10.151 to read as follows:

Importations Not Over $200 And Bona Fide Gifts

3. Section 10.151 is revised to read as follows:

§ 10.151 Importations not over $200.

Subject to the conditions in § 10.153 of this part, the district director shall pass free of duty and tax any shipment of merchandise, as defined in § 101.1(o) of this chapter, imported by one person on one day having a fair retail value, as evidenced by the bill of lading (or other document filed as the entry) or manifest listing each bill of lading, in the country of shipment not exceeding $200, unless he has reason to believe that the shipment is one of several lots covered by a single order or contract and that it was sent separately for the express purpose of securing free entry therefor or of avoiding compliance with any pertinent law or regulation. Merchandise subject to this exemption shall be entered under the informal entry procedures (see subpart C, part 143, and §§ 128.24, 145.31, 148.12, and 148.62, of this chapter).

4. Section 10.152 is revised to read as follows:

§ 10.152 Bona-fide gifts.

Subject to the conditions in § 10.153 of this part, the district director shall pass free of duty and tax any article sent as a bona-fide gift from a person in a foreign country to a person in the United States, provided that the aggregate fair retail value in the country of shipment of such articles received by one person on one day does not exceed $100 or, in the case of articles sent from a person in the Virgin Islands, Guam, and American Samoa, $200. Articles subject to this exemption shall be entered under the informal entry procedures (see subpart C, part 143, and §§ 145.32, 148.12, 148.51, and 148.64, of this chapter). An article is "sent" for purposes of this section if it is conveyed in any manner other than on the person or in the accompanied or unaccompanied baggage of the donor or donee.

5. Section 10.153 is amended by removing the references to "$50" and "$100" wherever appearing in paragraphs (b), (d)(2), (d)(3) and (f), and by adding in place thereof, respectively, "$100" and "$200".

PART 101—GENERAL PROVISIONS

1. The authority for part 101 is revised to read as set forth below, and the authority citations following §§ 101.1 and 101.4 are removed.

Authority: 5 U.S.C. 301; 19 U.S.C. 2, 66, 1202 (General Note 17, Harmonized Tariff Schedule of the United States), 1623, 1624.

2. Section 101.1 is amended by adding a new paragraph (o) to read as follows:

§ 101.1 Definitions.

* * * * *

(o) *Shipment.* "Shipment" means the merchandise described on the bill of lading or other document used to file or support entry, or in the oral declaration when applicable.

PART 111—CUSTOMS BROKERS

1. The general authority for part 111, and the specific section authority for § 111.3, are revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 17, Harmonized Tariff Schedule of the United States (HTSUS)), 1624, 1641.

Section 111.3 also issued under 19 U.S.C. 1484, 1498;

* * * * *

2. Section 111.3 is amended by adding a new paragraph (e) to read as follows:

§ 111.3 Transactions for which license is not required.

* * * * *

(e) *Informal entries.* A person entering merchandise qualifying for, and entered under, the informal entry procedures authorized by 19 U.S.C. 1498 is not required to be licensed as a broker, unless required to be so licensed under § 143.26 of this chapter, issued under the authority of 19 U.S.C. 1498.

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The general authority for part 123, and the specific section authority for §§ 123.12–123.18, are revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 17, Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1624;

* * * * *

Sections 123.12 also issued under 19 U.S.C. 1202 (Chapter 86, Additional U.S. Note 1, HTSUS), 1322;

Sections 123.13–123.18 also issued under 19 U.S.C. 1322;

* * * * *

2. Section 123.12 is amended by revising the first sentence, respectively, of paragraphs (a)(1) and (a)(2), and by revising paragraph (b), to read as follows:

§ 123.12 Entry of foreign locomotives and equipment in international traffic.

(a) * * *

(1) *On inward trip.* Unless formally entered and cleared through Customs into the United States, or unless exempt from entry as provided in § 141.4(b)(4) of this chapter, a foreign locomotive shall be used on the inward trip only in connection with taking the inbound train to the last place in a continuous haul, including the switching of cars which it has hauled into the United States. * * *

(2) *On outward trip.* Unless formally entered and cleared through Customs into the United States, or unless exempt from entry as provided in § 141.4(b)(4) of this chapter, foreign locomotives may be used on the outward trip only in connection with through trains crossing the boundary, including switching to make up such trains. * * *

(b) *Admission of empty equipment.* Empty foreign railroad equipment shall be admitted to the United States without formal entry and payment of duty only if:

(1) The passengers or goods to be loaded are to be transported directly to or through a foreign country; or

(2) The equipment is exempt from entry as provided in § 141.4(b)(4) of this chapter.

* * * * *

PART 128—EXPRESS CONSIGNMENTS

1. The authority for part 128 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 17, Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1484, 1498, 1551, 1555, 1556, 1565, 1624.

2. Section 128.21 is amended by revising paragraph (a)(4) to read as follows:

§ 128.21 Manifest requirements.

(a) *Additional information.* * * *

(4) Specific description of the merchandise, and under the following conditions, the Harmonized Tariff Schedule of the United States (HTSUS) subheading number:

(i) If the merchandise is required to be formally entered as provided in § 128.25; or

(ii) If the merchandise is eligible for, and is entered under, the informal entry procedures as provided in § 128.24, but may not be passed free of duty and tax as consisting of a shipment of merchandise imported by one person on one day having a fair retail value in the country of shipment not exceeding $200, as provided in § 128.24(e).

* * * * *

3. Section 128.23 is revised to read as follows:

§ 128.23 Entry requirements.

(a) *General rule.* Except as provided in paragraph (c) of this section, all articles carried by an express consignment entity shall be entered by a person with the right to file entry.

(b) *Procedures*—(1) *General.* All express consignment entities utilizing the procedures in this part shall comply with the requirements of the Customs Automated Commercial System (ACS). These requirements include those under the Automated Manifest System (AMS), Cargo Selectivity, Statement Processing, the Automated Broker Interface System (ABI), and enhancements of ACS.

(2) *Entry number.* All entry numbers must be furnished to Customs in a Customs approved bar coded readable format in order to assist in the processing of express consignment cargo under the Customs Automated Commercial System (ACS).

(3) *Paper entry document waiver.* The district director is authorized, at the time of entry, to accept the appropriate electronic equivalent in lieu of entry documents for those entries designated as not requiring examination or review when the advance manifest requirements of § 128.21(a) of this part have been met.

(c) *Exception.* Articles specifically exempt from entry by § 141.4(b) of this chapter need not satisfy the general rule as set forth in paragraph (a) of this section.

4. Section 128.24 is amended by revising the last sentence of paragraph (b), and the first sentence of paragraph (c), and by revising paragraphs (d) and (e) to read as follows:

§ 128.24 Informal entry procedures.

* * * * *

(b) *Procedures.* * * * The party who may make entry under § 143.26 of this chapter may submit a copy of the invoice or the advance manifest as described in § 128.21 in lieu of other control documents.

(c) *Alternative procedure.* The party who may make entry under § 143.26 of this chapter may be required to submit an individual Customs Form 3461 covering the eligible shipments on a daily basis or by flight basis. * * *

(d) *Entry summary.* An entry summary (Customs Form 7501) must be presented in proper form, and estimated duties deposited within 10 days of the release of the merchandise under either the regular or alternative procedure described in this section. However, see paragraph (e) of this section if the shipment is valued at $200 or less.

(e) *Shipments valued at $200 or less.* Shipments valued at $200 or less meeting the requirements of § 10.151 of this chapter shall be passed free of duty and tax. Such shipments must be segregated from shipments valued at more than $200 if an advance manifest is used as the entry document, as provided for in § 128.21. If such an advance manifest is used as the entry document, the following are not

required to be provided for shipments qualifying under this paragraph:

(1) The Harmonized Tariff Schedule of the United States (HTSUS) subheading number (see § 128.21(a)(4)); and

(2) An entry summary (see paragraph (d) of this section).

5. Section 128.25 is revised to read as follows:

§ 128.25 Formal entry procedures.

Formal entry, as provided for under 19 U.S.C. 1484 in parts 141, 142, and 143 (except for subpart C), of this chapter, is required for all shipments exceeding the monetary limitation for informal entry (see § 128.24) and any shipment for which the informal entry procedures may not be used (see § 128.24).

§ 128.26 [Removed]

6. Section 128.26 is removed.

PART 141—ENTRY OF MERCHANDISE

1. The general authority for part 141 continues to read as follows, and the specific section authority for § 141.4 is revised to read as follows:

Authority: 19 U.S.C. 66, 1448, 1484, 1624.

* * * * *

Section 141.4 also issued under 19 U.S.C. 1202 (General Note 13; Chapter 86, Additional U.S. Note 1; Chapter 89, Additional U.S. Note 1; Chapter 98, Subchapter III, U.S. Note 4; Chapter 99, Subchapter V, U.S. Note 9, Harmonized Tariff Schedules of the United States (HTSUS)), 1498;

* * * * *

2. Section 141.4 is revised to read as follows:

§ 141.4 Entry required.

(a) *General.* All merchandise imported into the United States is required to be entered, unless specifically excepted.

(b) *Exceptions.* The following are the exceptions to the general rule:

(1) The exemptions listed in General Note 13 to the Harmonized Tariff Schedule of the United States (HTSUS).

(2) Vessels (not including vessels classified in headings 8903 and 8907 and subheadings 8905.90.10 and 8906.00.10 or in Chapter 98, HTSUS, such as under subheadings 9804.00.35 or 9813.00.35). See also Chapter 89, Additional U.S. Note 1, HTSUS.

(3) Instruments of international traffic described in § 10.41a of this chapter, under the conditions provided for in that section. See also Chapter 98, Subchapter III, U.S. Note 4, HTSUS.

(4) Railway locomotives classified in heading 8601 or 8602, HTSUS, and freight cars classified in heading 8606, HTSUS, on which no duty is owed (see paragraph (d) of this section). See Chapter 86, Additional U.S. Note 1, HTSUS; Chapter 99, Subchapter V, U.S. Note 9, HTSUS; see also 19 CFR part 123 for reporting requirements for railway equipment brought into the United States from Canada or Mexico.

(c) *Undeliverable articles.* The exemption from entry for undeliverable articles under General Note 13(e), HTSUS, is subject to the following conditions:

(1) The person claiming the exemption must submit a certification (documentary or electronic) that:

(i) The merchandise was intended to be exported to a foreign country;

(ii) The merchandise is being returned within 45 days of departure from the United States;

(iii) The merchandise did not leave the custody of the carrier or foreign customs;

(iv) The merchandise is being returned to the United States because it was undeliverable to the foreign consignee; and

(v) The merchandise was not sent abroad to receive benefit from, or fulfill obligations to, the United States as a result of exportation.

(2) Upon request by Customs, the person claiming the exemption shall provide evidence required to support the claim for exemption.

(d) *Railway locomotives and freight cars.* To be excepted from entry, railway locomotives and freight cars described in Additional U.S. Note 1 of Chapter 86, HTSUS, and railway freight cars from Canada described in subheading 9905.86.05 or 9905.86.10, HTSUS, are subject to the following requirements, as applicable:

(1) For a railway freight car described in subheading 9905.86.05, HTSUS, the importer shall certify, subject to Customs verification, that the freight car was produced before July 1, 1991, or if admitted after July 1, 1994, that the freight car was produced not less than 3 years before the date of importation;

(2) For a railway freight car described in subheading 9905.86.10, HTSUS, the importer shall certify, subject to Customs verification, that the freight car will be exported within 1 year from the date of importation. (Any railway freight car admitted into the United States under this provision which is not exported within the 1-year period becomes subject to entry and the payment of any applicable duties.);

(3) For railway locomotives and freight cars described in Additional U.S. Note 1 of Chapter 86, HTSUS, and railway freight cars described in subheading 9905.86.05 or 9905.86.10, HTSUS, to be released in accordance with paragraph (b)(4) of this section, the importer shall first file a bond on Customs Form 301, containing the bond conditions set forth in either § 113.62 or 113.64 of this chapter.

(e) *Informal entry.* Merchandise qualifying for informal entry by regulation, pursuant to 19 U.S.C. 1498, is exempt from formal entry under 19 U.S.C. 1484 and this part, but must be entered as required under applicable regulations (see part 143, subpart C, and §§ 10.151 through 10.153, 128.24, 145.31, 145.32, 148.12, 148.13, 148.51, and 148.62 of this chapter).

PART 143—SPECIAL ENTRY PROCEDURES

1. The authority for part 143 continues to read as follows:

Authority: 19 U.S.C. 66, 1481, 1484, 1498, 1624.

2. Section 143.21 is amended by adding a paragraph (l) to read as follows:

§ 143.21 Merchandise eligible for informal entry.

* * * * *

(l) Shipments of merchandise qualifying for the administrative exemptions under 19 U.S.C. 1321(a)(2) and provided for in—

(1) Section 10.151 or 145.31 of this chapter (certain importations not exceeding $200 in value);

(2) Section 10.152 or 145.32 of this chapter (certain bona-fide gifts not exceeding $100 in value ($200 in the case of articles sent from a person in the Virgin Islands, Guam, or American Samoa)); or

(3) Section 148.51 or 148.64 of this chapter (certain personal or household articles not exceeding $200 in value).

3. Section 143.23 is amended by adding two new paragraphs (i) and (j) to read as follows:

§ 143.23 Form of entry.

* * * * *

(i) A shipment of merchandise not exceeding $1250 in value which is imported by an express consignment operator or carrier and which meets the requirements in § 128.24 of this chapter may be entered as provided in that section.

(j) Except for mail importations (see §§ 145.31 and 145.32 of this chapter), or in the case of personal written or oral declarations (see §§ 148.12, 148.13 and 148.62 of this chapter), a shipment of merchandise not exceeding $200 in value which qualifies for informal entry under 19 U.S.C. 1498 and meets the requirements in § 10.151 or § 10.152 of

this chapter may be entered by presenting the bill of lading or a manifest listing each bill of lading (see §§ 10.151, 10.152 and 128.24(e) of this chapter). The following information is required to be filed as a part of such entry:

(1) Country of origin of the merchandise;

(2) Shipper name, address and country;

(3) Ultimate consignee name and address;

(4) Specific description of the merchandise;

(5) Quantity; and

(6) Value.

4. Section 143.26 is added to read as follows:

§ 143.26 Party who may make informal entry of merchandise.

(a) *Shipments valued between $200 and $1250.* A shipment of merchandise valued between $200 and $1250 which qualifies for informal entry under 19 U.S.C. 1498 may be entered by the owner or purchaser of the shipment or, when appropriately designated by the owner, purchaser, or consignee of the shipment, a Customs broker licensed under 19 U.S.C. 1641.

(b) *Shipments valued at $200 or less.* A shipment of merchandise valued at $200 or less which qualifies for informal entry under 19 U.S.C. 1498 and meets the requirements in 19 U.S.C. 1321(a)(2) (see §§ 10.151, 10.152, 10.153, 145.31, 145.32, 148.51, 148.64, of this chapter) may be entered by the owner, purchaser, or consignee of the shipment or, when appropriately designated by one of these persons, a Customs broker licensed under 19 U.S.C. 1641.

PART 145—MAIL IMPORTATIONS

1. The general authority for part 145 is revised to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 17, Harmonized Tariff Schedule of the United States (HTSUS)), 1624.

* * * * *

2. Section 145.31 is revised to read as follows:

§ 145.31 Importations not over $200 in value.

The district director shall pass free of duty and tax, without preparing an entry as provided for in § 145.12, packages containing merchandise having an aggregate fair retail value in the country of shipment of not over $200, subject to the requirements set forth in §§ 10.151 and 10.153 of this chapter.

3. Section 145.32 is revised to read as follows:

§ 145.32 Bona-fide gifts.

The district director shall pass free of duty and tax, without preparing an entry as provided for in § 145.12, articles sent as bona-fide gifts from persons in foreign countries to persons in the United States having an aggregate fair retail value in the country of shipment not exceeding $100 ($200, in the case of articles sent from persons in the Virgin Islands, Guam, and American Samoa), subject to the requirements set forth in §§ 10.152 and 10.153 of this chapter.

PART 148—PERSONAL DECLARATIONS AND EXEMPTIONS

1. The general authority for part 148 is revised, and the specific section authority for §§ 148.43, 148.51, 148.63, 148.64 and 148.74 continues, to read as follows:

Authority: 19 U.S.C. 66, 1496, 1498, 1624. The provisions of this part, except for subpart C, are also issued under 19 U.S.C. 1202 (General Note 17, Harmonized Tariff Schedule of the United States (HTSUS));

* * * * *

Sections 148.43, 148.51, 148.63, 148.64 and 148.74 also issued under 19 U.S.C. 1321;

* * * * *

§§ 148.12, 148.51, 148.64 [Amended]

2. Sections 148.12(b)(2)(ii), 148.51(b)(1), and 148.64(b)(1) are amended by removing the reference to "$25" where appearing therein, and by adding in its place "$200".

PART 159—LIQUIDATION OF DUTIES

1. The authority for part 159 continues to read as follows:

Authority: 19 U.S.C. 66, 1500, 1624. Subpart C also issued under 31 U.S.C. 5151. Additional authority and statutes interpreted or applied are cited in the text or following the sections affected.

2. Section 159.6 is amended by removing the references to "$10" and "duties" wherever appearing in paragraphs (a), (b) and (c), and by adding in place thereof, respectively, "$20", and "duties, fees, and taxes"; and by revising paragraph (d) to read as follows:

§ 159.6 Difference between liquidated duties and estimated duties.

* * * * *

(d) *Customs duties and fees and internal revenue taxes netted for $20 limit.* The assessments of Customs duties and fees and internal revenue taxes shall be separately stated on the entry at the time of liquidation, but the amounts of any differences shall be netted when applying the $20 minimum for issuance of a bill or refund check.

George J. Weise,

Commissioner of Customs.

Approved: May 26, 1994.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 94–14255 Filed 6–8–94; 4:40 pm]

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 660

[FHWA Docket No. 93–16]

RIN 2125–AD13

Forest Highway Portion of Public Lands Highway Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule.

SUMMARY: The FHWA is issuing revised Forest Highway (FH) Program regulations to conform to the requirements of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). Section 1032 of the ISTEA amends, among other things, 23 United States Code (U.S.C.) 202 and 204 to combine the FH category with the public lands highway category. The revised regulation will ensure expeditious and proper allocation of funds to provide public road access to the National Forest System (NFS).

EFFECTIVE DATE: July 13, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Allen W. Burden, Chief, Program and Administration Division, Federal Lands Highway Office, (202) 366–9488, Mr. Curtis L. Page, Forest Highway Program Engineer, Federal Lands Highway Office, (202) 366–9489, or Mr. Wilbert Baccus, Office of the Chief Counsel, (202) 366–1396, FHWA, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION: On December 18, 1991, the President signed the ISTEA, Public Law 102–240, 105 Stat. 1914. Section 1032 of the ISTEA amends 23 U.S.C. 202 and 204 by, among other things, incorporating new planning provisions, including metropolitan and statewide transportation plan requirements; establishing management systems provisions, including highway safety, bridges on and off Federal-aid highways, and highway pavements;

adding and revising definitions for key terms relating to the Federal Lands Highway Program; and modifying existing allocation procedures.

The primary purpose of the Federal Lands Highway Program is to provide public road funding to serve the Federal lands outside State or local government responsibility. Typically, the facilities serve recreational travel and tourism, protect and enhance natural resources, provide sustained economic development in rural areas, and provide needed transportation for Native Americans.

The FHWA's partnership with the Forest Service (FS) began in 1916 when the Federal-Aid Road Act appropriated funds for the construction and maintenance of roads and trails serving the national forests. There are currently over 25,000 miles of FHs, on State and local transportation systems, serving 191 million acres of national forest lands in 40 States plus Puerto Rico. These roads connect to the approximately 370,000 miles of forest development roads that are under the jurisdiction of the FS. The fiscal year 1994 (FY 94) authorization for FHs was $113 million. On October 5, 1993, the FHWA published a notice of proposed rulemaking (NPRM) in the **Federal Register** (58 FR 51794). The following discussion addresses comments to the NPRM which were provided to the FHWA.

Development of Regulations

The final rule was developed by an interagency task force of the FHWA and the FS. The FHWA and the FS considered the comments received to the Docket for the regulation in developing the revisions to the NPRM for the final rule.

Relationship to Interim Guidance Issued December 26, 1991

On December 26, 1991, the FHWA issued interim guidance to aid States and the FS in complying with the new legislative requirements. The guidance was developed in consultation with FS headquarters staff and published in the **Federal Register** at 57 FR 14880 on April 23, 1992. This interim guidance is superseded by this regulation.

Conformance

This final rule is in accordance with part 450 of this title.

Written Comments Received to the Docket

Six commenters submitted 29 comments to the Docket regarding the NPRM. One Federal agency and five State highway agencies (SHAs) commented on the NPRM. The majority of commenters offered specific suggestions for revisions. Some also offered minor editorial corrections and text enhancements. Most of the significant comments were directed at § 660.105—Planning and route designation—and at § 660.107—Allocations. All comments were considered and have been accommodated to the extent practical. In response to these comments, the FHWA has developed a final rule. A summary of the specific responses to comments raised on individual sections of the NPRM follows:

Section-by-Section Analysis

Section 660.101 Purpose

Comment: One commenter expressed the need to better describe the importance of the FH Program for access to and management of the NFS and its role as an integral part of the Federal Lands Highway Program.

Response: This section was expanded to better describe how the FH Program enhances local, regional, and national benefits of FHs funded under the Public Lands Highway category of the coordinated Federal Lands Highway Program. The FH Program provides safe and adequate transportation access to and through National Forest System (NFS) lands for visitors, recreationists, resource users, and others which is not met by other transportation programs, assists rural and community economic development, and promotes tourism and travel.

Section 660.103 Definitions

Comment: One commenter suggested that the definition of "public authority" be modified so that a public authority would be required to meet all authorities noted in the NPRM definition by changing the "or" condition to an "and" condition regarding the public authority's authority to finance, build, operate, "or" maintain toll or toll-free facilities.

Response: Because this definition is a title 23, U.S.C., definition, it was not revised, even though the "and" condition would make it more restrictive. Regulations may clarify or explain, but cannot revise, a statutory definition.

Comment: Another commenter suggested revising the definition of "forest road" to include a road which provides "access to" the NFS since many FHs in some States do not meet the criteria of a forest road as indicated by the proposed definition.

Response: This is also a title 23, U.S.C., definition and was not revised in the final rule. The present wording for the definition of "forest road," as stated in 23 U.S.C. 101, is: "The term forest road or trail means a road or trail wholly or partly within, or adjacent to, and serving the NFS and which is necessary for the protection, administration, and utilization of the NFS and the use and development of its resources." This definition is adequate because a road which provides access to the NFS is considered to be serving the NFS. Also, the definition for FH allows for roads providing access to the NFS since it refers to forest roads, the definition of which allows access to the NFS.

Comment: One commenter suggested that the definition of "statewide transportation plan" be clarified by adding the phrase "pursuant to the provisions of part 450 of this title" at the end of the definition.

Response: Similar wording was used in the definition of Metropolitan Planning Organization (MPO) in this section. Therefore, the phrase was added to the end of the definition to clarify it. Also, a definition for "metropolitan transportation plan" was added to this section because the term is used in § 660.105 along with the term "statewide transportation plan," which is also defined in this regulation in § 660.103.

Section 660.105 Planning and Route Designation

Comment: Several of the SHAs expressed the need for clarification of who provides transportation planning, FS resource planning, and management systems information to the States and MPOs for incorporation into the MPOs and transportation improvement programs (TIPs).

Response: Some minor wording changes were made to paragraph (a) of this section to reflect the fact that the FS will provide resource planning and related transportation information to the "appropriate" MPO in accordance with part 450 of this title. This clarification was needed because there are numerous MPOs within some States and the FS should direct the information only to the MPO needing the information.

Comment: Two of the SHAs felt that paragraph (b) should be clarified to delineate the reporting responsibilities for management information systems. One felt the final rule should specify that the State would be responsible for pavement, bridge, and safety management systems where the FH is also a State highway and that cities and counties would be responsible for those management systems where FHs are under city or county jurisdiction. The FS would then be responsible for those

management systems on all other applicable roads.

Response: Title 23, U.S.C., 303 requires the States to develop and implement systems for managing highway pavements of Federal-aid highways (pavement management systems), bridges on and off Federal-aid highways (bridge management systems), and highway safety for all public roads (safety management systems). The results of bridge management systems and safety management systems on all FHs and results of pavement management systems for FHs on Federal-aid highways are to be provided by the SHAs for consideration in the development of programs under § 660.109 of this part. The FHWA will provide appropriate pavement management results for FHs which are not Federal-aid highways. The last two sentences in paragraph (b) were reworded to clarify these procedures and be more in concert with 23 U.S.C. 204(a).

Comment: Two SHAs pointed out the inappropriate reference to the "Federal-aid system" in paragraph (b) when describing who reports pavement management systems results for FHs.

Response: The language of the final rule was revised to refer to "forest highways which are not Federal-aid highways" rather than to "forest highways off the Federal-aid system."

Comment: One commenter recommended that paragraph (c)(1) be clarified by adding the word "forest" before the word "roads" to be more consistent with previous definitions and to clarify candidate roads for nomination. This would clarify the fact that the SHA and the FS will nominate "forest" roads, not just any roads, for FH designation. The FH definition also references forest roads.

Response: Paragraph (c)(1) was revised to make this clarification.

Comment: One commenter suggested that the order of the three criteria for designating FHs in paragraph (d)(1) should be revised to add greater emphasis to the serving of access needs of the NFS.

Response: This comment was accepted. The order of the three items was revised.

Section 660.107 Allocations

Comment: One commenter noted the restrictiveness of the NPRM in that it limits the funding of the allocated portion of the Public Lands Highway Program exclusively to FHs. The commenter further pointed out that the 1991 ISTEA amended 23 U.S.C. 202 by striking the subsection that dealt with FHs as a part of the Public Lands Highway Program with the result that, according to the commenter, one-third of the allocated program may be spent on highways other than FHs. Under this broader definition of Public Lands Highways, the States would have the flexibility to spend the allocated portion of PLH funds on all kinds of highways such as the Bureau of Land Management roads and even Indian Reservation Roads. The "equal consideration" language of the ISTEA, in the commenter's view, would allow for at least half of the allocated funds to be spent on such roads while the NPRM language restricts the allocated portion to FHs only.

Response: The conference report on ISTEA states that "Sixty-six percent of the public lands highway account shall be allocated to the Forest Service regional offices for use in 41 States based on the FH criteria. The remaining 34 percent shall be allocated by the Secretary based on national competition for other forest or public lands highways." (H.R. Conf. Rep. No. 404, 102d Cong., 1st Sess. 331 (1991).) Therefore, the interpretation of 23 U.S.C. 202(b) is as follows:

1. Thirty-four percent of the public lands highway funds shall be allocated in a discretionary manner, giving preference to States that contain at least 3 percent of the total public lands in the nation.

2. Sixty-six percent of the public lands highway funds are to be allocated to the FS Regions in accordance with section 134 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (STURAA) (Pub. L. 100–17, 101 Stat. 132, 173). Section 134 pertained to the allocation of FH funds, which is part of the Public Lands Highway category. Therefore, the language of this section was not changed.

Comment: Two of the SHAs took exception to the fact that this section requires the allocation of Public Lands Highway Funds by FS Region, citing an apparent inconsistency with section 134 of the STURAA which allocates "for expenditure in each State." It was suggested that, for some States which have more than one FS Region, allocation by FS Region potentially creates difficulties, such as competition or conflicts between States, and that FH funds should continue to be allocated as outlined in the STURAA. Also, because the ISTEA requires that all FS projects be included in each State's "Statewide Transportation Improvement Program" (STIP), allocation of funds by State would make it easier for each State to project available funding and projects for inclusion in its STIP.

Response: The NPRM may have given the appearance that the allocation method is being changed. Actually, the NPRM proposed to continue with the same FH allocation method which has been in existence since FY 85. If FH funds were to be allocated to the States, 34 States would have their "hold harmless" funds reduced by an aggregate total of approximately $90 million per year (based on FY 94 allocation amounts). This represents nearly 85 percent of the total FY 94 FH funds allocation. The regulation will continue with the allocation in its present form.

Comment: One commenter suggested that the word "elements," used in the NPRM to state that the allocation of funds for FHs uses values based on relative transportation needs of the various elements of the NFS, should be replaced with the word "resources." The commenter pointed out that the word "element" is used in the definition of renewable resources and could be construed to limit allocations based on renewable resources only. The commenter also believes the term "resources" was defined to include both renewable and nonrenewable resources and is more appropriate to use in defining the allocation process.

Response: This wording was carried forward from the previous wording of the existing regulation. However, the sentence was clarified by deleting the entire phrase "the various elements of," thereby eliminating the need for referring to either "resources" or "elements." It now refers only to "using values based on relative transportation needs of the NFS."

Section 660.109 Program Development

Comment: One commenter proposed that a seventh FH project selection criterion should be added to the existing six criteria in paragraph (a) of this section. The new criterion, which would read: "The results for forest highways from the pavement, bridge, and safety management systems" is needed to comply with § 660.105(b) of this part, which discusses the management systems required under 23 U.S.C. 134 and 135. It would also have to be consistent with any changes made in 23 U.S.C. 105.

Response: Because management systems provide input to transportation planning and the TIP, this seventh criterion was added to the final rule as worded above.

Comment: One of the SHAs noted that the NPRM, in paragraph (a), stated that: "The FHWA will arrange and conduct a conference with the FS and the State Highway Agency (SHA) to jointly select

the projects which will be included in the programs. * * *" The commenter stated that cooperators (agencies) with jurisdiction over the FHs under consideration should be included in this conference to enhance the regional planning aspect for these projects.

Response: Under current procedures, the State represents the interests of the cooperators. The program meetings are always open to interested cooperators who may wish to attend. The States may invite cooperators to the meetings, if they wish. Thus, there is no need to change the wording of the NPRM.

Comment: The previous commenter also called attention to paragraph (a) of the NPRM which stated that the FS and the SHA will "jointly select the projects which will be included in the programs for the current fiscal year and at least the next 4 years." The commenter recommended that, since the projects selected will ultimately be added to the STIP, the planning and selection of FH projects should cover the same timeframe as the STIP.

Response: Generally, at least 5 years are needed to identify early environmental and other preliminary engineering required to ensure meeting the schedule to advance a project to construction. The proposed FH timeframe is consistent with this since the TIP generally shows 3 years of the 5-year FH program. Thus, there is no need to change the wording of the NPRM.

Comment: One commenter requested that, in paragraph (b) of this section, the term "recommended," as used in the first sentence, "The recommended program will be prepared by the FHWA and concurred in by the FS and the SHA," should be replaced with the term "selected." This would more accurately reflect the current procedure, as stated in paragraph (a), that the FHWA, the FS, and the SHA will "jointly select the projects," not just recommend them. One of the SHAs felt the second sentence should be revised to read, "The FHWA will approve the program 'only when there is concurrence by the FS and the SHA.'" Otherwise, the FHWA could conceivably approve the program without waiting for concurrence by the other two agencies.

Response: A review of this section indicated that the wording of the NPRM may still create some confusion, even with the recommended word changes, because the first two sentences of paragraph (b) state that "The recommended program will be prepared by the FHWA and concurred in by the FS and the SHA" and that "The FHWA will approve the program." This would make it appear that the FHWA simply prepares and approves its own program. Consequently, the wording of the first sentence of this paragraph was revised to read: "The recommended program will be prepared and approved by the FHWA with concurrence by the FS and the SHA." The second sentence was deleted.

Comment: One commenter pointed out that the term "incorporate," as used in the third sentence of NPRM paragraph (b), which states that "the SHA shall advise any other cooperators in the State of the projects included in the final program and shall incorporate the approved program into the STIP," seems vague. It appears to imply that the approved FH program is independent of the regional and statewide STIP planning requirements of the ISTEA. The commenter felt that, although this may be the correct way to handle a program of this nature, the process required to "incorporate" the final program into the STIP should be clarified.

Response: This sentence was clarified by adding the following phrase to the end of the sentence: "And shall include the approved program in the State's process for development of the STIP."

Section 660.111 Agreements

Comment: One commenter felt that the 41 statewide FH agreements currently in effect between the FHWA and the States (including Puerto Rico) should be updated and made into tri-party agreements with the FHWA, the FS, and the SHA. This would perpetuate the "partnership" spirit of the ISTEA and facilitate cooperation among the three agencies. It would also eliminate separate agreements between the FS and the SHA and between the FHWA and the SHA in each State. The wording of this section should be revised by inserting the words "the Forest Service" where necessary, such as after the word "FHWA" in paragraph (a), to include the FS as a signatory agency to the agreements.

Response: Because there are some overall FH procedures that not only involve the SHAs, but the FS as well, tri-party agreements among the FHWA, the FS, and the SHA will be a requirement in the final rule. Because the FHWA and the FS already have separate two-party FH program agreements for all 40 States, plus Puerto Rico, and because the FHWA does not want to delay the FH program until all new tri-party agreements are executed, the first sentence of this section of the NPRM was revised to delete the phrase "prior to the expenditure of any funds by the FHWA in the State."

Section 660.112 Project Development

Comment: One commenter suggested that, in the first sentence of paragraph (a), the phrase "or a public authority" should be added after the words "Projects will be administered by the FHWA." This would acknowledge that the FS may, in some cases, administer the design and construction of FH projects. The same commenter also suggested adding the phrase "and procedures documented in the statewide agreement" to the end of the sentence to allow for items included in statewide agreements to supplement Federal-aid procedures, where appropriate.

Response: Because the FS wants to be able to administer FH projects, this sentence was reworded to add the words "or the FS" instead of "or a public authority." Also, the phrase "and procedures documented in the statewide agreement" was added to the end of the sentence. This will allow the parties to determine the procedures to be followed in a State.

Section 660.113 Construction

Comment: One commenter suggested that the words "a public authority" be substituted for "cooperator" in paragraph (b) of this section. This would allow the FS to perform construction, if appropriate. Cooperators would still be included since they are, by definition, a public authority.

Response: Because other public authorities that might potentially be involved in a project would also be cooperators, the word "cooperator" was kept in the sentence in paragraph (b). However, by adding the words "the FS" after FHWA, the FS will be explicitly allowed to perform construction, if appropriate. Also, paragraph (c), which deals with final acceptance of the project, was revised to clarify the intent. The word "construction" was retained in the language to differentiate acceptance of the construction work (for the purpose of releasing the contractor) from that of acceptance of the entire project, including any extra work required to resolve noncontractor-related matters.

Section 660.115 Maintenance

Comment: In dealing with the same issue discussed in the previous section, as to what constitutes final acceptance of a project, it was suggested by one commenter that the word "construction" be deleted to avoid confusion.

Response: The term "construction" is not incorrect in the context of this paragraph, because it describes the type

of acceptance being made. However, the entire sentence was reworded to clarify and minimize possible confusion. By referencing § 660.113(c), which includes the word "construction," the meaning of the term "construction acceptance" was retained.

Section 660.117 Funding, Records and Accounting

Comment: One commenter suggested deleting the phrase "and the SHAs" from paragraph (e).

Response: Because the term "cooperators" includes SHAs, the phrase was considered redundant and, therefore, deleted.

Comment: One commenter suggested adding the word "Generally" at the beginning of the sentence in paragraph (f) to allow for those special cases where cash is not obtained in advance of construction procurement.

Response: Adding the word "generally" to the sentence makes the requirement too much less restrictive. Instead, the following phrase was added to the end of the last sentence: "Unless otherwise specified in a project agreement." Also, the word "shall" was changed to "should" to allow more flexibility.

Rulemaking Analyses and Notices; Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not major within the meaning of Executive Order 12866 or significant within the meaning of Department of Transportation regulatory policies and procedures. It is anticipated that the economic impact of this rulemaking would be minimal; therefore, a full regulatory evaluation is not required. This rule merely requires the States and Federal agencies to conform to the requirements of the ISTEA. The requirements are basically incremental to what the States and Federal agencies are required to do under the new ISTEA provisions, such as incorporating new planning provisions, including metropolitan and statewide transportation plan requirements; and establishing management systems provisions, including highway safety, bridges on and off Federal-aid highways, and highway pavements.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. Based on the evaluation, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. The revised regulation will not directly affect small businesses because the regulation applies only to Federal agency, State, and local government transportation programs. However, a minor positive secondary effect may result from the employment of small businesses, such as engineering consultant firms, to implement some of the planning and management systems required by the ISTEA.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification 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 23 CFR Part 660

Forest highways, Highways and roads, Public lands highways.

In consideration of the foregoing, the FHWA is amending chapter 1 of title 23, Code of Federal Regulations, part 660, subpart A as set forth below.

Issued on: June 6, 1994.

Rodney E. Slater,

Federal Highway Administrator.

PART 660—SPECIAL PROGRAMS (DIRECT FEDERAL)

1. Part 660, subpart A is revised to read as follows:

Subpart A—Forest Highways

Sec.
660.101 Purpose.
660.103 Definitions.
660.105 Planning and route designation.
660.107 Allocations.
660.109 Program development.
660.111 Agreements.
660.112 Project development.
660.113 Construction.
660.115 Maintenance.
660.117 Funding, records and accounting.

Authority: 16 U.S.C. 1608–1610; 23 U.S.C. 101, 202, 204, and 315; 49 CFR 1.48.

Subpart A—Forest Highways

§ 660.101 Purpose.

The purpose of this subpart is to implement the Forest Highway (FH) Program which enhances local, regional, and national benefits of FHs funded under the public lands highway category of the coordinated Federal Lands Highway Program. As provided in 23 U.S.C. 202, 203, and 204, the program, developed in cooperation with State and local agencies, provides safe and adequate transportation access to and through National Forest System (NFS) lands for visitors, recreationists, resource users, and others which is not met by other transportation programs. Forest highways assist rural and community economic development and promote tourism and travel.

§ 660.103 Definitions.

In addition to the definitions in 23 U.S.C. 101(a), the following apply to this subpart:

Cooperator means a non-Federal public authority which has jurisdiction and maintenance responsibility for a FH.

Forest highway means a forest road under the jurisdiction of, and maintained by, a public authority and open to public travel.

Forest road means a road wholly or partly within, or adjacent to, and serving the NFS and which is necessary for the protection, administration, and utilization of the NFS and the use and development of its resources.

Jurisdiction means the legal right or authority to control, operate, regulate use of, maintain, or cause to be maintained, a transportation facility, through ownership or delegated authority. The authority to construct or

maintain such a facility may be derived from fee title, easement, written authorization, or permit from a Federal agency, or some similar method.

Metropolitan Planning Organization (MPO) means that organization designated as the forum for cooperative transportation decisionmaking pursuant to the provisions of part 450 of this title.

Metropolitan Transportation Plan means the official intermodal transportation plan that is developed and adopted through the metropolitan transportation planning process for the metropolitan planning area.

National Forest System means lands and facilities administered by the Forest Service (FS), U.S. Department of Agriculture, as set forth in the Forest and Rangeland Renewable Resource Planning Act of 1974, as amended (16 U.S.C. 1601 note, 1600–1614).

Open to public travel means except during scheduled periods, extreme weather conditions, or emergencies, open to the general public for use with a standard passenger auto, without restrictive gates or prohibitive signs or regulations, other than for general traffic control or restrictions based on size, weight, or class of registration.

Public authority means a Federal, State, county, town, or township, Indian tribe, municipal or other local government or instrumentality with authority to finance, build, operate, or maintain toll or toll-free facilities.

Public lands highway means: (1) A forest road under the jurisdiction of and maintained by a public authority and open to public travel or (2) any highway through unappropriated or unreserved public lands, nontaxable Indian lands, or other Federal reservations under the jurisdiction of and maintained by a public authority and open to public travel.

Public road means any road or street under the jurisdiction of and maintained by a public authority and open to public travel.

Renewable resources means those elements within the scope of responsibilities and authorities of the FS as defined in the Forest and Rangeland Renewable Resource Planning Act of August 17, 1974 (88 Stat. 476) as amended by the National Forest Management Act of October 22, 1976 (90 Stat. 2949; 16 U.S.C. 1600–1614) such as recreation, wilderness, wildlife and fish, range, timber, land, water, and human and community development.

Resources means those renewable resources defined above, plus other nonrenewable resources such as minerals, oil, and gas which are included in the FS's planning and land management processes.

Statewide transportation plan means the official transportation plan that is: (1) Intermodal in scope, including bicycle and pedestrian features, (2) addresses at least a 20-year planning horizon, and (3) covers the entire State pursuant to the provisions of part 450 of this title.

§ 660.105 Planning and route designation.

(a) The FS will provide resource planning and related transportation information to the appropriate MPO and/or State Highway Agency (SHA) for use in developing metropolitan and statewide transportation plans pursuant to the provisions of part 450 of this title. Cooperators shall provide various planning (23 U.S.C. 134 and 135) information to the Federal Highway Administration (FHWA) for coordination with the FS.

(b) The management systems required under 23 U.S.C. 303 shall fulfill the requirement in 23 U.S.C. 204(a) regarding the establishment and implementation of pavement, bridge, and safety management systems for FHs. The results of bridge management systems and safety management systems on all FHs and results of pavement management systems for FHs on Federal-aid highways are to be provided by the SHAs for consideration in the development of programs under § 660.109 of this part. The FHWA will provide appropriate pavement management results for FHs which are not Federal-aid highways.

(c) The FHWA, in consultation with the FS, the SHA, and other cooperators where appropriate, will designate FHs.

(1) The SHA and the FS will nominate forest roads for FH designation.

(2) The SHA will represent the interests of all cooperators. All other agencies shall send their proposals for FHs to the SHA.

(d) A FH will meet the following criteria:

(1) Generally, it is under the jurisdiction of a public authority and open to public travel, or a cooperator has agreed, in writing, to assume jurisdiction of the facility and to keep the road open to public travel once improvements are made.

(2) It provides a connection between adequate and safe public roads and the resources of the NFS which are essential to the local, regional, or national economy, and/or the communities, shipping points, or markets which depend upon those resources.

(3) It serves:

(i) Traffic of which a preponderance is generated by use of the NFS and its resources; or

(ii) NFS-generated traffic volumes that have a substantial impact on roadway design and construction; or

(iii) Other local needs such as schools, mail delivery, commercial supply, and access to private property within the NFS.

§ 660.107 Allocations.

On October 1 of each fiscal year, the FHWA will allocate 66 percent of Public Lands Highway funds, by FS Region, for FHs using values based on relative transportation needs of the NFS, after deducting such sums as deemed necessary for the administrative requirements of the FHWA and the FS; the necessary costs of FH planning studies; and the FH share of costs for approved Federal Lands Coordinated Technology Implementation Program studies.

§ 660.109 Program development.

(a) The FHWA will arrange and conduct a conference with the FS and the SHA to jointly select the projects which will be included in the programs for the current fiscal year and at least the next 4 years. Projects included in each year's program will be selected considering the following criteria:

(1) The development, utilization, protection, and administration of the NFS and its resources;

(2) The enhancement of economic development at the local, regional, and national level, including tourism and recreational travel;

(3) The continuity of the transportation network serving the NFS and its dependent communities;

(4) The mobility of the users of the transportation network and the goods and services provided;

(5) The improvement of the transportation network for economy of operation and maintenance and the safety of its users;

(6) The protection and enhancement of the rural environment associated with the NFS and its resources; and

(7) The results for FHs from the pavement, bridge, and safety management systems.

(b) The recommended program will be prepared and approved by the FHWA with concurrence by the FS and the SHA. Following approval, the SHA shall advise any other cooperators in the State of the projects included in the final program and shall include the approved program in the State's process for development of the Statewide Transportation Improvement Program. For projects located in metropolitan areas, the FHWA and the SHA will work with the MPO to incorporate the approved program into the MPO's Transportation Improvement Program

§ 660.111 Agreements.

(a) A statewide FH agreement shall be executed among the FHWA, the FS, and each SHA. This agreement shall set forth the responsibilities of each party, including that of adherence to the applicable provisions of Federal and State statutes and regulations.

(b) The design and construction of FH projects will be administered by the FHWA unless otherwise provided for in an agreement approved under this subpart.

(c) A project agreement shall be entered into between the FHWA and the cooperator involved under one or more of the following conditions:

(1) A cooperator's funds are to be made available for the project or any portion of the project;

(2) Federal funds are to be made available to a cooperator for any work;

(3) Special circumstances exist which make a project agreement necessary for payment purposes or to clarify any aspect of the project; or

(4) It is necessary to document jurisdiction and maintenance responsibility.

§ 660.112 Project development.

(a) Projects to be administered by the FHWA or the FS will be developed in accordance with FHWA procedures for the Federal Lands Highway Program. Projects to be administered by a cooperator shall be developed in accordance with Federal-aid procedures and procedures documented in the statewide agreement.

(b) The FH projects shall be designed in accordance with part 625 of this chapter or those criteria specifically approved by the FHWA for a particular project.

§ 660.113 Construction.

(a) No construction shall be undertaken on any FH project until plans, specifications, and estimates have been concurred in by the cooperator(s) and the FS, and approved in accordance with procedures contained in the statewide FH agreement.

(b) The construction of FHs will be performed by the contract method, unless construction by the FHWA, the FS, or a cooperator on its own account is warranted under 23 U.S.C. 204(e).

(c) Prior to final construction acceptance by the contracting authority, the project shall be inspected by the cooperator, the FS, and the FHWA to identify and resolve any mutual concerns.

§ 660.115 Maintenance.

The cooperator having jurisdiction over a FH shall, upon acceptance of the project in accordance with § 660.113(c), assume operation responsibilities and maintain, or cause to be maintained, any project constructed under this subpart.

§ 660.117 Funding, records and accounting.

(a) The Federal share of funding for eligible FH projects may be any amount up to and including 100 percent. A cooperator may participate in the cost of project development and construction, but participation shall not be required.

(b) Funds for FHs may be used for:

(1) Planning;

(2) Federal Lands Highway research;

(3) Preliminary and construction engineering; and

(4) Construction.

(c) Funds for FHs may be made available for the following transportation-related improvement purposes which are generally part of a transportation construction project:

(1) Transportation planning for tourism and recreational travel;

(2) Adjacent vehicular parking areas;

(3) Interpretive signage;

(4) Acquisition of necessary scenic easements and scenic or historic sites;

(5) Provisions for pedestrians and bicycles;

(6) Construction and reconstruction of roadside rest areas including sanitary and water facilities; and

(7) Other appropriate public road facilities as approved by the FHWA.

(d) Use of FH funds for right-of-way acquisition shall be subject to specific approval by the FHWA.

(e) Cooperators which administer construction of FH projects shall maintain their FH records according to 49 CFR part 18.

(f) Funds provided to the FHWA by a cooperator should be received in advance of construction procurement unless otherwise specified in a project agreement.

[FR Doc. 94–14224 Filed 6–10–94; 8:45 am]

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23 CFR Parts 710, 712, 713, and 720

[FHWA Docket No. 93–7]

RIN 2125–AD09

Removal of Obsolete and Redundant Right-of-Way Requirements

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Correction to final rule.

SUMMARY: This document contains a correction to the authority citation in the final rule published on May 16, 1994 at 59 FR 25326. The final rule related to removal of obsolete and redundant right-of-way requirements.

EFFECTIVE DATE: June 13, 1994.

FOR FURTHER INFORMATION CONTACT: Gerald B. Saunders, Chief, Operations Division, Office of Right-of-Way, HRW–20, (202) 366–0142; or Reid Alsop, Office of Chief Counsel, HCC–31, (202) 366–1371, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

The FHWA hereby corrects the authority citation of 23 CFR part 713 which was published on Monday, May 16, 1994, on page 25327 in FR Doc. 94–11846 to read as follows:

Authority: 23 U.S.C. 101(a), 142(f), 156, and 315; 42 U.S.C. 4633 and 4651–4655; 23 CFR 1.32; 49 CFR 1.48 (b) and (cc), 18.31 and parts 21 and 24.

Issued on: June 6, 1994.

Theodore A. McConnell,

Chief Counsel.

[FR Doc. 94–14225 Filed 6–10–94; 8:45 am

BILLING CODE 4910–22–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 19–1–6225; FRL–4890–3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Stage II Vapor Recovery Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision establishes and requires the use of Stage II vapor recovery at gasoline dispensing facilities in ozone nonattainment areas classified as moderate, serious, or severe in the Commonwealth. The effect of this action is to approve, in a limited fashion, the Pennsylvania regulation requiring Stage II vapor recovery gasoline dispensing facilities (Chapter 129.82) and the associated definition of gasoline dispensing facility in Chapter 121.1. It is also the effect of this action to disapprove, in a limited fashion, Pennsylvania regulation, Chapter 129.82. This action is being taken under section 110 of the Clean Air Act.

EFFECTIVE DATE: This final rule will become effective on July 13, 1994.

ADDRESSES: 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, Pennsylvania 19107; Air and Radiation Docket & Information Center, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Stahl, (215) 597–9337,at the EPA Region III address.

SUPPLEMENTARY INFORMATION: On November 29, 1993 (58 FR 62560), EPApublished a notice of proposed rulemaking (NPR) for the Commonwealth of Pennsylvania. The NPR proposed two actions: (a) A limited approval/limited disapproval of the Pennsylvania Stage II vapor recovery regulation, Chapter 129.82 submitted on March 4, 1992; and (b) approval of Chapter 129.82 as supplemented by section 6.7(b), (c), and (h) and section 17(2) of the Pennsylvania Air Pollution Control Act as amended on June 29, 1992. EPA proposed the approval of Chapter 129.82 as supplemented by sections of the Pennsylvania Air Pollution Control Act in the event that Pennsylvania submitted those sections of the Pennsylvania Air Pollution Control Act as a formal SIP revision.

Since Pennsylvania has not submitted the applicable sections from its Air Pollution Control Act as amended on June 29, 1992, EPA is withdrawing its proposed approval of Chapter 129.82 as supplemented by section 6.7(b), (c), and (h) and section 17(2) of the Pennsylvania Air Pollution Control Act, as amended on June 29, 1992. Therefore, this notice is a final rulemaking action of the March 4, 1992 submittal alone.

Other specific requirements of Pennsylvania's Stage II regulation and the rationale for EPA's proposed action are explained in the NPR and will not be restated here. Only one comment pertaining to the NPR was received. The Pennsylvania Department of Environmental Resources (DER) requested that EPA withhold final action on the Stage II vapor recovery regulation submitted on March 4, 1992 until EPA resolves the issues concerning applicability of Stage II in moderate ozone nonattainment areas. EPA has no issues to resolve concerning Stage II in moderate ozone nonattainment areas. The onboard vapor recovery requirements required to be issued prior to January 22, 1994 do not affect requirements in the Pennsylvania Stage II regulation, Chapter 129.82. States are free to continue to enforce Stage II regulations in moderate ozone nonattainment areas, even after the promulgation of onboard vapor recovery requirements by EPA. Therefore, EPA is finalizing its limited approval/limited disapproval of the Pennsylvania Stage II regulation, Chapter 129.82, and the associated definition of gasoline dispensing facilities located in Chapter 121.1, which is applicable in moderate, serious and severe ozone nonattainment areas in the Commonwealth.

Final Action

EPA is approving the definition of gasoline dispensing facility in Chapter 121 and the Stage II vapor recovery requirements in Chapter 129.82 as a revision to the Pennsylvania SIP. EPA is also disapproving the Stage II vapor recovery requirements in Chapter 129.82 for the limited purpose of allowing Pennsylvania the opportunity to correct the testing and certification requirement deficiencies previously identified by EPA. This final limited disapproval begins the 18 month sanctions clock for the Pennsylvania Stage II regulation.

Because of the previously identified deficiencies, EPA cannot grant full approval of this rule under section 110(k)(3) and part D. Also, because the submitted rule is not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rule under section 110(k)(3).

However, EPA may grant a limited approval of the submitted rule(s) under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval, due to the fact that the rule does not meet the section 182(b)(3) requirement of part D because of the noted deficiencies. Thus, EPA is approving the Pennsylvania Stage II vapor recovery regulation, Chapter 129.82 submitted under section 110(k)(3) and 301(a) of the CAA for the limited purpose of strengthening the Pennsylvania SIP.

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 CAA, 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).

EPA is also disapproving the Pennsylvania Stage II rule because it contains deficiencies that have not been corrected and, as such, the rule does not fully meet the requirements of section 182(b)(3) of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway funding and offsets. The 18 month period referred to in section 179(a) begins at the time EPA publishes final notice of this disapproval. Moreover, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c). The 18 month sanctions clock for the Pennsylvania Stage II vapor recovery regulation begins on June 13, 1994.

EPA's disapproval of the State request under section 110 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements and impose any new Federal requirements.

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.

This action has been classified as a Table 2 action for signature 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. 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. The USEPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on USEPA'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, pertaining to the Pennsylvania Stage II regulation, Chapter 129.82, must be filed in the United States Court of Appeals for the appropriate circuit by August 12, 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).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: April 14, 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 NN—Pennsylvania

2. Section 52.2020 is amended by adding paragraph (c)(89) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(c) * * *

(89) Revisions to the Pennsylvania Regulations, Chapter 129.82 pertaining to Stage II Vapor Recovery and the associated definition of gasoline dispensing facilities in Chapter 121.1 submitted on March 4, 1992 by the Pennsylvania Department of Environmental Resources:

(i) Incorporation by reference.

(A) Letter of March 4, 1992 from the Pennsylvania Department of Environmental Resources transmitting Chapter 121.1, definition of gasoline dispensing facilities, and Chapter 129.82 pertaining to regulations for Stage II vapor recovery in moderate, serious and severe ozone nonattainment areas in the Commonwealth.

(B) Pennsylvania Bulletin (Vol. 22, No. 8) dated February 8, 1992 containing the definition of gasoline dispensing facility in Chapter 121.1 and the Stage II vapor recovery regulations contained in Chapter 129.82, effective on February 8, 1992.

(ii) Additional material.

(A) Remainder of March 4, 1992 State submittal.

3. Section 52.2023 is amended by adding paragraph (i) to read as follows:

§ 52.2023 Approval status.

* * * * *

(i) Limited approval/limited disapproval of revisions to the Pennsylvania Regulations, Chapter 129.82 pertaining to Stage II Vapor Recovery and the associated definition of gasoline dispensing facilities in Chapter 121.1 submitted on March 4, 1992 by the Pennsylvania Department of Environmental Resources. The Pennsylvania Stage II regulation is deficient in that it does not include the testing and certification procedures contained in EPA's October 1991 Stage II guidance documents (EPA–450/3–91–022a and EPA–450/3–91–022b).

[FR Doc. 94–14244 Filed 6–10–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

Special Industrial Radio Service

CFR Correction

In Title 47 of the Code of Federal Regulations, part 80 to End, revised as of October 1, 1993, on pages 296 and 297, § 90.73, paragraph (c) incorrectly carried the *Manufacturers Radio Service Frequency Table.* Paragraph (c) should have carried the *Special Industrial Radio Service Frequency Table* which reads as follows.

§ 90.73 Special Industrial Radio Service.

* * * * *

(c) *Frequencies available.* * * *

SPECIAL INDUSTRIAL RADIO SERVICE FREQUENCY TABLE

Frequency or band	Class of station(s)	Limitations
Kilohertz:		
2,000 to 25,000	Fixed, base or mobile.	1
2292	Base or mobile	1, 34
2398	do	1, 34
4637.5	do	1, 34
Megahertz:		
30.58	do	2
30.60	do	2
30.62	do	2
30.64	do	34
31.28	do	34
31.32	do	29, 34
31.36	do	34
31.40	do	29, 34
31.44	do	29,34
31.48	do	29, 31, 34
31.52	do	29, 31, 34
31.56	do	34
31.60	do	29, 34
31.64	do	29, 31, 34
31.68	do	34
31.72	do	29, 31, 34
31.76	do	29, 31, 34
31.80	do	34
31.84	do	34
31.88	do	34
31.92	do	34
31.96	do	34
33.12	do	3, 34
35.28	do	34
35.32	do	34
35.36	do	34
35.40	do	34
35.44	do	34
35.48	do	29, 34
35.52	do	34
35.74	do	2
35.76	do	2
35.78	do	2
35.80	do	2
35.82	do	2
35.84	do	2
35.86	do	2
43.02	do	31, 34
43.04	do	4
43.06	do	34
43.08	do	34
43.10	do	34
43.12	do	34
43.14	do	34
43.18	do	2
43.28	do	31, 34
43.32	do	34
43.36	do	31, 34
43.40	do	31, 34
43.44	do	34
43.48	do	34
43.52	do	31, 34
47.44	do	2
47.48	do	2
47.52	do	2
47.56	do	2
47.60	do	2
47.64	do	2
47.68	do	2
49.52	do	34
49.54	do	5, 34
49.56	do	2
49.58	do	5, 34
72–76	Operational fixed	6
72.44	Mobile	7
72.48	do	7
72.52	do	7
72.56	do	7
72.60	do	7
75.44	do	7
75.48	do	7
75.52	do	7
75.56	do	7
75.60	do	7
150–170	Base or mobile	35
151.490	do	2, 8
151.505	do	4
151.520	do	2
151.535	do	2
151.550	do	2
151.565	do	2
151.580	do	2
151.595	do	2
152.465	do	2, 28
152.48	do	2, 9

SPECIAL INDUSTRIAL RADIO SERVICE FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations
152.870	do	16, 34
152.885	do	2
152.900	do	2, 10
152.915	do	2
152.930	do	2, 10
152.945	do	2
152.960	do	2, 10
152.975	do	2
152.990	do	2, 10
153.005	do	2
153.020	do	2, 10
153.035	do	2, 11
153.050	do	2, 30, 33
153.125	do	2, 30, 33
153.335	do	2, 30
153.350	do	2, 30
153.365	do	2, 30
153.380	do	2, 30
153.395	do	2, 30
154.45625	Fixed or mobile	12, 13, 15, 25
154.46375	do	12, 13, 15, 26, 27
154.47125	do	12, 13, 15, 27
154.47875	do	12, 13, 15, 25
154.49	Base or mobile	2
154.625	do	2, 9
157.725	do	2, 28
157.740	do	2, 9
158.325	do	2, 30, 33
158.355	do	2, 32
158.385	do	2
158.400	do	4
158.415	do	2, 30, 33
158.460	do	2, 9
169 to 172	Mobile, operational fixed.	14
173.20375	Fixed or mobile	12, 13, 15, 27
173.2100	do	12, 15, 16, 27
173.2375	do	12, 13, 15, 25
173.2625	do	12, 13, 15, 25
173.2875	do	12, 13, 15, 25
173.3125	do	12, 13, 15, 25
173.3375	do	12, 13, 15, 25
173.3625	do	12, 13, 15, 25
173.3900	do	12, 15, 16, 27
173.39625	do	12, 13, 15, 27
216 to 220	Base or mobile	17
220 to 222	Base and mobile	(37)
406–413	Operational fixed	14
450 to 470	Fixed	18
451.725	Base or mobile	2
451.775	do	2
451.800	Operational fixed, base or mobile.	4, 19
451.825	Base or mobile	2
451.850	do	2
451.875	do	2
451.900	do	2
451.925	do	2
451.950	do	2
451.975	do	2
452.000	do	2
452.025	do	2
452.075	do	2
452.125	do	2
452.175	do	2
456.725	Mobile	2
456.775	do	2
456.800	Operational fixed, base or mobile.	4, 19
456.825	Mobile	2
456.850	do	2
456.875	do	2
456.900	do	2
456.925	do	2
456.950	do	2
456.975	do	2
457.000	do	2
457.025	do	2
457.075	do	2
457.125	do	2
457.175	do	2
470 to 512	Base or mobile	20
806 to 821	Mobile	21
851 to 866	Base or mobile	21
896 to 901	Mobile	21
928 and above	Operational-fixed	22
929 to 930	Base only	36
935 to 940	Base or mobile	21
1427 to 1435	Operational-fixed, base or mobile.	17
2450 to 2500	Base or mobile	23
8400 to 8500	do	24

SPECIAL INDUSTRIAL RADIO SERVICE FREQUENCY TABLE—Continued

Frequency or band	Class of station(s)	Limitations
10,550 to 10,680*.	do	

*The frequencies in the band 10.55–10.68 GHz are available for Digital Termination Systems and for associated intermodal links in the Point-to-Point Microwave Radio Service. No new licenses will be issued under this subpart but current licenses will be renewed.

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Ocenic and Atmospheric Administration

50 CFR Part 216

[Docket No. 940667–4167; I.D. 053194B]

RIN 0648–AG34

Taking and Importing of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; with request for comments.

SUMMARY: NMFS implements provisions of the International Dolphin Conservation Act (IDCA) that make it unlawful, after June 1, 1994, for any person, to sell, purchase, offer for sale, transport, or ship, in the United States, any tuna or tuna product that is not dolphin safe. The intent of this action is to ensure that the U.S. market does not act as an incentive to the harvest of tuna caught in association with dolphins or with driftnets.

DATES: This rule is effective June 2, 1994. Comments on this rule must be received or postmarked on or before August 12, 1994.

ADDRESSES: Comments should be sent to: Director, Southwest Region, NMFS, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: LT Dana Wilkes, NMFS, 310–980–4000.

SUPPLEMENTARY INFORMATION:

Background

NMFS is required to monitor the importation of certain fish and fish products to ensure compliance with various provisions of the Marine Mammal Protection Act (MMPA), as amended by the IDCA and the Dolphin Protection Consumer Information Act (DPCIA). The IDCA states, among other things, that "It is the policy of the United States.. to ensure that the market of the United States does not act as an incentive to the harvest of tuna caught in association with dolphins or with driftnets."

The IDCA makes it unlawful, after June 1, 1994, for any person to sell, purchase, offer for sale, transport, or ship, in the United States, any tuna or tuna product that is not dolphin safe.

Tuna, or a tuna product, is not dolphin safe if it contains tuna that was harvested on the high seas by a vessel engaged in fishing with driftnets 2.5 km or longer in length ("large-scale driftnets"). As of May 31, 1994, the Secretary had not identified any nation whose vessels are engaging in fishing with large-scale driftnets.

Tuna or a product containing tuna that was harvested in the eastern tropical Pacific Ocean (ETP) by a vessel 400 short tons (362.8 metric tons (mt)) carrying capacity or greater, is dolphin safe only if it is accompanied by two written statements: one executed by the captain of the vessel that harvested the tuna, certifying that purse seine nets were not intentionally deployed on or to encircle dolphins at any time during the fishing trip (captain's statement); and the other from a NMFS or Inter-American Tropical Tuna Commission official certifying that there was an approved observer on board the vessel during the entire trip and that purse seine nets were not intentionally deployed during the trip on, or to encircle, dolphins (observer's statement). Both the captain's and the observer's statements must be endorsed in writing by each exporter, importer, and processor of the product.

Tuna or a product containing tuna harvested outside the ETP by a purse seine vessel, is dolphin safe if it is accompanied by a captain's statement, certifying that no purse seine net was intentionally deployed on, or to encircle, dolphins during the particular voyage on which the tuna was harvested.

Tuna or a product containing tuna harvested outside the ETP by a purse seine vessel in a fishery in which the Secretary has determined that a regular and significant association occurs between marine mammals and tuna, and in which tuna is harvested through the use of purse seine nets deployed on, or to encircle, marine mammals, is dolphin safe if it is accompanied by a captain's statement and an observer's statement. As of May 31, 1994, the Secretary had not made such a determination.

NMFS anticipates that the dolphin-safe documentation requirements of the IDCA and this final rule will primarily affect tuna harvested with purse seine nets outside of the ETP. In accordance with the importation requirements of 50 CFR 216.24(e), all tuna, other than fresh, is required to be accompanied by a NOAA Form 370 "Fisheries Certificate

of Origin" (FCO) upon importation into the United States. NMFS believes that most tuna marketed in the United States (U.S.-harvested, as well as imports) is labeled "dolphin safe" in accordance with DPCIA labeling standards. Therefore, most tuna harvested in the ETP by purse seine vessels 400 short tons (362.8 mt) carrying capacity or greater and sold in the United States meets the dolphin-safe documentation requirements (i.e., it is accompanied by an FCO, as well as captain's and observer's statements and endorsements). For imported tuna harvested outside the ETP by a purse seine vessel, this regulation requires that a captain's statement be attached to the FCO. In addition, for tuna harvested outside the ETP by a U.S. purse seine vessel, this regulation requires a captain's statement. The FCO's must be endorsed by each exporter, importer, and processor of the tuna, as described above.

The U.S. Customs Service (USCS) controls the importation of tuna and tuna products into the United States. USCS will verify that a captain's statement accompanies shipments of tuna and tuna product containing tuna harvested by purse seine outside the ETP, and that a captain's statement and an observer's statement, endorsed in writing by every exporter, importer, and processor, accompany tuna or tuna product containing tuna harvested by purse seine in the ETP.

This rule is codified in 50 CFR 216.24(e)(9). The former text of paragraph 216.24(e)(9) that is replaced by this regulation was effective only through 1986. Therefore, deletion of that language has no regulatory effect.

Classification

This rule codifies statutory requirements and prohibitions that became effective pursuant to the IDCA after June 1, 1994. Therefore, under authority set forth at 5 U.S.C. 553(b)(B), good cause exists to waive the notice and comment requirements of the Administrative Procedure Act as such procedures are unnecessary. Further, in that this rule incorporates a statutory requirement already in effect, good cause exists under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date.

This rule has been determined to be not significant for purposes of E.O. 12866.

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act. The collections found at 50 CFR 216.24(e) have been previously approved by the Office of Management and Budget (OMB) under Control Number 0648–0040 for tuna or a tuna product that contains tuna harvested in the ETP by purse seine vessels of 400 short tons (362.8 metric tons) carrying capacity or greater and that is labeled "dolphin safe." The public reporting burden for this collection was previously estimated to be 0.66 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information (56 FR 47418, September 19, 1991). The IDCA now mandates that the same reporting requirement apply to all tuna or tuna products containing tuna harvested by purse seine in the ETP by these vessels, and it is expected that the same reporting burden will apply. In addition, all tuna or tuna products containing tuna harvested by purse seine vessel outside the ETP must now be accompanied by the captain's statement described above. The reporting burden for the completion of the captain's statement for tuna harvested by purse seine outside of the ETP is estimated to be 0.083 hours per response. Also, tuna harvested outside the ETP must now be accompanied by an FCO and captain's statement. Send comments regarding this burden estimate or on any other aspect of this collection of information, including suggestions for reducing this burden, to the Director, Southwest Region, NMFS (see ADDRESSES) and to the Office of Management and Budget, Paperwork Reduction Project 0648–0400, Washington, D.C. 20503 (Attn: NOAA Desk Officer).

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Imports, Indians, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Dated: June 6, 1994.

Charles Karnella,

Acting Program Management Officer, National Marine Fisheries Service.

For the reasons set out 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.*

2. In § 216.24, the heading of paragraph (e) is revised and paragraph (e)(9) is revised to read as follows:

§ 216.24 Taking and related acts incidental to commercial fishing operations.

* * * * *

(e) *Importation, purchase, shipment, sale and transport.*

(9) *Dolphin safe requirements.* (i) It is unlawful for any person to sell, purchase, offer for sale, transport, or ship in the United States, any tuna or tuna product that is not dolphin safe.

(ii) For purposes of this section, tuna or a tuna product is dolphin safe if:

(A) It does not contain tuna that was harvested on the high seas by a vessel engaged in large-scale driftnet fishing;

(B) In the case of tuna or tuna product that contains tuna harvested in the ETP by a purse seine vessel, either the purse seine vessel is of less than 400 short tons (362.8 metric tons (mt)) carrying capacity or, if the purse seine vessel is of 400 short tons (362.8 mt) carrying capacity or greater, the tuna or tuna product is accompanied by:

(*1*) A completed Fisheries Certificate of Origin;

(*2*) A written statement by the captain of each vessel that harvested the tuna, certifying that the vessel did not intentionally deploy a purse seine net on, or to encircle, dolphins at any time during the trip; a written statement, signed by either the Secretary or a representative of the Inter-American Tropical Tuna Commission, certifying that an observer employed by or working under contract with the Inter-American Tropical Tuna Commission or the Secretary, was on board the vessel during the entire trip and that the vessel did not intentionally deploy a purse seine net on, or to encircle, dolphin at any time during the trip; and

(*3*) An endorsement on the Fisheries Certificate of Origin by each exporter, importer, and processor certifying that, to the best of his or her knowledge and belief, the Fisheries Certificate of Origin and attached documents, and the statements required by this paragraph (e)(9)(ii) accurately describe the tuna products;

(C) In the case of tuna or a tuna product containing tuna harvested outside the eastern tropical Pacific Ocean by a purse seine vessel, it is accompanied by a written statement, executed by the captain of the vessel, certifying that no purse seine net was intentionally deployed on, or to encircle, dolphins during the particular voyage on which the tuna was harvested; and

(D) In the case of tuna or a tuna product containing tuna harvested outside the ETP by a purse seine vessel in a fishery in which the Secretary has determined that a regular and significant association occurs between

marine mammals and tuna, and in which tuna is harvested through the use of purse seine nets deployed on, or to encircle, marine mammals, it is accompanied by a written statement, executed by the captain of the vessel and by an observer, certifying that no purse seine net was intentionally deployed on, or to encircle, marine mammals during the particular voyage on which the tuna was harvested.

(iii) *Submission of documentation.*—(A) *Imported tuna or tuna product.* The documents required by paragraph (e)(9)(ii) of this section must accompany the imported tuna or tuna product until no further endorsements are required on the documentation and the documents have been submitted to officials of the U.S. Customs Service at the time of importation.

(B) *U.S. domestic shipments.* The documents required by paragraph (e)(9)(ii) of this section must accompany tuna or tuna product, other than imported, until no further endorsements are required on the documentation and the documents have been submitted to the Director, Southwest Region, National Marine Fisheries Service, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802.

* * * * *

[FR Doc. 94–14247 Filed 6–10–94; 8:45 am]

BILLING CODE 3510–22–F

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50 CFR Part 301

[Docket No. 931235–4107; I.D. 060694F]

Pacific Halibut Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of inseason action.

SUMMARY: The Assistant Administrator for Fisheries, NOAA, on behalf of the International Pacific Halibut Commission (IPHC),publishes notice of this inseason action pursuant to IPHC regulations approved by the United States Government to govern the Pacific halibut fishery. This action is intended to enhance the conservation of Pacific halibut stocks in order to help sustain them at an adequate level in the northern Pacific Ocean and Bering Sea.

EFFECTIVE DATE: May 26, 1994.

FOR FURTHER INFORMATION CONTACT: Steven Pennoyer, telephone 907-586-7221; Gary Smith, telephone 206-526-6140; or Donald McCaughran, telephone 206-634-1838.

SUPPLEMENTARY INFORMATION: The IPHC, under the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (signed at Ottawa, Ontario, on March 2, 1953), as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979), has issued this inseason action pursuant to IPHC regulations governing the Pacific halibut fishery. The regulations have been approved by the Secretary of State of the United States of America (58 FR 17791, April 6, 1993). On behalf of the IPHC, this inseason action is published in the **Federal Register** to provide additional notice of its effectiveness, and to inform persons subject to the inseason action of the restrictions and requirements established therein.

Inseason Action

1994 Halibut Landing Report No. 3

North Washington Coast Sport Fishery to Close

The north Washington coast (waters west of the Bonilla-Tatoosh line and south to the Queets River) sport halibut harvest through May 22 is 47,699 lb (21.6 mt). It is anticipated that the catch limit of 68,039 lb (30.9 mt) for this area will be reached on May 28. Therefore, the sport halibut fishery in this area will close at 11:59 p.m. on May 28, and remain closed for the remainder of 1994.

Anglers have landed an estimated 6,500 lb (3.0 mt) of Pacific halibut in Neah Bay, WA, that were caught in Canadian waters. Fishing remains open in Canadian waters with a two fish daily bag limit, no size restriction. Anglers desiring to fish in Canadian waters are strongly urged to contact Canada Department of Fisheries and Oceans at (604) 666-0383/0583 for sport fishing information concerning licensing and the nautical description of closed areas.

Dated: June 7, 1994.

David S. Crestin,

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

[FR Doc. 94–14299 Filed 6–10–94; 8:45 am]

BILLING CODE 3510–22–F

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50 CFR Part 675

[Docket No. 931100–4043; I.D. 060894A]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of Greenland turbot in the Bering Sea subarea (BS) of the Bering Sea and Aleutian Islands management area (BSAI). NMFS is requiring that catches of Greenland turbot in the BS be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the Greenland turbot total allowable catch (TAC) in the BS has been reached.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), June 8, 1994, until 12 midnight, A.l.t., December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Michael L. Sloan, 907–586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the BSAI Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii), the Greenland turbot TAC for the BS was established by the final 1994 initial specifications of groundfish (59 FR 7656, February 16, 1994) and subsequent apportionment of reserve (59 FR 21673, April 26, 1994) as 4,667 metric tons.

The Director, Alaska Region, NMFS has determined in accordance with § 675.20(a)(9), that the Greenland turbot TAC in the BS has been reached. Therefore, NMFS is requiring that further catches of Greenland turbot in the BS be treated as prohibited species in accordance with § 675.20(c)(3), effective from 12 noon, A.l.t., June 8, 1994, until 12 midnight, A.l.t., December 31, 1994.

Classification

This action is taken under § 675.20 and is exempt from OMB review under E.O. 12866.

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

Dated: June 8, 1994.

David S. Crestin,

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

[FR Doc. 94–14298 Filed 6–8–94; 4:50 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 59, No. 112
Monday, June 13, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 9

[Docket No. PRM-9-2]

Ohio Citizens for Responsible Energy, Inc.; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) is publishing for public comment a notice of receipt of a petition for rulemaking dated February 10, 1994, which was filed with the Commission by Ohio Citizens for Responsible Energy, Inc. (OCRE). The petition was docketed by the NRC on February 15, 1994, and has been assigned Docket No. PRM-9-2. OCRE filed an amendment to the petition which was docketed by the NRC on April 11, 1994. The petitioner requests that the NRC amend its regulations to establish public right-to-know provisions that would ensure public access to licensee-held information.

DATES: Submit comments by August 29, 1994. Comments received after this date will be considered if it is practical to do so but the Commission is able to ensure consideration only for comments received on or before this date.

ADDRESSES: Submit written comments to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm on Federal workdays.

For a copy of the petition, write the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

The petition and copies of comments received may be inspected and copied for a fee at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: 301-415-7163 or Toll Free: 800-368-5642.

SUPPLEMENTARY INFORMATION:

Background

The regulations specified in 10 CFR Part 9 address the public's right of access to information held by NRC. Subpart A prescribes procedures for making NRC agency records available to the public for inspection and copying under the Freedom of Information Act (FOIA) and provides notice of procedures for obtaining NRC records otherwise publicly available. Subpart B implements the provisions of the Privacy Act of 1974 with respect to the procedures by which individuals may determine the existence of, seek access to, and request correction of NRC records concerning themselves. Subpart B also covers the requirements applicable to NRC personnel with respect to the use and dissemination of such records.

The Petitioner

On February 10, 1994, OCRE filed a petition for rulemaking under 10 CFR 2.802 with the NRC. OCRE filed an amendment to the petition on April 11, 1994. The petitioner is a private, not-for-profit organization incorporated under the laws of the State of Ohio. OCRE specializes in research and advocacy on nuclear safety issues and supports the highest standards of safety and environmental protection. OCRE also supports the right of meaningful public participation in the regulation of nuclear facilities. The petitioner was an intervenor in the operating license proceeding for the Perry Nuclear Power Plant and has intervened in three operating license amendment cases regarding Perry.

Reasons for the Petition

According to the petitioner, the purpose of the petition is to request a change to the rules regarding public access to information as stated in 10 CFR part 9, particularly information that is held by licensees but is not submitted to the NRC. OCRE contends that it has observed a trend in the NRC's regulatory practice in the past several years that decreases the amount of information to which the public has access. The petitioner believes that this trend is apparent in NRC bulletins and generic letters issued over the past six years. OCRE states that these documents instruct licensees to send conclusory statements that they have completed the requested actions to the NRC instead of instructing licensees to send the NRC detailed documentation and analyses of their actions. The detailed records are kept at the plant site where they are accessible only to NRC inspectors. The petitioner is particularly concerned because if these materials are never sent to the NRC, they will not get into the Public Document Room and the public will never have access to them. OCRE further states that the materials will not even be obtainable under the FOIA unless an NRC inspector happens to make a copy of the requested documents and the documents are still in the agency's possession at the time the FOIA request is filed.

OCRE refers to the Station Blackout rule in § 50.63(a)(2), which states that "the capability for coping with a station blackout of specified duration shall be determined by an appropriate coping analysis. Utilities are expected to have the baseline assumptions, analyses, and related information used in their coping evaluations available for NRC review." It is not apparent to the petitioner that this material is actually sent to the NRC and made publicly available.

The petitioner believes that other regulatory trends are also decreasing public access to information. OCRE states that the Technical Specification Improvement Program encourages the removal of material from the plant technical specifications and the relocation of it to internal plant documents. The petitioner included a list of recent generic letters that enable licensees to relocate material from the plant technical specifications, a public document, into other plant documents that may not be available to the public. According to the petitioner, about 36 percent of current technical specification material will be relocated to internal plant documents under this program.

The petitioner states that NRC's revised rules of practice place an even greater burden on public petitioners to provide as much documentation and factual basis for contentions as early as possible while the access of petitioners to detailed information is diminishing. The petitioner further states that if detailed information is never submitted to the NRC, and thus never becomes accessible to the public, participants in proceedings will never be able to supply a basis sufficient to support admission of contentions under the new rules of practice.

OCRE believes that lack of public access to information on nuclear regulation undermines public confidence in the NRC's regulatory program and is contrary to the public's statutory right to participate in the NRC regulatory process. The petitioner also states that members of the public cannot fulfill the role of participating in the NRC regulatory process, which Congress has bestowed upon them, without access to the detailed information that current NRC policies are placing beyond the public's reach.

In the amendment to the petition, OCRE cited two additional examples of the lack of public access to licensee-held information. The first example is NRC's proposed rule entitled "Codes and Standards for Nuclear Power Plants; Subsection IWE and Subsection IWL" (59 FR 979, January 7, 1994), which states that "In order to further reduce the burden on licensees and NRC staff, the Subsection IWE and IWL portions of the ISI plan will not have to be submitted to the NRC for approval. Licensees may simply retain their initial Subsection IWE and Subsection IWL plans at the site for audit." The second example is NRC's final rule entitled "Storage of Spent Fuel in NRC-Approved Storage Casks at Power Reactor Sites" (55 FR 29161, July 18, 1990) which does not appear to require nuclear power plant users of the approved storage casks to submit their site-specific evaluations, as required by § 72.212(b)(2), to the NRC. This section states that "A copy of this record must be retained until spent fuel is no longer stored under the general license issued under § 72.210." The petitioner further states that § 72.212(b)(10) only requires that general licensees make records available to the NRC for inspection.

In the amendment to the petition, the petitioner amended the language in its suggested § 9.301(b) to include persons required by the proposed rule entitled "Certification of Gaseous Diffusion Plants," published on February 11, 1994 (59 FR 6792), to obtain NRC certification of gaseous diffusion plants under proposed Part 76 in the definition of "possessor." OCRE requests that the NRC clarify that this proposed definition would include entities authorized to dispose of radioactive materials.

The petitioner recommends a change to Part 9 to establish the public's right-to-know and to provide the public access to copies of internal plant documents, subject to the exceptions necessary to protect sensitive information. The suggested amendment would not require that licensees generate information that does not already exist in response to a request. The petitioner believes that its suggested amendment would strike a proper balance between the public's right to know and the rights of the licensees.

The petitioner's suggested amendment would include appeal procedures. If a requester is not satisfied with a licensee's response to a request for information, the requester could appeal the matter to an Administrative Law Judge on the Atomic Safety and Licensing Board Panel. According to the petitioner, this option is the most appropriate and efficient one for appeals.

OCRE believes that its suggested amendment to Part 9 would impose a minimal burden on licensees and that this minor burden would be justified by the substantial increase in meaningful public participation. According to the petitioner, the proposed amendment to Part 9 would also enhance the public's confidence in the NRC's regulatory program.

The Suggested Amendments

The petitioner requests that the NRC amend 10 CFR Part 9 by adding subpart E to read as follows:

Subpart E—Public Right of Access to Licensee-Held Information

Section 9.300 Scope of Subpart

This subpart establishes the public's right of access to licensee-held information, subject to certain exceptions. This subpart sets forth the procedures to be followed by persons requesting documents held by NRC licensees or applicants and by the licensees or applicants in responding to requests for documents. This subpart also establishes procedures for appealing adverse licensee responses to public requests for records.

Section 9.301 Definitions

As used in this subpart,

(a) "Person" has the meaning given in 10 CFR 2.4.

(b) "Possessor" means any holder of or applicant for any license to possess, use, dispose of, and/or transfer source material, byproduct material, special nuclear material, and/or spent fuel, or to construct, manufacture, possess, own, operate, and/or transfer any production or utilization facility or independent spent fuel storage installation, or any holder of or applicant for any construction permit, or any holder of or applicant for an early site permit under subpart A of 10 CFR part 52, or any holder of or applicant for a standard design certification under subpart B of part 52, or any holder of or applicant for a certificate of compliance or approved compliance plan under part 76.

(c) "Record" means any document, writing, book, data, paper, brochure, photograph, punch card, magnetic tape or disk, paper tape, sound recording, pamphlet, slide, motion picture, map, drawing, graph, correspondence, contract, report, microfilm, microfiche, optical storage medium, or other documentary material, regardless of form or characteristics, made by, in the possession of, or under the control of a possessor.

Section 9.302 Designation of Responsible Official

Each possessor shall designate, by name or title, a responsible official to whom requests for records are to be sent. Each possessor shall report to the NRC the name and/or title of the responsible official so designated. Possessors shall promptly notify the NRC, in writing, of any changes to the name or title of the designated responsible official. The NRC will periodically publish a list of possessors and their designated responsible officials.

Section 9.303 Procedure for Requesting Records

Any person may request any record relevant to NRC-licensed or regulated activities held by a possessor. The request shall be made in writing and sent to the responsible official designated by the possessor. The requester should describe the records sought with reasonable specificity.

Section 9.304 Response by Possessor

(a) A possessor receiving a request for records shall respond to the request within thirty (30) days from the receipt of the request by the designated responsible official.

(b) The possessor's response shall consist of one or more of the following options:

(1) If the records requested do not exist or are not within the possession or

control of the possessor, inform the requester of this fact.

(2) If the records requested are publicly available, inform the requester of this fact and where the records may be obtained.

(3) Place the records requested in the NRC's Public Document Room in Washington, DC, or in a Local Public Document Room near the possessor's facility or convenient to the requester, and inform the requester where the records may be obtained.

(4) Provide the records directly to the requester. The possessor may require the requester to pay reasonable reproduction fees.

(5) The possessor may refuse to disclose the requested records only if one or more of the following criteria are met:

(i) The requested records have absolutely no relevance to any activity, facility, or material licensed or regulated by the NRC.

(ii) The requested records contain personnel or medical files or similar personal information, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. However, records pertaining to the requester shall be disclosed directly to the requester or his or her designated legal representative.

(iii) The requested records contain trade secrets or proprietary information or privileged or confidential commercial or financial information.

(iv) The requested records contain safeguards information, as defined in 10 CFR part 73.

(v) The requested records contain material that has been properly classified in the interests of national defense or foreign policy.

(vi) The requested records contain information that would disclose the identity of a confidential source or reveal information furnished only by a confidential source, the disclosure of which would tend to reveal the source's identity.

(c) Any reasonably segregable portion of a record shall be provided to the requester or placed in the Public Document Room after deletion of the portions that are exempt under paragraph (b)(5).

(d) Unless disclosure of the record is prohibited by law, a possessor may disclose a record containing material exempt under paragraph (b)(5) directly to the requester upon the execution of an appropriate protective agreement.

Section 9.305 Appeals

(a) A requester may appeal a possessor's response for denial of access to the requested records, for charging excessive reproduction fees, or for lack of response by the possessor within the designated time limits.

(b) Appeals shall be made by filing a notice of appeal with the Chairman of the Atomic Safety and Licensing Board Panel. The notice of appeal shall be filed within sixty (60) days of the possessor's final response and shall include:

(i) A copy of the requester's original letter of request;

(ii) a copy of the possessor's response(s), or a statement that the possessor has not responded to the request;

(iii) an explanation of why the possessor's response is inadequate, erroneous, or otherwise unacceptable, or why the reproduction fees charged by the possessor are excessive.

(c) Upon the receipt of a notice of appeal under this section, the Chairman of the Atomic Safety and Licensing Board Panel shall appoint an Administrative Law Judge to consider the appeal. The Administrative Law Judge shall utilize whatever informal procedures are deemed necessary to resolve the matter and may examine in camera the requested records to determine whether such records or any part thereof may be withheld under the exemptions specified in § 9.304(b)(5). The burden of proof is upon the possessor to sustain its actions.

(d) The decision of the Administrative Law Judge shall be binding on the possessor. Decisions of the Administrative Law Judge shall be final and are not subject to further administrative appeals or judicial review.

Section 9.306 Penalties

Refusal of a possessor to comply with an order of the Administrative Law Judge may be subject to enforcement action by the NRC.

Dated at Rockville, Maryland, this 7th day of June, 1994.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 94–14256 Filed 6–10–94; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Regulation C; Docket No. R–0839]

Home Mortgage Disclosure

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for public comment proposed changes to Regulation C (Home Mortgage Disclosure) and to the instructions and reporting forms that financial institutions must use in complying with the annual reporting requirements under the regulation. The principal reasons for the proposed amendments are to respond to the statutory provisions regarding earlier availability of the HMDA disclosure statements to the public; help improve the quality of the HMDA data; and provide clarifications requested by financial institutions that report under HMDA. The amendments would set an earlier deadline for reporting HMDA data to supervisory agencies; require reporting in machine-readable format; require institutions to keep their loan application registers current during the year as data are being collected; and make a number of other changes.

DATES: Comments must be received on or before August 10, 1994.

ADDRESSES: Comments should refer to Docket No. R–0839 and be sent to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. They may also be delivered to the guard station in the Eccles Building courtyard on 20th Street, NW. (between Constitution Avenue and C Street on 20th Street NW (between Constitution Avenue and C Street, NW.) between 8:45 a.m. and 5:15 p.m. weekdays. Comments received will be available for inspection and copying by any member of the public in the Freedom of Information Office, room B–1122 of the Eccles Building, between 9 a.m. and 5 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Jane Jensen Gell or W. Kurt Schumacher, Staff Attorneys, or John C. Wood, Senior Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at 202/452–2412; for the hearing impaired *only*, contact Dorothea Thompson, Telecommunications Device for the Deaf, at 202/452–3544.

SUPPLEMENTARY INFORMATION:

(1) Background

The Board's Regulation C (12 CFR part 203) implements the Home Mortgage Disclosure Act of 1975 (HMDA) (12 U.S.C. 2801 *et seq.*). The regulation requires most mortgage lenders located in metropolitan statistical areas (MSAs) to report annually to federal supervisory agencies, and disclose to the public, information about their home mortgage

and home improvement lending activity. The reports and disclosures cover loan originations, applications that do not result in originations (for example, applications that are denied or withdrawn), and purchases of loans. Information reported includes the location of the property to which the loan or application relates; the race or national origin, gender, and income of the applicant; and the type of purchaser for loans sold in the secondary market. For denied applications, lenders are also permitted to report the reasons for denial.

Lenders are required to report originations, applications, and purchased loans for each calendar year to their supervisory agency by March 1 of the following year. The reports are made on a HMDA Loan/Application Register (HMDA–LAR) in a transaction-by-transaction format; for reports containing more than 100 entries, lenders currently are expected to submit the data in automated form (magnetic tape or diskette). The lender's supervisory agency submits the data to the Federal Reserve Board, which processes the data on behalf of member agencies of the Federal Financial Institutions Examination Council (FFIEC) and the Department of Housing and Urban Development. The Board then prepares public disclosure statements for each reporting lender and aggregate reports covering the data for all lenders in a metropolitan area. The statements are sent to lenders, generally by July or August, and the lenders are required to make the statements available to the public at their home office and at certain branch offices.

Although lenders must make the disclosure statements available within three business days, they have a thirty-day period within which to review the statements prepared by the Board and to report any discrepancies to the agencies. After necessary revisions have been made, the Board prepares and sends disclosure statements for all reporting lenders in each MSA, along with aggregate disclosure tables covering all such lenders, to a central data depository in each MSA. The central depositories are usually public libraries, regional planning agencies, or other public offices; the disclosures are generally sent to the depositories by October.

(2) Explanation of Proposed Amendments

One of the principal reasons the Board is proposing to amend Regulation C is the need to make HMDA data available to the public earlier than has been the case in the past. Statutory amendments to HMDA enacted in 1992 provide that starting with the HMDA reports for calendar year 1994, disclosure statements for individual lenders should be available to the public by July 1 of the following year, and that aggregate tables should be available at the central depositories by September 1.

To meet this timetable, it will be necessary for the agencies to begin processing the raw data earlier than March 1. Therefore, the proposed amendments include a change in the deadline for data submission, requiring lenders to submit their data by February 1 instead of March 1. Some of the other proposed amendments also are intended, in part, to facilitate earlier availability of the data (see discussion concerning the proposed change to § 203.5(a), below).

Another important reason the Board is proposing amendments to Regulation C relates to the accuracy of the HMDA data. The accuracy of the HMDA reports produced under the new data collection system that was instituted in 1990 (following an expansion of the data collected under HMDA) has improved in each succeeding year, but concerns continue to exist about data quality. A major part of what is involved in ensuring data accuracy relates to matters that are in the control of reporting institutions; for example, lending institutions must devote adequate resources to the task of accurately compiling and checking data before reporting it. However, to the extent that any requirements of the regulation are unclear or complicated, consistent and accurate reporting is more difficult. Accordingly, some of the proposed amendments now being published are intended in whole or in part to make the reporting requirements clearer or simpler. In addition, another proposed amendment calls for reporting in machine-readable format; this change also should help improve data quality, as discussed below.

The Board solicits comment generally on other ways in which Regulation C might be changed to better address problems of accuracy of the HMDA data. For example, would allowing or requiring all home equity lines to be reported—rather than only the portion of a line the borrower intends to use for home improvement or home purchase—simplify reporting and bring about greater consistency? Would the same be true for other categories of loans? (On a similar point, refer to the discussion of possible changes in the types of refinancings that should be reported, in section (3), "Other Matters on Which the Board Solicits Comment," below.) Are there areas in which explanations could be made simpler or clearer, thereby facilitating more accurate reporting?

The Board notes its intention to publish within the next several months a proposed staff commentary to Regulation C. The commentary will provide a vehicle for interpretations that would help lenders better understand and comply with the regulation's requirements. The commentary will supplement the detailed instructions provided in appendix A to Regulation C for completion of the HMDA-LAR and in the Guide to HMDA Reporting: Getting It Right, the brochure published by the FFIEC and distributed by the individual agencies. The Board is in the process of drafting the commentary, and solicits comment from lenders identifying specific areas that the commentary should address.

Set forth below is a section-by-section discussion of the proposed amendments to the regulation.

Section 203.2—Definitions

Paragraph (f)—Home Improvement Loan

The proposal would revise the regulation's definition of "home improvement loan" to facilitate compliance. The existing definition sets two conditions: first, that the loan applicant state, at the time of the application, that the loan is for the purpose of repairing, rehabilitating, or remodeling a dwelling; and second, that the loan be classified in the records of the financial institution as a home improvement loan.

One change proposed by the Board relates to the first part of the definition—that the loan be for the purpose of repairing, rehabilitating, or remodeling a dwelling. Questions have arisen about situations in which a loan is made for the purpose of making improvements to the borrower's residential property, but not, strictly speaking, to the "dwelling" as defined under Regulation C. The regulation defines dwelling as a residential structure, whether or not attached to real property. Thus, for example, a dwelling under Regulation C includes a house, apartment building, or mobile home, but not necessarily the land upon which the house or other structure is located. Some institutions have asked whether a loan for building or repairing things such as a detached garage, a driveway, a fence, or landscaping should qualify as a home improvement loan for HMDA purposes.

To avoid technical distinctions based on whether a loan relates to the structure or to the land on which it is situated, the Board proposes to change

the home improvement loan definition to focus primarily on the applicant's statement of purpose for the loan. Thus, a loan would qualify as a home improvement loan for HMDA purposes if the applicant states, at the time of the loan application, that the loan is for "home improvement purposes."

The Board also proposes to eliminate the second part of the definition, which would make the manner in which an institution classifies a loan irrelevant to its treatment for HMDA purposes. This part of the definition was originally intended to minimize the regulatory burden on financial institutions, by not requiring an institution to report a loan as a home improvement loan on its HMDA-LAR if the institution did not record the loan as a home improvement loan for other purposes. Many institutions now indicate that they would like to report loans that in fact are for home improvement purposes, but they find it difficult to do so because the loans may not be "classified" in the institution's records as home improvement loans. Removing the classification test would resolve this problem. However, the Board solicits comment on the extent to which this proposed change would create significant compliance burdens for institutions that do not currently record such loans on the HMDA–LAR but now would be required to do so. Comment is also requested generally on the overall advantages and disadvantages of making this change.

Section 203.4—Compilation of Loan Data

Paragraph (a)—Data Format and Itemization

Maintenance of LARs on current basis. The regulation currently requires covered institutions to report HMDA data for a given calendar year to supervisory agencies by March 1 of the following year, but does not specify when the data must be recorded on the HMDA–LAR. The Board proposes to require institutions to fully record transactions within one month after final action is taken (such as origination of a loan, or denial or withdrawal of an application). The Board believes this approach would help in improving the accuracy and timeliness of the HMDA data. Current-year registers would be available to examiners so that, if problems were occurring, the supervisory agency could work with the institution to ensure that errors were corrected well before the relatively brief period between the end of the year and the reporting deadline. Another advantage of the proposed change would be that examiners and the institution itself would have ready access to current data that could be helpful in assessing its fair lending and community reinvestment performance.

The Board recognizes that some institutions may compile and geocode transactions (assign MSA, state, county, and census tract codes) on a batch basis, from time to time during the year or at year-end. The Board solicits comment on how burdensome institutions that currently follow this procedure would find it to record all the LAR information, including the geographic codes, on the HMDA–LAR within one month after final action. In addition, comment is requested on the extent to which any burden might be reduced if the requirement were to keep the HMDA–LAR up to date on a quarterly basis, rather than monthly. The Federal Deposit Insurance Corporation imposes a thirty-day requirement on the HMDA-covered institutions it supervises; the Office of the Comptroller of the Currency proposed a similar requirement, and recently adopted a quarterly update requirement instead (see 59 FR 26411, May 20, 1994).

The Board believes that a requirement to update the HMDA—LAR within one month after each transaction would be an important step toward improving the accuracy and timeliness of HMDA data reporting; if the compliance burden appeared to outweigh the advantages, however, the Board would consider alternatives such as quarterly updating.

Reporting income. The Board proposes to revise the regulation to clarify how institutions report applicants' income and eliminate an internal inconsistency that now exists. Currently, § 203.4(a)(7) of Regulation C provides that financial institutions shall collect data on "income relied upon in processing the loan application." The instructions for completing the HMDA–LAR state that if no income is asked for or relied on in the credit decision, the lender may enter NA (not applicable) in this field (appendix A, paragraph V.D.5.c.).

The Board proposes that lenders must report all income reflected on the application, including income of coapplicants, whether or not the lender relies on a particular source of income. If the lender determined, in the course of verifying information, that some portion of the income reported by the applicant was overstated, the lender would enter the verified amount rather than the amount originally reported.

Currently lenders need not report income for streamlined refinancings in which they neither ask for nor rely on income information. In addition, for privacy reasons, an institution need not record applicants' income on the HMDA–LAR for loans made to the institution's own employees. These rules will remain in place.

Section 203.5—Disclosure and Reporting

Paragraph (a)—Reporting to Agency

Change in reporting deadline. Currently, institutions are required to file their HMDA data with supervisory agencies by March 1 following the year to which the data relate. The Board proposes to change the due date to February 1.

Statutory amendments contained in the Housing and Community Development Act of 1992, 106 Stat. 3889, provide that starting with loan and application data for calendar year 1994, the FFIEC shall make "every effort" to ensure that individual lenders' public disclosure statements are available at the lenders' offices before July 1 of the following year. Similarly, the amendments call for the FFIEC to make both the individual disclosures and the aggregate tables available at the central depositories before September 1.

In 1993, the individual lenders' disclosure statements for 1992 lending activity became available to the public the first week of August, and the disclosure statements and aggregate reports became available at central depositories the first week of November. This year, the processing schedule calls for disclosures to be available at institutions in July and at central depositories in October. Thus, progress is being made toward meeting the statutory targets for earlier availability of HMDA data. But given the high volume of data being processed, the Board believes it is necessary to move up the date for submitting the raw data to supervisory agencies.

Reporting in Machine-Readable Format. In processing the HMDA data, the Board and the other agencies use various means to identify and correct data errors. For example, the data are run through computerized edit checks designed to detect errors and omissions in the data fields. Where these are found, the agencies send the reports back to the institution for correction.

Lenders whose HMDA–LAR contains more than 100 line entries are generally expected by the agencies to submit their data in machine-readable format, such as PC diskette or magnetic tape. The Board and the other agencies have encouraged lenders to submit their HMDA–LARs in automated form, and all but one of the agencies provide PC software that can be used to compile

data on diskettes. This software has built-in edit checks for accuracy and is furnished free of charge. Software packages that are widely available from private vendors also contain the computerized edits used by the Board. Nonetheless, many lending institutions still submit their HMDA data in paper form, and the agencies have found that these paper submissions tend to contain a substantially higher number of errors than submissions in machine-readable form.

The Board proposes to require that all institutions report HMDA data in machine-readable form and that they edit their data before submitting it, either using the agency-supplied HMDA software or using the same edits in private vendors' software.

The proposed change would help lenders to ensure submission of accurate data.

The overall accuracy of the data has improved each year since 1990, the first year of expanded reporting under the amendments in the Financial Institutions Reform, Recovery and Enforcement Act of 1989, in part because institutions have increasingly submitted data by diskette, magnetic tape, or Fedline. However, further improvements in data quality are needed, and the pre-edited reporting of data in machine-readable form would help in bringing about such improvements. Machine-readable reporting would also assist the agencies in meeting the new public disclosure deadlines, by reducing the time needed to enter the data from each reporting institution into the HMDA processing database.

The Board recognizes that some financial institutions subject to HMDA might not have the computer capability to compile and report their data in machine-readable form. The Board solicits comment, therefore, on whether requiring machine-readable data submission from all institutions would create a hardship for some, and if so, whether supervisory agencies should have discretion to grant waivers from this requirement on a case-by-case basis. For example, a waiver might be granted in a case where an institution does not itself own or have ready access to a personal computer nor have access through a service provider.

Paragraph (e)—Notice of Availability

The Board proposes to make a technical change to § 203.5(e) concerning the notice of availability that institutions are required to post. Pursuant to amendments contained in the Housing and Community Development Act of 1992, lending institutions must now make available to the public not only their disclosure statements but also their loan/application registers (after deleting certain data fields). These statutory amendments were incorporated into Regulation C in March 1993 (see 58 FR 13403, March 11, 1993).

The proposed change will revise the notice language to reflect that HMDA data in addition to disclosure statements are available from institutions.

Appendix A—Form and Instructions for Completion of HMDA Loan/Application Register

II. Required Format and Reporting Procedures

Paragraph A. The Board proposes to require that all HMDA-covered institutions submit data in machine-readable form, except that supervisory agencies may have discretion to grant relief from this requirement in cases of hardship. See the discussion of this proposed change under § 203.5(a), above.

Paragraph E. A new paragraph II. E. would be added to the HMDA–LAR instructions to reflect the proposed requirement that the HMDA–LAR be kept current within one month of final action during the year as transactions occur. See the discussion under § 203.4(a), above.

III. Submission of HMDA–LAR and Public Release of Data

Paragraph A. The proposal includes a change in the reporting deadline from March 1 to February 1; paragraph III. A. in the instructions would be revised accordingly. See the discussion on this proposed change under § 203.5(a), above.

Paragraphs B and C.— Requirement to report total HMDA–LAR entries on transmittal sheet. The regulation requires that a transmittal sheet accompany an institution's HMDA–LAR data submission, containing general information such as the name, address, and identifying numbers of the institution. Currently, the transmittal sheet does not ask for the total number of transaction line entries contained in the HMDA submission, although the instructions encourage institutions to provide this record count in a cover letter.

The Board proposes to amend Regulation C to require financial institutions to report on the transmittal sheet (in both the paper-copy and machine-readable versions) the total number of line entries included in the data submission. Respondents also will be asked to send a transmittal sheet with any subsequent submission of data, rather than only with the initial submission. An institution will sometimes send HMDA data to its supervisory agency in more than one submission when revisions to the initial submission are necessary, for example, or because transactions were found to have been inadvertently omitted. The count on the transmittal sheet for each submission will help the agencies verify the number of line entries submitted by the institution at that time. This change would help reduce the likelihood of any data being lost during the collection process.

Paragraph G. Posters. The Board is providing suggested language for the notice of availability that lenders are required to post in their home and branch offices in metropolitan areas. The revised notice reflects the fact that HMDA data besides disclosure statements are now available from financial institutions. See the discussion of proposed changes to § 203.5(e), above.

V. Instructions for Completion of Loan/Application Register

A. *Application or loan information.* 5. Explanation of purpose codes. Code 2: Home improvement. The proposal includes changes in the definition of home improvement loans for HMDA reporting purposes. The HMDA–LAR instructions would be revised to reflect the proposed changes. See the discussion of home improvement loan issues under § 203.2(f), above.

8. Loan amount. f. Reporting counteroffers. The proposal clarifies that counteroffers are to be reported as loan denials if the applicant does not accept the counteroffer, not as applications withdrawn or approved but not accepted. This clarification conforms with the treatment of counteroffers in Regulation B (Equal Credit Opportunity).

C. *Property location.* 5. Outside MSA. Financial institutions are encouraged but not required to enter geographic information for loans on property located outside the MSAs in which they have a home or branch office (or outside any MSA). The proposed rule clarifies that, if a lender enters data in the property location fields of the HMDA–LAR for these loans, the data must accurately reflect the location of the property in question.

(3) Other Matters on Which the Board Solicits Comment. In addition to seeking comment on the proposed amendments, the Board solicits comment on other matters related to HMDA reporting: prequalification programs, refinancing transactions, and

the collection of racial or ethnic information, as discussed below.

Prequalification programs. Regulation C requires lenders to compile and report data on applications for loans as well as on loan originations. The Board has received questions about mortgage lenders' prequalification programs, asking whether and when a request for prequalification must be treated as a credit application for purposes of HMDA reporting. The answer depends on the outcome of the prequalification decision.

The definition of application under HMDA is virtually identical to the definition established by the Board's Regulation B (Equal Credit Opportunity). Accordingly, lenders are directed to the guidance provided in the Official Staff Commentary to Regulation B, comments 2(f)–1 through –4, on differentiating between applications and inquiries. The commentary states that if a lender—in giving information to a consumer—evaluates information about the consumer, decides to decline a credit request, and communicates this to the consumer, the creditor has treated that inquiry as an application for credit (by virtue of having made a credit decision). In the case of Regulation B, the creditor must then comply with the notification rules on adverse action.

In regard to HMDA reporting, the same rule applies, and a lender that turns down a prequalification request (because of the homebuyer's poor credit history, for example) must report it as a loan denial on its HMDA–LAR.

Prequalification requests that are approved, on the other hand, will be reported on the HMDA–LAR at a later stage in the process, after homebuyers have found the property they want to purchase and the lender has evaluated a formal loan application, not at the time of the prequalification approval. Thus, the lender will report when: (1) the lender originates a loan; (2) the lender has made a firm loan offer that the applicant does not accept; (3) the applicant expressly withdraws the mortgage application; (4) the lender closes the file for incompleteness; or (5) the lender denies the mortgage loan application.

In some cases, lender decisions on prequalifications that are approved may ultimately not be reported on the HMDA–LAR; if a homebuyer who has been prequalified for credit does not later pursue a formal application for a mortgage loan, the lender has no reporting obligations under HMDA (and no notification requirements under Regulation B).

For denials of prequalification requests that are reportable under HMDA, there are questions about how a lender can comply with the reporting requirements with regard to the loan amount, loan type, and property location data fields on the HMDA–LAR. Generally speaking, a property location will not "exist" at the prequalification stage if the prospective homebuyer does not yet have a purchase contract on, or has not requested financing for, a specific property. Thus, the lender should enter NA (not applicable) in each of the location fields in such instances. For loan amount, if the prospective homebuyer has not requested a particular amount of credit, the regulation currently does not provide any alternative code. The Board requests comment on whether a code such as NA (not applicable) will suffice, or whether a special code—indicating that the transaction is a prequalification—would be more appropriate and useful. Similar issues arise with respect to loan type in cases where prospective borrowers have not specified during the prequalification process the type of loan they are seeking.

The Board requests comment about other compliance issues related to prequalifications, and contemplates that guidance regarding these matters will be provided in the commentary to Regulation C to be issued later this year.

Reporting of refinancings. The regulation requires lenders to report refinancings, which are defined as loans involving the satisfaction of an existing obligation and its replacement by a new obligation undertaken by the same borrower. The Board solicits comment on the reporting of transactions that are not technically refinancings, but that serve as the functional equivalent of refinancings. In some regions, transactions are structured as modifications of existing obligations (sometimes called modification, extension, and consolidation agreements or "MECAs"), rather than as replacements thereof, often in order to reduce borrower costs associated with a refinancing (for example, title insurance fees).

Institutions have inquired whether they should report such transactions, which serve the same purpose as refinancings and normally entail the same underwriting procedures. The Board solicits comment on this matter. The Board also solicits comment on what types of modifications should not be subject to reporting (such as the simple modification of a loan term from 25 to 15 years), as well as the basis for any such distinctions. Other issues on which comment is requested include whether the reporting of such transactions should be limited to cases where a new lender is offering the modification, or should also be available to the original lender.

Another matter on which the Board seeks comment concerns the current exclusion for certain refinancings based on the purpose of the transaction. Under existing Regulation C, a refinancing is to be reported only if the loan being refinanced was a home purchase or home improvement loan, or was a refinancing of such a loan. In addition, a refinancing is reported only if the amount outstanding on the loan being refinanced, plus the amount of any new money for home purchase or home improvement purposes, is equal to more than 50 percent of the total new loan amount. For example, if a borrower refinances a home purchase loan only for the purpose of getting a lower interest rate on the outstanding balance, and therefore does not obtain any new money, the refinancing is reported because the amount outstanding on the original loan is equal to 100 percent of the new loan amount. Similarly, if a borrower refinances a home purchase loan and obtains new money to be used entirely for home improvement purposes, then again the refinancing is reported because here again, the amount outstanding plus new money for "covered purposes" (home improvement and home purchase) is equal to 100 percent of the new loan amount. At the other extreme, if a borrower refinances a loan with an outstanding balance of $20,000 and obtains $40,000 of new money to be used for starting a new business, the refinancing is not reported because the amount outstanding plus new money for "covered purposes" is equal to only one-third of the new loan amount.

This purpose test for determining whether refinancings are to be reported under Regulation C has generated a substantial number of questions from lenders. For example, the purpose of the loan being refinanced may not be clear at the time the borrower applies for the refinancing. In some cases, a loan has been refinanced repeatedly, new money having been obtained each time; and the calculations necessary to determine whether more than 50 percent of the total new loan amount is for covered purposes become difficult. An alternative approach that would be easier to understand and apply would be to treat all refinancings as subject to reporting on the HMDA–LAR. Although such an expansion in coverage would result in the disclosed data's being less tied to the home purchase and home improvement categories, it is not clear that the resulting data would be less

useful. The Board solicits comment on the advantages and disadvantages of these changes, both for reporting institutions and for users of HMDA data.

Collection of racial or ethnic information. Regulation C provides that applicants for mortgage and home improvement loans be requested, but not required, to provide information about their race or national origin, gender, and income. The purpose is to gather data that may help regulatory agencies to gauge whether a lending institution is complying with the fair lending laws. If an applicant chooses not to provide the information on race or national origin and gender, the loan officer is required to enter the information on the basis of visual observation or surname.

Currently, the categories in Regulation C for data collection on race/national origin of applicants are:

- American Indian or Alaskan Native
- Asian or Pacific Islander
- Black
- Hispanic
- White
- Other

The categories that the Office of Management and Budget (OMB) issues for government statistical purposes are substantially the same, except that the "other" category is not included. OMB and others have indicated their belief that the presence of the "other" category undercuts the usefulness of the data, in that a data user has no way of knowing what the category represents.

In adopting the monitoring provisions of Regulation C in 1989, the Board based the categories used on Regulation B, which has contained the "other" category since it was first adopted by the Board in 1976. The Board believed that the "other" category served a useful function. For example, it provides a choice to applicants who do not identify with any of the specifically defined categories; in 1992, the "other" category was used in roughly 45,000 out of 10 million loan records. The Board notes also that OMB is likely in the next few years to propose changing the list of categories for the next decennial census.

Comment is solicited on whether the Board should consider deleting the "other" category. The Board notes that if this change were made for Regulation C, a parallel change would be made in the monitoring provisions of Regulation B.

(4) Economic Impact Statement. The Board's Division of Research and Statistics has prepared an economic impact analysis of the proposed amendments. A copy of the analysis may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, DC 20551, or by telephone at (202) 452-3245.

List of Subjects in 12 CFR Part 203

Banks, banking, Consumer protection, Federal Reserve System, Home mortgage disclosure, Mortgages, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 203 as follows:

(Certain conventions have been used to highlight the proposed changes to the regulation and the instructions. New language is shown inside bold-faced arrows, while language that would be removed is set off with brackets.)

PART 203—HOME MORTGAGE DISCLOSURE (REGULATION C)

1. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 2801–2810.

2. Section 203.2 would be amended by revising paragraph (f) as follows:

§ 203.2 Definitions.

* * * * *

(f) *Home improvement loan* means any loan that [— (1)] is stated by the borrower (at the time of the loan application) to be for ►home improvement purposes.◄ [the purpose of repairing, rehabilitating, or remodeling a dwelling; and (2) is classified by the financial institution as a home improvement loan.]

* * * * *

3. Section 203.4 would be amended by revising the second sentence of paragraph (a) introductory text and paragraph (a)(7) as follows:

§ 203.4 Compilation of loan data.

(a) *Data format and itemization.* * * * These [data shall be presented] ►transactions shall be recorded, within one month of taking final action,◄ on a register in the format prescribed in appendix A ►of this part◄ and shall include the following items:

* * * * *

(7) The race or national origin and sex of the applicant or borrower, and the income ►asked for or◄ relied upon in processing the application.

* * * * *

4. Section 203.5 would be amended by revising paragraphs (a) and (e) as follows:

§ 203.5 Disclosure and reporting.

(a) *Reporting to agency.* By ►February 1◄ [March 1] following the calendar year for which the loan data are compiled, a financial institution shall send [two copies of] its complete loan application register [(if submitted in paper form)] to the agency office specified in appendix A of this [regulation] ►part◄, and shall retain a copy for its records for a period of not less than three years. [A financial institution need only submit one copy when the submission is on computer tape or diskette.]

* * * * *

(e) *Notice of availability.* A financial institution shall post a general notice about the availability of its ►HMDA data◄ [disclosure statement] in the lobbies of its home office and any physical branch offices located in an MSA. Upon request, it shall promptly provide the location of the institution's offices where the statement is available. At its option, an institution may include the location in its notice.

5. Item II. of appendix A to Part 203 would be amended by revising the first sentence of paragraph A., by removing the last 3 sentences of paragraph A., and by adding a new paragraph E., as follows:

Appendix A to Part 203—Form and Instructions for Completion of HMDA Loan/Application Register

* * * * *

II. Required Format and Reporting Procedures

A. Institutions [are expected to] ►shall◄ submit data to their supervisory agencies in an automated, machine-readable form [unless 100 or fewer application and loan entries are reported]. * * * [An institution that submits its register in nonautomated form must send two copies that are typed or computer printed. You must use the format of the loan/application register but are not required to use the form itself. Each page must be numbered, and the total number of pages must be given (for example, "Page 1 of 3").]

* * * * *

►E. Applications and loans must be fully recorded on your register, including geographic information, within one month of final action (such as the origination, denial or withdrawal of an application, or the purchase of a loan).◄

6. Item III. of appendix A to Part 203 would be amended by revising paragraphs A., B., C., and G., as follows:

* * * * *

III. Submission of HMDA-LAR and Public Release of Data

A. You must submit the data for your institution to the office specified by your supervisory agency no later than ►February 1◄ [March 1] following the calendar year for which the data are compiled. A list of the agencies appears at the end of these instructions.

B. You must submit all required data to your supervisory agency in one complete package, with the prescribed transmittal

sheet. An officer of your institution must certify to the accuracy of the data. ►Any additional data submissions that become necessary (for example, because you discover that data were omitted from the initial submission, or because revisions are called for) also must be accompanied by a transmittal sheet.◄

C. ►The transmittal sheet must state the total number of HMDA-LAR line entries included in the accompanying data submission.◄ [You are encouraged to provide in a cover letter an approximate count of the total number of line entries contained in your data submission.] If you are a depository institution, you also are asked to ►provide◄ [include] a list of the MSAs where you have a home or branch office.

* * * * *

G. Posters. Your agency [can] ►may◄ provide [you with] HMDA posters that you can use to inform the public of the availability of your disclosure statement, or you may print your own posters. ►If you print your own, the following language is suggested:

Home Mortgage Disclosure Act Notice

The HMDA data about our residential mortgage lending are available for review. The data show geographic distribution of loans and applications; race, gender, and income of applicants and borrowers; and information about loan approvals and denials. To inspect our HMDA data, inquire at this office.◄

7. Item V. of Appendix A to Part 203 would be amended by revising paragraphs A.5.code 2, A.8.f., and C.5., as follows:

* * * * *

V. Instructions for Completion of Loan/Application Register

A. *Application or loan information*

* * * * *

5. *Explanation of purpose codes*

* * * * *

Code 2: Home Improvement

a. Code 2 applies to loans and applications for loans that [(1)] the borrowers have said will be used for ►home improvement purposes for◄ [repairing, rehabilitating, or remodeling] one- to four-family residential dwellings[, and (2) are recorded on your books as home improvement loans].

* * * * *

8. Loan amount.

* * * * *

f. ►Reporting counteroffers.◄ [If you offered to lend less than the applicant applied for, enter the amount of the loan if the offer was accepted by the applicant. If the offer was not accepted, enter the amount that the applicant applied for.] ►If you make a counteroffer for an amount different from the amount initially applied for, and the counteroffer is accepted by the applicant, report it as an origination for the amount of the loan actually granted. If the applicant turns down the counteroffer or fails to respond, report it as a denial for the amount initially requested. Do *not* report it as a withdrawn application or as an application that was approved but not accepted.◄

* * * * *

C. Property location.

* * * * *

5. Outside-MSA. For loans on property located outside the MSAs in which you have a home or branch office (or outside any MSA), you may enter the MSA, state, county, and census tract numbers or you may enter the code "NA" in each of these columns. ►If you choose to enter the numbers, they must be correct for the property in question.◄

* * * * *

By order of the Board of Governors of the Federal Reserve System, June 7, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–14262 Filed 6–10–94; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 333

RIN 3064–AB44

Mutual-to-Stock Conversions of State Nonmember Savings Banks

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed rule.

SUMMARY: The proposed rule would require FDIC-insured mutual state-chartered savings banks that are not members of the Federal Reserve System (State Savings Banks) to comply with new substantive provisions of the FDIC's regulations when proposing to convert to the stock form of ownership. The intended effect of the proposed rule is to assure that certain aspects of mutual-to-stock conversions of FDIC-regulated institutions do not engender safety-and-soundness concerns, breaches of fiduciary duty or other violations of law.

DATES: Written comments must be received by the FDIC on or before July 13, 1994.

ADDRESSES: Written comments shall be addressed to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to Room F–400, 1776 F Street, NW., Washington, DC, on business days between 8:30 a.m. and 5 p.m. (FAX number: (202) 898–3838). Comments will be available for inspection in room 7118, 550 17th Street, NW., Washington, DC between 9 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Robert H. Hartheimer, Acting Director, Division of Resolutions (202/898–8879), John G. Finneran, Jr., Acting Deputy General Counsel, Legal Division (202/898–3766), Robert F. Miailovich, Associate Director, Division of Supervision (202/898–6918), Robert W. Walsh, Manager, Planning and Program Development Section, Division of Supervision (202/898–6911), Joseph A. DiNuzzo, Counsel, Legal Division (202/898–7349), Federal Deposit Insurance Corporation, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

The collection of information contained in this proposed rule has been submitted to the Office of Management and Budget (OMB) for review and approval pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Comments regarding the accuracy of the burden estimate, and suggestions for reducing the burden, should be addressed to the Office of Management and Budget, Paperwork Reduction Project (3064–0117), Washington, DC 20503, with copies of such comments sent to Steven F. Hanft, Assistant Executive Secretary (Administration), room F–400, FDIC, 550 17th St. NW., Washington, DC 20429.

The collection of information in this proposed rule is found in § 333.4(d) and takes the form of materials related to a State Savings Bank's proposed conversion from the mutual to stock form of ownership. The information will be used to enable the FDIC to identify and address issues involved in the proposed conversion relating to the safety and soundness of the bank, any abusive management practices and potential violations of applicable law.

The estimated annual reporting burden for the collection of information requirement in this proposed rule is summarized as follows:

Number of Respondents: 40

Number of Responses per Respondent: 1

Total Annual Responses: 40

Hours per Response: 20

Total Annual Burden Hours: 800

Regulatory Flexibility Act

The Board hereby certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Therefore, the provisions of that Act regarding an initial and final regulatory flexibility analysis (*Id.* at 603 and 604) do not apply here.

II. Recent FDIC Regulatory Initiatives on Mutual-To-Stock Conversions

In recent years numerous mutually owned State Savings Banks have converted to stockholder-owned State Savings Banks. Many of the institutions that converted from mutual to stock form first converted from federal or state mutual savings associations regulated by the Office of Thrift Supervision (OTS) to State Savings Banks. One consequence of these conversions to State Savings Banks is that the FDIC replaces the OTS as the institution's primary federal regulator. Mutual-to-stock conversions of State Savings Banks are generally subject to the rules and entitled to the protections of the applicable state law.[1]

Conversion rules under state law are not identical to and in some cases are less stringent than OTS regulations. The absence of consistent treatment under state laws and the lack of some federal oversight of State Savings Bank mutual-to-stock conversions present an opportunity for inconsistency and abuse.

Because of concerns about prior and potential abuses in the conversion process, on February 1, 1994, the FDIC issued for public comment a proposed policy statement on the conversions of State Savings Banks from mutual to stock ownership (Proposed Policy Statement). 59 FR 4712. The general purpose of the Proposed Policy Statement was to solicit public comment on the issues involved in mutual-to-stock conversions and whether and how the FDIC should regulate this activity. The areas of FDIC concern identified in the Proposed Policy Statement were: (1) Proper appraisal of the institution to be sold; (2) proper pricing of the stock sold in the conversion; (3) fair apportionment of the stock subscription rights; (4) adequate disclosure of information needed to make an informed investment decision; and (5) non-abusive compensation and benefits provided to insiders.

Subsequent to the issuance of the Proposed Policy Statement the Board of Directors of the FDIC (Board) determined that during the pendency of the Proposed Policy Statement it was necessary for the FDIC to review applications filed by State Savings Banks with their respective state banking regulator and any other applicable state and federal banking and/or securities regulators to determine whether the proposed conversions contain any safety and soundness issues and/or issues of insider abuse that reflect negatively on the integrity and competence of the management of the converting institution. The Board's concerns were caused by several recent and pending mutual-to-stock conversions of State Savings Banks that had given rise to questions related to management abuse and excessive enrichment of insiders, fairness to depositors and general safety and soundness concerns. These conversions have recently been the subject of Congressional hearings and numerous news articles and reports. The FDIC also had received (and continues to receive) direct complaints from depositors of State Savings Banks about unfair treatment and insider abuse in mutual-to-stock conversions.

Thus, on February 15, 1994, the FDIC issued an interim final rule adding a new section to Part 303 of the FDIC's regulations (to be published at 12 CFR 303.15) prohibiting State Savings Banks from converting to stock form without complying with the requirements of the interim rule (Interim Rule). 59 FR 7194. The Interim Rule requires State Savings Banks that propose to convert to stock ownership to file with the FDIC a notice of intent to convert to stock form consisting of a description of the proposed conversion accompanied by a copy of all documentation and application materials filed with the applicable state and federal regulators. Pursuant to the Interim Rule, the FDIC currently reviews all conversion materials regarding State Savings Banks with a special interest in: The use of the proceeds from the sale of stock, as prescribed in the business plan; the adequacy of the disclosure materials; the participation of depositors in approving the transaction; the form of the proxy statement required for the vote of the depositors/members on the conversion; any increased compensation and other remuneration (including stock grants, stock option rights and other similar benefits) to be obtained by officers and trustees of the bank in connection with the conversion; the adequacy and independence of the appraisal of the value of the mutual savings bank for purposes of determining the price of the shares of stock to be sold; the process by which the bank's trustees approved the appraisal, the pricing of the stock and the compensation arrangements for insiders; the nature and apportionment of stock subscription rights; and the extent of any existing and planned contributions to or investments in the community. In a proposed merger/conversion, the FDIC pays particular attention to the value offered to depositors of the converting institution and the compensation packages offered to management.

As indicated in the Interim Rule, the FDIC generally expects proposed conversions to substantially satisfy the standards found in the mutual-to-stock conversion regulations of the OTS (12 CFR Part 563b). Any variance from those regulations is closely scrutinized. As also indicated in the Interim Rule, however, compliance with OTS requirements is not necessarily sufficient for FDIC regulatory purposes. The Interim Rule specifies that the FDIC will look to the OTS rules "currently in effect" at the time the FDIC reviews the proposed conversion. As indicated below, the OTS recently revised its mutual-to-stock conversion regulations. Thus, upon the issuance of the OTS revised regulations on May 3, 1994 (59 FR 22725), the FDIC began taking into account the extent to which proposed conversions of State Savings Banks conform with the various provisions of the OTS' revised regulations. The Interim Rule remains effective during the pendency of this proposed rulemaking.

III. Comments Received on the Proposed Policy Statement and Interim Rule

In developing and issuing this proposed rule it was helpful for the FDIC staff and the Board to consider the comments received on the Proposed Policy Statement and the Interim Rule. It is anticipated that the Board will again consider those comments when taking final action on the Proposed Policy Statement and the Interim Rule. Some issues identified and discussed in the comments are not germane to the proposed rule, but may be relevant when the Board takes final action on the Proposed Policy Statement and Interim Rule; thus, although they are mentioned briefly in the summary of comments provided below, those issues are not otherwise discussed in the context of this proposed rulemaking.

In the Proposed Policy Statement and the Interim Rule the FDIC specifically requested comment on, among other issues: What abuses are prevalent in mutual-to-stock conversions and why the FDIC should take action against such abuses; whether federal oversight in conversions of State Savings Banks is necessary; whether the FDIC should issue a regulation closely following the OTS conversion regulations or the FDIC should take a less formal approach; whether the FDIC should seek Congressional action in this area; and

[1] Some federal laws also apply, such as the anti-fraud provisions of the federal securities law. *E.g.*, 15 U.S.C. 78j.

the mechanics and substantive provisions of the Interim Rule.

A summary of the comments received on the Proposed Policy Statement and Interim Rule is provided below.

IV. Need for the Proposed Rule

Recently the OTS revised its mutual-to-stock conversion regulations primarily to address immediate concerns about excessive management remuneration and inadequate depositor participation in conversions of savings associations (59 FR 22725 (May 3, 1994)) (OTS Revisions). In essence, the new regulations attempt to prevent management abuses by strengthening the rights of depositors.

The FDIC believes that the OTS Revisions are a necessary, sound first step in correcting certain abuses stemming from conversions and that the absence of some federal oversight of mutual-to-stock conversions of State Savings Banks presents an opportunity for inconsistency and abuse. Thus, the FDIC thinks it may be necessary and appropriate to adopt regulations similar to the OTS Revisions. For these reasons, as discussed below, the FDIC is issuing this proposed rule.

Because the fundamental problem concerning the distribution of existing economic value in mutual-to-stock conversions is not addressed by the OTS Revisions, however, the Board believes other forms of abuse may still arise. The FDIC believes that it is necessary to re-examine the conversion process to explore whether the existing economic value of a converting mutual institution can be better distributed directly to those who should receive it.

The FDIC is particularly concerned about the appraisals of converting institutions. The FDIC believes that under the current process it may be difficult to prepare an appraisal of a well capitalized mutual institution which accurately reflects "pro forma value" while at the same time reflecting the appraised value cogently in a business plan of the institution. The incidence of significant appreciation in the stock price immediately after the initial public offering, which tends to exceed the stock appreciation of initial public offerings in other industries, suggests that appraisals may be too low. As a possible consequence of underpricing the institution, insiders may be able to acquire more shares than they are entitled to; moreover, a low appraisal may deprive an institution of the additional capital it should receive in the sale of conversion stock.

To address the possible need for fundamental changes to the mutual-to-stock conversions process, concurrently with the publication of this proposed rule, the Board also is publishing a request for comments on ways to address concerns about the overall conversion process (Request For Comments). The Request For Comments is a separate notice contained elsewhere in this issue of the **Federal Register**.

V. Explanation of the Proposed Rule

1. Overview

The proposed rule would impose several specific requirements upon State Savings Banks that propose to undergo mutual-to-stock conversions. The proposed requirements are similar to the OTS Revisions. Currently and during the pendency of this proposed rulemaking, the FDIC intends to continue to use the case-by-case methodology explained in the Interim Rule in reviewing notices of proposed conversions of State Savings Banks. As noted above and in the Interim Rule, this FDIC review includes an analysis of whether the proposed conversion would comply with current OTS mutual-to-stock conversions rules. Subsequent to the adoption of a final rule, the FDIC intends to continue to use a case-by-case approach in reviewing aspects of proposed conversions that are outside the scope of the specific requirements in the proposed rule.

Among other things, the proposed rule also would indicate that the requirements thereof apply, to the extent appropriate, to the reorganization of State Savings banks to the mutual holding company form of ownership. The FDIC also is involved in the mutual holding company reorganizations of federal and state savings associations. That involvement entails FDIC action on the application for deposit insurance required to be filed with the FDIC in such transactions for the *de novo* stock depository institution organized to facilitate the reorganization. In acting on applications for deposit insurance the FDIC must consider the factors listed in section 6 of the Federal Deposit Insurance Act (12 U.S.C. 1816), one of which is the "general character and fitness of the management of the depository institution." In the course of that review the FDIC considers, among other things, the same issues of fiduciary duty that it considers in reviewing proposed mutual-to-stock conversions of State Savings Banks.

As discussed below, preliminarily, the FDIC believes that each of the requirements in the proposed rule is necessary to satisfy specific FDIC concerns about safety and soundness and/or breaches of fiduciary duty in connection with mutual-to-stock conversions. At the same time, the FDIC believes that it is essential to consider the existence of state regulation and supervision in determining the proper role in the conversion process for the FDIC as the primary federal regulator of State Savings Banks. As discussed below, many of the comments that the FDIC received on the Proposed Policy Statement and the Interim Rule expressed agreement with the FDIC's federal oversight role in mutual-to-stock conversions of State Savings Banks, but several also suggested that deference be paid to states' rights on issues outside the FDIC's areas of concern.

With the issuance of the proposed rule, the Board is attempting to strike the proper balance in this regard. In particular, the proposed rule includes a provision stating that, in the event that a State Savings Bank proposing to convert determines that compliance with any provision of the proposed rule would be inconsistent or in conflict with applicable state law, the bank may file with the FDIC a written request for waiver of compliance with the provision. The request would have to demonstrate that the requested waiver would not be detrimental to the safety and soundness of the bank, entail a breach of fiduciary duty by the bank's management, or otherwise be detrimental or inequitable to the bank, its depositors, any other insured depository institution(s), the federal deposit insurance funds or the public interest.

As noted above, recently the OTS revised its regulations on mutual-to-stock conversions of savings associations. OTS' concerns about avoiding insider abuses in mutual-to-stock conversions of federal and state savings associations are the same as the FDIC's concerns about insider abuses in conversions of State Savings Banks. Thus, as noted above, to the extent necessary and appropriate, the proposed rule incorporates most of the same requirements recently adopted by the OTS.

The proposed rule would: Require the submission of a full appraisal report, including a complete and detailed description of the elements that make up an appraisal report, justification for the methodology employed and sufficient support for the conclusions reached therein; require a depositor vote on all mutual-to-stock conversions of State Savings Banks and prohibit management's use of previously executed (or "running") proxies to satisfy depositor voting requirements; for one year following the date of the conversion, among other things, require that any management recognition plans

or stock option plans be implemented only after shareholder approval is received, require that stock options (if any) be granted at no lower than the market price at which the stock is trading at the time of grant and prohibit MRPs funded by conversion proceeds; require that the record date for determining depositors eligible to receive rights to participate in the subscription offering of the conversion stock not be less than one year prior to the date of adoption of the plan of conversions by the converting bank's board of trustees; require that the subscription offering provide a preference to eligible depositors and others in the bank's "local community" (as defined in the proposed rule) or within 100 miles of the bank's home office or branch(es); require that employee stock ownership plans (ESOPs) not have a priority over subscription rights of "eligible depositors" (as defined in the proposed rule); require the submission of a business plan, including, among other things, a detailed discussion of how management intends to deploy the capital raised through the sale of stock in the conversion; and prohibit stock repurchases within one year following the conversion.

2. Discussion of Each Proposed Requirement

The following is a discussion of each of the requirements in the proposed rule. Many of the requirements are engendered by the Board's concerns about bank management's proper exercise of its fiduciary duties. As discussed in the preamble to the Interim Rule, the duties and obligations of trustees and officers of mutual savings banks are identical to the responsibilities the FDIC has historically enunciated and enforced concerning directors and officers of commercial banks.[2] The two principal duties of care and loyalty that directors and officers of commercial banks must exercise on behalf of the institution and its constituencies (*i.e.*, depositors, creditors and shareholders) also obligate trustees of mutual savings banks. Both duties have long antecedents in the common law of corporations and financial institutions.[3]

Trustees (as well as officers) of mutual savings institutions are held to the same standard of care and loyalty as directors and officers of stock banks. Thus, the trustees must fulfill their duty of loyalty to the institution by administering its affairs with the utmost candor, personal honesty and integrity. They are prohibited from advancing their own personal or business interests or those of others at the expense of the bank. This general fiduciary duty has been frequently interpreted to include an element of fairness and good faith which, in the context of mutual-to-stock conversions, affords protection to the various stakeholders (particularly depositors) of mutual savings banks.

The FDIC, through the Interim Rule, also requires the trustees of mutual savings banks to adhere to the same standards of loyalty and care that are required of directors and officers of stock institutions in order to prevent insider abuse. Publicized insider abuse (and the lawsuits that such abuses may engender) may have a sufficiently significant impact upon the reputation of a bank to affect its continued viability and, thus, its safety and soundness, resulting in a regulatory violation.

As indicated above, the requirements in the proposed rule are rooted in concerns about safety and soundness, breaches of fiduciary duty and/or other violations of law.

A. Submission of a Full Appraisal Report

The proposed rule would require State Savings Banks that propose to convert to stock ownership to submit to the FDIC, along with the other required materials, a full appraisal report on the value of the converting bank and the pricing of the conversion stock. Many of the states require that a converting mutual savings banks sell its capital stock at a total price equal to its estimated *pro forma* market value, based on an independent valuation. The purpose of this requirement is to assure that the converting institution receives the full value for the conversion stock sold. As indicated above and in the Request For Comments, the FDIC has identified what may be significant problems with the overall conversion process.

As discussed in detail in the Request For Comments, many recent mutual-to-stock conversions have exhibited significant increases in the immediate post-conversion trading market for the stock. The FDIC is concerned that such increases have resulted from appraisal reports (submitted in connection with these recent conversions) that have set the *pro forma* market value significantly below the true value of the converting institution. If an appraisal is too low and the shares of stock are underpriced, the institution receives less of an increase in capital than it should from the sale of conversion stock; in addition, the deposit insurance fund is provided with less of a capital cushion than would have resulted if the stock was based on a proper and adequate appraisal. Also, an underpriced appraisal could entice insiders to undertake a conversion (in order to acquire shares below their fair value) that may not be in the best interests of the institution. Sophisticated investors also are able to benefit, undeservedly, from the sale of underpriced conversion stock.

For these reasons, the proposed rule would require that a full appraisal be provided to the FDIC in a proposed mutual-to-stock conversion of a State Savings Bank. The appraisal report would have to be prepared by an independent appraiser and include a complete and detailed description of the elements that make up the report, justification for the methodology employed and sufficient support for the conclusions reached therein. This would include a full discussion of the applicability of each peer group member and documented analytical evidence supporting any variance (above or below) the converting institution may have from the peer group statistics. The FDIC would require a complete analysis of the institution's *pro forma* earnings which should include the bank's full potential once it fully deploys the new capital pursuant to its business plan. In reviewing appraisal reports the FDIC would continue to consider the appraisal standards and guidelines, if any, of the applicable state and/or the appraisal guidelines issued by the OTS.

The FDIC generally has been disappointed with the appraisal reports it has reviewed in connection with proposed conversions. As noted above, many appraisals have set the *pro forma* market value of the converting institution significantly below the true value of the institution as derived from its peer group. Reasons for this have included inappropriate peer-group selections, inconsistencies between the analysis in the appraisal report and the business plan submitted with the conversion notice and continued unfounded justification for new issue discounts in stock issuances that have been well oversubscribed.

The FDIC has noted that appraisals lack specific detail on the inclusion of peer group members regarding particular information on: the markets within which they operate; the adjustments made to normalize their earnings or design comparable *pro*

[2] *See e.g., Statement Concerning the Responsibilities of Bank Directors and Officers* (FDIC Legal Division, December 3, 1992); Pocket Guide for Directors (FDIC 1988).

[3] *Greenfield Savings Bank* v. *Abercrombie*, 211 Mass. 252, 97 N.E. 897, 39 L.R.A.n.s. 173 (1912) provides a detailed discussion of liability of trustees of a savings bank.

forma earnings; and the price appreciations experienced by each member since its conversion. Converting institutions are almost always considered inferior to the peer group—a fact which raises questions about the composition of the peer group. Little or no analytical evidence is typically given in appraisals for the discounts suggested for the converting institution compared to the peer members. In addition, every appraisal contains a new issue discount without any analytical support for exactly how much that discount should be or why it is needed. Our analysis indicates market activity where virtually every conversion has traded up over the last few years. Finally, when subscription offerings are completed and oversubscriptions have occurred (in some case, quite substantially) appraisers have not justified why the original appraisal should not be increased beyond the "supermax" but rather in virtually every case confirm the original valuation.

Many appraisals that the FDIC has reviewed contain only cursory analysis of the expected future earnings of the institution. The FDIC believes that buyers of conversion stocks need to analyze institutions with much more financial sophistication than what appears in the appraisal and, therefore, appraisals should be augmented. Earnings rarely reflect a true expected use of conversion proceeds and others are understated by investments in low-rate securities. Earnings are rarely estimated in conjunction with the converting institution's future business plan—a fact that the FDIC finds inconsistent and unacceptable.

During the pendency of this rulemaking and subsequent to the adoption of a final rule, the FDIC will continue to review appraisal reports to ensure that converting institutions and the conversion stock are properly valued. The FDIC will continue to object to proposed conversions supported by unacceptable appraisal reports.

B. Depositor Voting Requirement and Prohibition on the Use of Running Proxies

The Board believes that, in order for a board of trustees of a mutual savings bank to properly exercise its fiduciary responsibilities to the bank and its depositors, the board should obtain a vote of depositors in favor of the proposed conversion before the proposed conversion is completed. Most states, but not all, require a depositor vote for mutual-to-stock conversions. The OTS also requires both federal and state savings associations to obtain a majority vote of association members as one of the pre-conditions to converting. Some states, however, require only that the board of trustees (or similar group) approve the plan of conversion and do not require a vote of members.

As discussed below, several of the comments on the Interim Rule voiced opposition to "voting rights" for depositors in states that do not provide such rights. In preliminary response to those comments, and subject to others that the FDIC hopes to receive on this issue, the Board thinks that it is necessary and appropriate for the FDIC to require a depositor vote on proposed conversions. Such a requirement would not necessarily contradict state laws (that do not require a depositor vote), but supplement the state law by requiring the member vote. The FDIC's concern is with the board of trustees' proper exercise of its fiduciary duties of loyalty and care to the bank and its depositors. Preliminarily, the Board believes that the proper exercise of such duties requires that depositors, as stakeholders of the bank, have the opportunity to approve or disapprove the proposed conversion. This requirement is, in part, rooted in the foregoing concern that bank insiders often benefit personally from bank conversions. This almost inherent conflict of interest (between self interest and the interests of the bank) may be mitigated by the existence of a depositor vote on the proposed conversion. The proposed rule, therefore, would require a depositor vote in favor of the proposed conversion of a State Savings Bank to stock form. Unless otherwise prescribed by the applicable state law, the required vote would be a majority of the bank's depositors and other stakeholders of the bank who the bank's trustees reasonably determine are entitled to vote on the conversion.

In the same vein, the Board believes that a proxy specifically designed for the proposed conversion should be used to obtain a depositor vote on the conversion. In some states the management of converting banks and savings associations, subject to certain conditions, may use so-called "running proxies" (proxies obtained when a depositor opened his or her account with the institution) to vote in favor of the proposed conversion. The former OTS mutual-to-stock conversion regulations also permitted the use of running proxies, under certain circumstances. Running proxies are prohibited by the OTS Revisions.

The FDIC believes, preliminarily, that given the material change in structure represented by the bank's conversion to stock form, it is imperative that depositors be permitted to vote separately on the proposed conversion and that the most effective manner to assure that depositors are fully informed of the proposed conversion and have an opportunity to participate fully in the conversion would be to prohibit the use of running proxies in such transactions. This is in keeping with the FDIC's concern that the management of a State Savings Bank fulfill its fiduciary responsibilities by assuring that the depositors are in agreement with the proposed conversion. Thus, the proposed rule would prohibit the use of running proxies in the mutual-to-stock conversion process.

C. Restrictions on Management Stock Benefit and Recognition Plans (MRPs)

The OTS Revisions prohibit MRPs in conversions of federal and state savings associations. Currently, however, the regulations and policies of some state banking and thrift regulators permit MRPs to purchase a certain percentage of the stock sold in a mutual-to-stock conversion of a bank or savings association depending on the institution's capital position. Under some of these regulations and guidelines, management also may be granted stock options up to a certain percentage of the shares issued in the conversion. Based on a review of numerous proposed conversions, the Board believes that some bank insiders may be sacrificing the interests of their institutions and depositors in order to acquire significant amounts of conversion stock and other benefits more advantageously than depositors. Also, in some instances, the issuance of conversion stock to an MRP decreases the opportunity for depositors to obtain conversion stock. Moreover, the issuance of stock options at the conversion price, rather than at the aftermarket trading price, which in recent years has been substantially higher than the conversion price, creates the impression that insider enrichment may be the main reason for the conversion.

These factors reflect negatively on management's fulfillment of its fiduciary obligations. In fact, it may be an inherent conflict of interest for management to decide to convert the bank to stock form when, as part of the proposed conversion, management will reap significant benefits. Independent business judgment is essential to the proper carrying out of a manager's obligations. This judgment may be severely clouded when MRPs are provided as part of the conversion transaction.

As discussed below, the FDIC received several comments on the Proposed Policy Statement and the Interim Rule about management compensation in the conversion process. Many of these comments argued that the management of converting institutions should benefit from the conversion because such insiders are responsible for the bank's success and will undertake additional and perhaps more difficult challenges upon the bank's conversion to stock form. The Board does not disagree with this general point of view. While the Board believes that management and trustees would have increased responsibilities as a public company, preliminarily, the Board believes that, in most cases, market-based management compensation should be determined by the stockholders after the conversion is completed.

In particular, the proposed rule would provide that no converted savings bank shall, for one year from the date of the conversion, implement a stock option plan or management or employee stock benefit plan, other than a tax-qualified employee stock ownership plan, unless: each of the plans was fully disclosed in the proxy solicitation and conversion stock offering materials; all such plans are approved by a majority of the bank's stockholders, or in the case of a recently formed holding company, its stockholders, prior to implementation and no sooner than the first annual meeting following the conversion; in the case of a savings bank subsidiary of a mutual holding company, all such plans are approved by a majority of stockholders other than its parent mutual holding company prior to implementation and no sooner than the first annual meeting following the stock issuance; for stock option plans, stock options are granted at no lower than the market price at which the stock is trading at the time of grant; and for management or employee stock benefit plans, no conversion stock is used to fund the plans.

The proposed restrictions on MRPs do not include specific percentage limitations. Preliminarily, the FDIC believes that the proposed restrictions would adequately safeguard against potential management self-interest in mutual-to-stock conversions. Also, pursuant to the Interim Rule, the FDIC would continue to look to MRP percentage limitations in the OTS regulations, as well as in the applicable state law and regulations, as a frame of reference for reviewing proposed conversions of State Savings Banks. In addition, the FDIC believes that specific percentage limitations on MRPs may be too rigid and not serve to stem management abuses in every situation. The Board requests specific comments on whether MRP percentage limitations should be specified in the FDIC's regulations and, if so, what those percentages should be.

D. Eligibility Record Date, Priority to Depositors Residing in the Bank's Local Community, Priority of Employee Stock Ownership Plans (ESOPs)

The OTS Revisions require, among other things, that the record date established by a converting institution to determine which depositors will be afforded a priority in obtaining subscription rights in the conversion stock be set at no less than a year prior to the board of director's approval of the conversion. The Board believes, preliminarily, that, in order for a board of trustees of a State Savings Bank to carry out its fiduciary responsibilities to the bank and its depositors, the board must assure an equitable and lawful conversion process. From numerous comments we have received thus far and from our own review of proposed and completed conversions, it is apparent that so-called professional depositors, who place funds in mutual banks and savings associations throughout the country in order to gain a purchase priority if the institution converts to stock form, have reaped substantial profits on conversions of mutual institutions. A proper exercise of fiduciary responsibilities toward the bank and its longer-term depositors dictates that professional depositors not be allowed to experience windfall gains in conversions. Requiring that the eligibility record date be no less than one year prior to the board's adoption of the plan of conversion would help assure that longer-term depositors are more likely than professional depositors to benefit from the stock purchase priority. Thus, the proposed rule would require that the eligibility record date be no less than one year prior to the date the board of trustees approves the plan of conversion. The FDIC requests specific comment on whether the one-year period is sufficient and on whether the date chosen should be based on the board of trustees' first consideration of whether the bank should be converted to the stock form of ownership.

In a further effort to mitigate the exploitation of the mutual-to-stock conversion process by professional depositors, the proposed rule would provide a stock purchase preference to eligible depositors in the bank's "local community" or within 100 miles of a home or branch office of the converting bank. The term "local community" would be defined as all counties in which the converting bank has its home office or a branch office, each county's standard metropolitan statistical area or the general metropolitan area of each of these counties and such other area(s) as provided for in bank's plan of conversion. The Board believes that it is likely that the double requirement (for a stock purchase priority) of having a depositor relationship with the bank for at least one year prior to the date of the board's adoption of the plan of conversion and of having to reside in the bank's local community would decrease the participation of professional depositors in conversions of State Savings Banks.

The Board is mindful, however, that there may be depositors, particularly long-term depositors, of a State Savings Banks who are not "professional depositors," but happen to live outside the "local community" or the 100-mile area designated by the proposed requirement. Thus, the FDIC requests specific comment on whether and how such depositors can be included within the proposed stock purchase preference for "local depositors." One possible alternative would be to expand the definition of "local depositor" to include all depositors who have had a deposit relationship with the bank for, say, three or five years prior to the board of trustees' adoption of the plan of conversion. The Board is interested in comments on all aspects of the proposed priority requirement for local depositors, including views on whether the requirement is necessary, sufficient and/or equitable.

In the same vein, the Board believes that ESOPs (tax-qualified or otherwise) should not be accorded higher purchase priority rights than long-term depositors. The Board believes that general principles of fiduciary duty require that the board of trustees of a State Savings Bank put the interest of long-term depositors ahead of the interests of management and employees. Thus, the proposed rule would require that ESOPs not be accorded a higher subscription right priority than "eligible depositors." The term "eligible depositors" would be defined as a depositor holding qualifying deposits at the bank as of a date designated in the bank's plan of conversion that is not less than one year prior to the date of adoption of the plan of conversion by the converting bank's board of trustees. The FDIC requests specific comment on whether the one-year period is sufficient and on whether the period chosen should be based on the board of trustees' first consideration of whether to convert to stock ownership.

E. Submission of Business Plans

For safety and soundness purposes the FDIC must know the institution's business plan for post-conversion operation, growth and investment of any newly injected capital. The reason is that institutions converting from mutual form undertake a major restructuring that possibly could lead to significant changes in the nature or volume of business conducted. Converted institutions become answerable to shareholders for the first time, and the shareholders are concerned with obtaining a reasonable return on their investment. As discussed in the preamble to the Interim Rule, in the past some institutions, in leveraging capital raised through a conversion and reaching for a return on equity, have vigorously competed for loans and unduly liberalized underwriting standards. Such practices led to loan losses that in many instances depleted more capital than was raised through conversion and, in some cases, failures and losses to the Bank Insurance Fund.

For these reasons, the proposed rule would require State Savings Banks that propose to undergo a mutual-to-stock conversion to submit a business plan including, among other things, a detailed discussion of how management intends to deploy the capital raised through the sale of stock in the conversion, expected returns resulting from the plan, and the justification for any intended stock repurchases.

F. Post-conversion Stock Repurchases

As indicated above, the proposed rule would require that the business plan submitted to the FDIC in connection with a proposed mutual-to-stock conversion include a detailed discussion of how the capital acquired in the conversion will be utilized, including, among other things, a justification for any proposed stock repurchases. The FDIC is concerned that substantial buyback programs begun immediately after the bank's conversion to stock form may not have a legitimate business purpose. Such repurchases also raise issues about whether the conversion stock was appropriately valued. In addition, the FDIC is concerned that a recently converted institution have a capital base adequate to safeguard against possible unexpected losses that may occur under the new organizational structure. To protect against these potential problems, the proposed rule would prohibit stock repurchases for one year following the conversion. Stock repurchases after that period would be considered on a case-by-case basis under section 18(i)(1) of the FDI Act (12 U.S.C. 1828(i)(1)) which prohibits state nonmember banks from reducing or retiring capital without the prior consent of the FDIC.

VI. Merger/Conversions

In some cases, mutual institutions convert to stock ownership in the course of a merger or acquisition transaction with another depository institution or holding company. This is generally known as a merger/conversion. In merger/conversions depositors of the converting institutions obtain the right to purchase stock in the acquiring institution and not the converting savings bank. In exercising its fiduciary responsibilities the board of trustees of a State Savings Bank must assure that value of the converting institution is fairly distributed. This means not only guarding the interests of long-term depositors against insiders and professional depositors, but against acquiring institutions. Based on the proposed conversions we have reviewed in the recent past and other merger conversions we have studied, the Board has observed that, in virtually every merger conversion, the acquiring institution captures a large portion of the value of the converting institution. It is also not uncommon in merger/conversions for the management of the converting mutual institution to receive extremely generous compensation and benefit packages. The OTS Revisions prohibit merger/conversions.

As indicated in the preamble to the OTS Revisions, there is an issue whether the management of a mutual institution is opting for a merger/conversion, instead of a standard conversion, based on the best interests of the institution and its depositors or in response to the level of benefits offered to management by the acquiring entity. As noted in the preamble to the Interim Rule, there have been numerous complaints recently by depositors and others that permitting healthy mutual savings banks to be acquired by means of a merger/conversion has resulted in some savings bank insiders putting their interest ahead of the interests of the converting bank and its depositors.

For the foregoing reasons, the Board believes that merger/conversions should, in most cases, be permitted only in situations where a State Savings Bank is "undercapitalized," "significantly undercapitalized" or "critically undercapitalized" as defined in the FDIC's capital maintenance regulations. At this time, however, the Board does not propose to impose a blanket prohibition on non-supervisory merger/conversions. The FDIC will continue to review proposed merger/conversions with an emphasis on whether the fair value of the State Savings Bank would be delivered to the rightful recipients. The FDIC is requesting specific comment on this topic and specifically whether a moratorium should be placed on merger/conversions involving sufficiently capitalized State Savings Banks.

VII. Comparison With OTS Regulations

As noted above, the requirements imposed by the proposed rule would essentially parallel the OTS Revisions. There are numerous other provisions in the OTS' mutual-to-stock conversion regulations (12 CFR part 563b), however, that are not included in either the FDIC Interim Rule or the proposed rule. Those OTS regulations impose upon converting savings associations specific and detailed requirements on, among other things: items to be included in the plan of conversion, stock purchase priorities, percentage limitations on stock purchases and MRPs, proxy solicitation and the form and content of proxy statements, the form and content of offering circulars, accounting rules, liquidation accounts, notices of filing, availability of conversion documents and pricing and sale of securities.

Preliminarily, the FDIC believes that the requirements imposed by the proposed rule, coupled with the requirements of the Interim Rule, would enable the FDIC to monitor the conversions of State Savings Banks for issues involving safety and soundness, fiduciary duty and other violations of law. Pursuant to the Interim Rule, the FDIC uses the OTS regulations as a frame of reference in reviewing proposed mutual-to-stock conversions of State Savings Banks. The FDIC also looks to the applicable state law and regulations in reviewing proposed conversions. To date, the FDIC has not identified a need to adopt a more comprehensive set of regulations addressing all aspects of the mutual-to-stock conversion process. It has been suggested, however, that in order to achieve greater uniformity with the OTS' conversion regulations the FDIC's conversion regulations should be expanded to match the scope and depth of the OTS rules. Thus, the Board specifically requests comment on whether the FDIC's regulations should be expanded to include provisions similar to those of the OTS regulations that are not already included in either the Interim Rule or the proposed rule.

VIII. Convenience and Needs Requirement

The OTS has issued a proposed rule that would add a requirement to its mutual-to-stock conversion regulations that, in determining whether to approve such a conversion transaction, the OTS would consider the convenience and needs of the community served by the converting institution. 59 FR 22764 (May 3, 1994.) The "convenience and needs of the community to be served" by the applicant is one of the statutory factors required to be considered by the Board in acting on applications for deposit insurance (12 U.S.C. 1816). Thus, in connection with the review of mutual holding company reorganizations of insured depository institutions the FDIC already is required to (and does) apply a convenience and needs test. The Board requests comment on whether the FDIC could and should also consider imposing such a requirement in connection with the mutual-to-stock conversions of State Savings Banks.

IX. Summary of Comments on the Proposed Policy Statement and Interim Rule

The FDIC received 85 written comments on the Proposed Policy Statement and Interim Final Rule: 60 from banks, savings banks, cooperative bank and saving associations; 7 from bank and thrift industry trade groups; 6 from state banking and thrift regulators; 5 from individuals; 5 from law firms; 1 from a bank holding company; and 1 from a regulatory "shadow" group.

1. FDIC Oversight Role

The comments did not focus on describing recent abuses in mutual-to-stock conversions. They generally acknowledged that there had been notable examples of insider abuse in the recent past and then suggested how future potential abuses could be avoided. Many of those who commented recommended that the FDIC play an oversight role in the mutual-to-stock conversions of State Savings Banks. One state stock savings bank that is owned by a mutual holding company noted that "present abuses in several recent and proposed conversions have demonstrated the need for the FDIC to maintain oversight of the conversion process, to ensure that issues of both safety and soundness and of fiduciary care are identified and adequately addressed." One state savings association trade group commented that "with recent publicity over some apparent abuses in the [conversion] process and resulting Congressional concerns, * * * it is most appropriate and important for the FDIC to assert regulatory jurisdiction over conversions by state nonmember banks." One state thrift regulator noted that the FDIC had issued an "excellent set of rules" with a "very conservative, realistic approach to a situation which could have gotten out of hand if left to go unchecked." One State Savings Bank said simply that "past abuses [in mutual-to-stock conversions] support the need for FDIC oversight."

Several commenters suggested that the FDIC have oversight authority of State Savings Bank mutual-to-stock conversions, but with prescribed limitations. For example, a national banking industry trade group noted that it "deplores instances in which it can be demonstrated that insiders involved in mutual-to-stock conversions received benefits so large that they bear no reasonable relationship to the institution's performance * * * Unjustifiable windfall profits, depletion of capital without concern for safety and soundness and manipulation of the value of the institution to benefit limited interests are practices that deserve close scrutiny and action by the appropriate authorities * * * In responding to these issues, the FDIC should act quickly and decisively in concert with the state authorities." The trade group further commented that the "cornerstone" for the FDIC's response to issues arising from the mutual-to-stock conversion issue is the state regulatory authorities. One state thrift regulator expressed support for FDIC oversight of conversions if such involvement assures "reasonableness and relative uniformity of benefits for both state- and OTS-regulated institutions * * * and allows state variation from OTS requirements if such variations benefit the institution and the depositors."

One mutual savings bank noted that the FDIC should focus on broad safety-and-soundness issues and that detailed regulations, like the OTS', are not necessary. Another state mutual savings bank said that the FDIC should be involved in conversion oversight, but only in terms of setting minimum standards rather than superseding state regulation. Many savings banks in Massachusetts and a banking trade association in that state commented that the FDIC should issue conversion regulations similar to the OTS and Massachusetts mutual-to-stock conversion regulations, noting that the FDIC has broad statutory authority to regulate issues that affect safety and soundness. They noted that the FDIC's focus should be to eliminate abuses in stock evaluation, depositor disclosures, depositors' ability to purchase stock at conversion and insider compensation programs. They also asserted that state statutory and regulatory conversion rules should not be superseded by federal law. One mutual savings bank noted that promulgating federal laws or regulations "should not be allowed when it is determined that state requirements are generally consistent or more stringent than existing federal rules."

Some commenters contended that state regulation was sufficient in the area of mutual-to-stock conversions and that the Interim Rule is not necessary. One mutual savings bank asserted that the "averments made by the FDIC in support of the Interim Rule that it is needed for safety and soundness reasons and to protect the interest of depositors are without merit and are being offered only to support continued federal intrusion into issues which are primarily the concern of state law and regulation." One state mutual savings bank stated that the "proposed policy statement is overkill" and that "state regulation can handle insider abuse issues." One state banking and thrift regulator asserted that state regulators are not to blame for insider abuses in conversions and that "states' rights should not be tramped on." The regulator suggested that a committee of state and federal regulators work together to address issues and concerns.

All those who commented on the issue expressed objection to Congressional legislation to address current issues in mutual-to-stock conversions. One mutual savings bank commented that "if the FDIC does not act, Congress will—in an uninformed manner." Another mutual savings bank noted that "regulation is far preferable than legislation." A national banking industry trade group noted that the "FDIC has full statutory authority in the conversion area to ensure the integrity of the conversion process and no new legislation is necessary to address these issues."

2. Transferable Subscription Rights

The FDIC received many comments on the issue whether conversion rules should be modified to require converting institutions to provide depositors with transferable subscription rights to purchase the stock issued in the mutual-to-stock conversion. This issue was not addressed in either the Proposed Policy Statement or the Interim Rule. In recent Congressional testimony the FDIC Chairman has indicated that the FDIC may consider whether depositors and other stakeholders of converting

institutions should receive transferable subscription rights so they can participate more equitably in the conversion process and receive benefits from the conversion without having to purchase conversion stock to do so. With one exception, all the comments received on this issue opposed the idea. One mutual savings bank stated that "we are outraged that any governmental body would consider provisions such as depositor subscription rights that could enable speculators to force a mutual bank to convert to a stock bank. Such a provision would not just endanger this bank, but destroy it, along with many other community institutions." A national banking industry trade group echoed these sentiments, noting that "permitting or requiring transferable subscription rights would undermine the integrity of conversions by generating intense pressures to convert mutuals to stock form. All mutuals would be put into play."

Many mutual savings and cooperative banks in Massachusetts expressed their objection to "mandatory depository transferable/saleable subscription rights" noting that "they could subject our depositors to professional flippers [out-of-area depositors who are just interested in short-term investment gains], attorneys and investment firms who may bring pressure to force a mutual-to-stock conversion." A shadow regulatory group expressed the opposite view, arguing that subscription rights should be transferable to provide an incentive for depositors to exercise their subscription rights.

3. Contributions to the Community/FDIC

Most of those who commented on the issue expressed opposition to requiring converting institutions to contribute part of the conversion proceeds directly to their communities. Many noted such a requirement would impose a "social tax" on converting institutions. A state savings bank stated that "a capital giveaway wouldn't further the FDIC's legitimate goal of preserving safety and soundness." Another state savings bank noted that such a "social tax would jeopardize the safety and soundness of the bank and would negatively affect credit availability to local consumers and small businesses. These are not public funds." One of the numerous savings banks in Massachusetts who commented negatively on this issue asserted that "a social tax would replace insider greed with a form of outsider greed."

Some commenters, however, suggested that the FDIC should share in conversion proceeds. A regulatory "shadow" group stated that the FDIC should receive at least 50 percent of [the transferable subscription] rights [issued in a mutual-to-stock conversion], which it would sell in the market. The group argued that: "the taxpayer, through the FDIC, has the strongest claim on the existing surplus of converting mutual institutions. The taxpayer has taken the risk of loss that is usually borne by the stockholder. The public, that had to pay for the loss of failed thrifts, should reap some of the benefits that all usually go to the stockholder." A state bank commented that "windfall appreciation from stock conversions should accrue to the FDIC. The FDIC has provided protection for thrifts over the years and deserves the benefit."

4. Merger/Conversions

An individual who commented on the Proposed Policy Statement and Interim Rule stated that merger/conversions should not be allowed because they "only serve management's interests and not the depositors." He suggested that any merger take place only after an initial "free-standing" standard conversion. A bank holding company commented that merger/conversions are desirable because they increase competition in the industry and support safety and soundness. It noted that state law is the "proper authority" to regulate management compensation issues in merger/conversions. A law firm commented that the problems with merger/conversions could be "reduced substantially if the OTS revised its policy to encourage a discount in the acquirors' stock as offered to depositors of the acquired institution." A state banking and thrift regulator suggested that the FDIC and OTS collaborate in a joint determination on whether merger/conversions will be approved in the future and, if so, adopt specific requirements to provide parity among savings associations and savings banks. A state banking and thrift industry trade group recommended that merger/conversions be permitted only in the case of undercapitalized institutions or at the discretion of the regulators on a case-by-case basis. A national banking and thrift industry trade group said it would not oppose a "regulatory pause by the FDIC to evaluate its rules governing merger/conversions."

5. Depositor Voting/Running Proxies

Several commenters stated that the FDIC should not provide "voting rights" to depositors in connection with conversions of mutual savings banks in states that do not provide such voting rights. One state bank asserted that "voting rights should be left to state law. To impose some sort of depositor approval requirement in a state that does not have depositor voting could lead to expanded ownership claims by depositors that could operate to the detriment of mutuals." One state banking and thrift regulator (of a state that does not provide a depositor voting right) asserted that "any FDIC requirement of a depositor vote in a mutual-to-stock conversion * * * [would be] wholly unsupported by any expressly preemptive federal statute." Many banks in Massachusetts commented that any depositor voting right requirements imposed by the FDIC would put undue pressure on mutuals in that state to convert to stock ownership.

An individual noted that general proxies should be prohibited and that all conversions should be subject to a special proxy, or proxies should be entirely eliminated in favor of a majority-rules scheme. A national banking and thrift industry trade group noted that the use of general proxies is reasonable under the OTS' rules.

6. Management Benefits

Many of the commenters discussed the issue of management benefits in conversions. Several of them stated that insiders should share in the benefits of conversions because the insiders managed the institution in a safe-and-sound manner. One state thrift regulator (and other commenters) suggested that MRPs be based on the size of the institution and not on "straight across-the-board percentages." One national banking and thrift industry trade group noted that "avoiding the use of across-the-board percentages for MRPs and tailoring their availability more to the size of the institution and their specific business plan objectives and needs would be a reasonable approach." One mutual savings bank noted that MRPs, stock option plans and employee stock ownership plans "all encourage more stock ownership and cement an identity among outside shareholders and those who run and work for the company." It also noted that OTS rules are workable in this regard and should be adopted by the FDIC. Another savings association commented that conversions should not be permitted where there is excessive compensation for insiders, but "without benefits to insiders there will be no conversions."

An individual commented that the FDIC should not regulate director remuneration in conversions of healthy mutuals because those conversions do not place the insurance fund at risk and shareholders' votes are dispositive under the "corporate waste" doctrine. A law firm, commenting on behalf of a

state thrift industry trade group, also noted that compensation benefits are not a safety-and-soundness concern if the institution meets the applicable capital requirements. In addition, it stated that a "uniformity of benefits between state- and OTS-regulated conversions" is necessary to assure the end of "regulatory arbitrage." A state bank and thrift regulator (and several other commenters) suggested that the FDIC and OTS publish joint MRP guidelines permitting or prohibiting MRPs, along with specific rules therefore. It noted that "proper resolution of the MRP issue will have a substantial impact on fairness to depositors in conversions." One savings bank commented that "when an institution contemplates going public for the right reasons (expansion, market share, competitive advantage) the benefits should go to those willing to risk their careers (board and management team) or their capital (shareholders) not to the faceless non-entity group known as the existing depositors."

7. Appraisals

A state savings association noted that one of the basic problems with conversions is the appraisal of the institution. It stated that "the FDIC needs to be satisfied that the various states are as well equipped [as the "qualified" OTS staff] to perform a definitive analysis of institution appraisals as well as know with certainty that the appraiser is qualified to assess a financial institution's value." The commenter also noted that fairness and moderation are the keys to governing stock conversions. An individual commented that the FDIC should not regulate the offer price for healthy mutuals because those conversions do not place the insurance fund at risk. An individual suggested that the applicable regulator should retain its own appraiser to assure fair valuation of the converting entity. A state bank and thrift regulator stated that appraisal rules required by the FDIC should be specifically stated in the Interim Rule.

8. Other Comments

An attorney commented that the Interim Rule should allow depositors full access to all papers filed in connection with proposed merger/conversions, as well as standard conversions. He also suggested that depositors be permitted to file with the FDIC objections to such proposed transactions.

A few commenters noted that the FDIC should clarify that the Interim Rule applies to mutual holding company formations and merger/conversions.

An individual suggested that, to protect the insurance fund, a converting institution should prepare a business plan regarding the proposed use of the new capital. The plan should be reviewed by the applicable state; however, if the FDIC feels state review will be insufficient, the FDIC is empowered by the Federal Deposit Insurance Act (FDI Act) to assume jurisdiction.

Two law firms suggested that the FDIC's review time on conversion notices be reduced from 60 days to 45 days because of the potential that financial information might become "stale" under rules issued by the Securities and Exchange Commission and the converting institution would have to go through the expense of producing updated financial statements.

Request for Public Comment

The FDIC is hereby requesting comment during a 30-day comment period on all aspects of this proposed rule.

List of Subjects in 12 CFR Part 333

Banks, banking, Corporate powers.

The Board of Directors of the Federal Deposit Insurance Corporation hereby proposes to amend part 333 of title 12 of the Code of Federal Regulations as follows:

PART 333—EXTENSION OF CORPORATE POWERS

1. The authority citation for part 333 is revised to read as follows:

Authority: 12 U.S.C. 1816, 1818, 1819 ("Seventh", "Eighth" and "Tenth"), 1828, 1828(m), 1831p-1(c).

2. Section 333.4 is added to read as follows:

§ 333.4 Conversions from mutual to stock form.

(a) *Scope.* This section applies to the conversion of insured mutual state savings banks to the stock form of ownership. It supplements the procedural and other requirements for such conversions in § 303.15 of this chapter. This section also applies, to the extent appropriate, to the reorganization of insured mutual state savings banks to the mutual holding company form of ownership. As determined by the Board of Directors of the FDIC on a case-by-case basis, this section does not apply to mutual-to-stock conversions of insured mutual state savings banks whose capital category under § 325.103 of this chapter is "undercapitalized," "significantly undercapitalized" or "critically undercapitalized." The Board of Directors of the FDIC may grant a waiver in writing from any requirement of this section for good cause shown.

(b) *Conflicts with state law.* In the event that an insured mutual state savings bank that proposes to convert to the stock form of ownership finds that compliance with any provision of this section would be inconsistent or in conflict with applicable state law, the bank may file a written request for waiver of compliance with such provision by the FDIC. In making such request, the bank shall demonstrate that the requested waiver, if granted, would not result in any effects that would be detrimental to the safety and soundness of the bank, entail a breach of fiduciary duty on part of the bank's management or otherwise be detrimental or inequitable to the bank, its depositors, any other insured depository institution(s), the federal deposit insurance funds or to the public interest.

(c) *Definitions.* For purposes of this section:

(1) *Local community* includes all counties in which the converting bank has its home office or a branch office, each county's standard metropolitan statistical area or the general metropolitan area of each of these counties and such other area(s) as provided for in the plan of conversion, acceptable to the FDIC; and

(2) *Eligible depositors* are depositors holding qualifying deposits at the bank as of a date designated in the bank's plan of conversion that is not less than one year prior to the date of adoption of the plan of conversion by the converting bank's board of trustees.

(d) *Requirements.* In addition to other requirements that may be imposed by the applicable state statutes and regulations and other federal statutes and regulations, including § 303.15 of this chapter, an insured mutual state savings bank shall not convert to the stock form of ownership unless the following requirements are satisfied:

(1) The subscription offering of the stock to be offered or sold in the conversion shall provide a stock purchase priority to eligible depositors, other depositors and others entitled to vote on the bank's proposed conversion residing in the bank's local community or within 100 miles of a home office or branch of the converting bank;

(2) Employee stock ownership plans shall not have priority over subscription rights of eligible depositors;

(3) Any direct community offering by the converting bank shall give a purchase priority to natural persons

residing in the bank's local community or within 100 miles of a home office or branch of the bank;

(4) The proposed conversion shall be approved by a vote of at least a majority of the bank's depositors and other stakeholders of the bank who the bank's trustees reasonably determine are entitled to vote on the conversion, unless the applicable state law requires a higher percentage, in which case the higher percentage shall be used. Voting may be in person or by proxy;

(5) Management shall not use proxies executed outside the context of the proposed conversion to satisfy the voting requirement imposed in paragraph (d)(4) of this section; and

(6) In addition to the materials to be submitted to the FDIC pursuant to § 303.15(c) of this chapter, the bank must submit to the FDIC:

(i) A full appraisal report on the value of the converting bank and the pricing of the stock to be sold in the conversion. The report must be prepared by an independent appraiser and must include a complete and detailed description of the elements that make up an appraisal report, justification for the methodology employed and sufficient support for the conclusions reached therein, including a full discussion of the applicability of each peer group member and documented analytical evidence supporting any variance (above or below) the institution proposing to convert may have from the peer group statistics and a complete analysis of the institution's *pro forma* earnings which should include its full potential once the institution fully deploys its new capital pursuant to its business plan; and

(ii) A business plan which must include, in part, a detailed discussion of how the capital acquired in the conversion will be utilized, expected returns resulting from the plan and a justification for any proposed stock repurchases.

(e) *Restriction on repurchase of stock.* An insured mutual state savings bank that has converted from the mutual to stock form of ownership may not repurchase its capital stock within one year following the date of its conversion to stock form. Any stock repurchases after the one year period shall be subject to the requirements of section 18(i)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1828(i)(1)).

(f) *Stock benefit plan limitations.* No converted insured mutual state savings bank shall, for one year from the date of the conversion, implement a stock option plan or management or employee stock benefit plan, other than a tax-qualified employee stock ownership plan, unless each of the following requirements is met:

(1) Each of the plans was fully disclosed in the proxy soliciting and conversion stock offering materials;

(2) All such plans are approved by a majority of the bank's stockholders, or in the case of a recently formed holding company, its stockholders, prior to implementation and no sooner than the first annual meeting following the conversion;

(3) In the case of a savings bank subsidiary of a mutual holding company, all such plans are approved by a majority of stockholders other than its parent mutual holding company prior to implementation and no sooner than the first annual meeting following the stock issuance;

(4) For stock option plans, stock options are granted at no lower than the market price at which the stock is trading at the time of grant; and

(5) For management or employee stock benefit plans, no conversion stock is used to fund the plans.

By the order of the Board of Directors.

Dated at Washington, D.C., this 31st day of May, 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 94–14007 Filed 6–10–94; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[WV9–1–6419, WV9–2–6425 FRL–4997–8]

Approval and Promulgation of Air Quality Implementation Plans; Designation of Areas for Air Quality Planning Purposes; Redesignation of the Charleston West Virginia Ozone Nonattainment Area to Attainment and Approval of the Area's Maintenance Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On November 13, 1992, the West Virginia Department of Commerce, Labor & Environmental Resources; Division of Environmental Protection; Office of Air Quality (WVOAQ) submitted a request to EPA to redesignate the Charleston moderate ozone nonattainment area (Kanawha and Putnam Counties) from nonattainment to attainment. On November 13, 1992, the WVOAQ also submitted a maintenance plan for the Charleston area as a revision to the West Virginia State Implementation Plan (SIP). On February 28, 1994, West Virginia submitted an update to its November 13, 1994 submittal. The EPA is proposing to redesignate the Charleston ozone nonattainment area from nonattainment to attainment and proposing to approve the maintenance plan submitted by the WVOAQ as a revision to the West Virginia SIP because the relevant requirements set forth in the Clean Air Act, as amended in 1990, have been met. This proposal to approve the redesignation is contingent upon West Virginia's submittal of a revision to its maintenance plan's provisions for implementation of contingency measures. These actions are being taken in accordance with the Act. The approved maintenance plan will become a federally enforceable part of the SIP for the Charleston area.

DATES: Comments must be received on July 13, 1994.

ADDRESSES: Written comments should be sent to Thomas J. Maslany, Director, Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107. The state submittal and EPA's Technical Support Document (TSD) prepared on these proposed actions is available for public review at the above address and at the West Virginia Division of Environmental Protection, Office of Air Quality 1558 Washington Street, East Charleston, West Virginia, 25311–2599.

FOR FURTHER INFORMATION CONTACT: Michael Dubowe at (215) 597–1109 or Todd Ellsworth at (215) 597–2906.

SUPPLEMENTARY INFORMATION:

I. Background

The Clean Air Act, as amended in 1977 (1977 Act), required areas that were designated nonattainment based on a failure to meet the ozone national ambient air quality standard (NAAQS) to develop SIPs with sufficient control measures to expeditiously attain and maintain the standard. (1977 Act, sections 110(a)(1) and 172.) The Charleston, West Virginia nonattainment area was designated under section 107 of the 1977 Act as nonattainment with respect to the ozone NAAQS on September 12, 1978. (40 CFR 81.347) In accordance with section 110 of the 1977 Act, West Virginia submitted a part D ozone SIP on November 15, 1979 which EPA approved as meeting the requirements of section 110 and part D of the 1977 Act. In its SIP, the State of West Virginia projected that the Charleston, West

Virginia nonattainment area would attain the ozone standard by December 31, 1982. The area failed to attain the standard.

On November 15, 1990, the Clean Air Act Amendments of 1990 (hereafter the Act) were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The nonattainment designation of the Charleston, West Virginia area continued by operation of law according to section 107(d)(1)(C)(i) of the Act, furthermore, it was classified by operation of law as moderate for ozone pursuant to section 181(a)(1) of the Act. See 56 FR 56694 (Nov. 6, 1991) and 57 FR 56762 (Nov. 30, 1992), codified at 40 CFR 81.347.

The Charleston, West Virginia ozone nonattainment area more recently has attained the ozone NAAQS, based on air quality data from 1989 through 1991. In an effort to comply with the Act and to ensure continued attainment of the NAAQS, on November 13, 1992 the WVOAQ submitted an ozone maintenance plan for the Charleston, West Virginia area as a revision to the West Virginia SIP.

On November 13, 1992, the State of West Virginia also requested that EPA redesignate the Charleston, West Virginia area to attainment with respect to the ozone NAAQS. In addition, on February 28, 1994, West Virginia submitted an update to its November 13, 1992 submittal, collectively referred to hereafter as the "State of West Virginia's redesignation request."

II. Evaluation Criteria

According to section 107(d)(3)(E) of the Act, five specific requirements must be met in order for EPA to redesignate an area from nonattainment to attainment:

1. The area must have attained the applicable NAAQS;
2. The area has met all relevant requirements under section 110 and part D of the Act;
3. The area has a fully approved SIP under section 110(k) of the Act;
4. The air quality improvement must be permanent and enforceable; and
5. The area must have a fully approved maintenance plan pursuant to section 175A of the Act.

III. Review of West Virginia's Submittal

The State of West Virginia's redesignation request for the Charleston, West Virginia area included information and documentation sufficient for EPA to determine that the five requirements of section 107, noted above have been met. Following is a brief description of how each of these requirements has been fulfilled. Because the maintenance plan is a critical element of the redesignation request, EPA will discuss its evaluation of the maintenance plan under its analysis of the redesignation request. A Technical Support Document (TSD) has also been prepared by EPA on these rulemaking actions. That TSD is available for public inspection at the EPA Regional Office listed in the ADDRESSES section of this document.

1. Attainment of the Ozone NAAQS

The submittal contains an analysis of ozone air quality data which is relevant to the maintenance plan and to the redesignation request. Ambient ozone monitoring data for 1989 through 1991 show attainment of the ozone NAAQS in the Charleston, West Virginia area. See 40 CFR § 50.9 and appendix H. The State of West Virginia's request for redesignation included documentation that the Charleston, West Virginia ozone nonattainment area has complete, quality-assured data showing attainment of the standard over the most recent consecutive three calendar year period. Therefore, the Charleston, West Virginia area has met the first statutory criterion for redesignation to attainment of the ozone NAAQS found at section 107(d)(3)(E)(i) of the Act. It is important to note that EPA has also reviewed the ozone data monitored during the 1992 and 1993 ozone seasons in the Charleston area and determined that no violations of the standard were monitored during those years. Therefore, there have been no violations of the ozone standard monitored in the Charleston area since the 1988 ozone season.

2. Meeting Applicable Requirements of Section 110 and Part D

As previously stated, EPA fully approved the State of West Virginia SIP for the Charleston, West Virginia area as meeting the requirements of section 110(a)(2) and part D of the 1977 Act. The amended Act, however, modified section 110(a)(2) and, under Part D, revised section 172 and added new requirements for all nonattainment areas. Therefore, for purposes of redesignation, EPA has reviewed the SIP to ensure that it contains all measures that were due under the Act as of November 13, 1992, the date the State of West Virginia submitted its redesignation request.

2.A. Section 110 Requirements

Although section 110 of the 1977 Act was amended in 1990, the Charleston, West Virginia SIP meets the requirements of section 110(a)(2) of the amended Act. A number of the requirements did not change in substance and, therefore, EPA believes that the pre-amendment SIP met these requirements. As to those requirements that were amended, See 57 FR 27936 and 23939 (June 23, 1993), many are duplicative of other requirements of the Act. EPA has analyzed the SIP and determined that it is consistent with the requirements of section 110(a)(2) of the Act. It contains enforceable emission limitations, it requires monitoring, compiling, and analyzing ambient air quality data, it requires preconstruction review of new major stationary sources and major modifications to existing ones, it provides for adequate funding, staff, and associated resources necessary to implement its requirements, and requires stationary source emissions monitoring and reporting.

2.B. Part D Requirements

Before the Charleston, West Virginia ozone nonattainment area may be redesignated to attainment, it also must have fulfilled applicable requirements of part D due as of the date of the State's redesignation request. Under part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, classified as well as nonclassifiable. Subpart 2 of part D establishes additional requirements for nonattainment areas classified under table 1 of section 181(a). The Charleston, West Virginia ozone nonattainment area was classified as moderate. (See 56 FR 56694, codified at 40 CFR 81.347). Therefore, in order to be redesignated to attainment, West Virginia must meet the applicable requirements of subpart 1 of part D—specifically sections 172(c) and 176—as well as the applicable requirements of subpart 2 of part D—due as of the date of the State's November 13, 1992 request for redesignation. EPA interprets section 107(d)(3)(E)(v) to mean that for a redesignation request to be approved, the State has met all requirements that applied to the subject area prior to or at the time of the submission of a complete redesignation request. Requirements of the Act that come due subsequently continue to be applicable to the area at those later dates (see section 175A(c)) and, if the redesignation of the area is disapproved, the State remains obligated to fulfill those requirements.

2.B.1. Subpart 1 of Part D—Section 172(c) Provisions

Under section 172(b), the section 172(c) requirements are applicable no later than 3 years after an area has been designated as nonattainment under the Act. EPA has determined that these requirements were not applicable to ozone nonattainment areas on or before

November 13, 1992—the date the State of West Virginia submitted a complete redesignation request and maintenance plan for Charleston. Therefore, the State of West Virginia is not required to meet these requirements for purposes of redesignation. West Virginia has, however, completed and submitted a 1990 base year emissions inventory for its ozone nonattainment areas (including the Charleston area) in accordance with EPA's guidance. It is also important to note that upon redesignation to attainment, the preconstruction new source review requirements for prevention of significant deterioration (PSD) would apply in the Charleston area. EPA approved West Virginia's PSD SIP program on April 11, 1986 (51 FR 12517).

2.B.2. Subpart 1 of Part D—Section 176 Conformity Provisions

Section 176(c) of the Act requires States to revise their SIPs to establish criteria and procedures to ensure that Federal actions, before they are taken, conform to the air quality planning goals in the applicable State SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under title 23 U.S.C. or the Federal Transit Act ("transportation conformity"), as well as to all other Federal actions ("general conformity"). Section 176 further provides that the conformity revisions to be submitted by States must be consistent with Federal conformity regulations that the Act required EPA to promulgate. Congress provided for the State revisions to be submitted one year after the date for promulgation of final EPA conformity regulations. When that date passed without such promulgation, USEPA's General Preamble for the Implementation of Title I informed States that its conformity regulations would establish a submittal date (see 57 FR 13498, 13557 (April 16, 1992)).

The EPA promulgated final transportation conformity regulations on November 24, 1993 (58 FR 62188) and general conformity regulations on November 30, 1993 (58 FR 63214). These conformity rules require that States adopt both transportation and general conformity provisions in the SIP for areas designated nonattainment or subject to a maintenance plan approved under CAA section 175A. Pursuant to § 51.396 of the transportation conformity rule and § 51.851 of the general conformity rule, the State of West Virginia is required to submit a SIP revision containing transportation conformity criteria and procedures consistent with those established in the Federal rule by November 25, 1994. Similarly, West Virginia is required to submit a SIP revision containing general conformity criteria and procedures consistent with those established in the Federal rule by December 1, 1994. Because the deadlines for these submittals have not yet come due, they are not applicable requirements under section 107(d)(3)(E)(v) and, thus, do not affect approval of this redesignation request.

2.B.3. Subpart 2 of Part D—Section 182 Provisions for Ozone Nonattainment Areas

The Charleston, West Virginia nonattainment area is classified as moderate and is subject to the requirements of section 182(b) of the Act. As of November 13, 1992, the date West Virginia submitted a complete redesignation request for the Charleston, West Virginia nonattainment area, the Charleston, West Virginia area was required to meet the provisions of section 182(a)(2)(A) to correct its Reasonably Available Control Technology (RACT) requirements in effect prior to enactment of the 1990 amendments to the Act. The State of West Virginia submitted those RACT corrections as SIP revisions to EPA on June 4, 1991. A final rule approving these RACT corrections was published on September 17, 1992 (57 FR 42895).

On January 15, 1993, EPA notified the Governor of West Virginia that it had made a finding that West Virginia had failed to submit either a full or committal SIP revision for a basic inspection and maintenance (I/M) program for its ozone nonattainment areas. On January 18, 1994, EPA notified the Governor of West Virginia that it had made a finding that West Virginia had failed to submit a 15% rate of progress plan SIP revision for its ozone nonattainment areas. Upon the effective date of a final approval by EPA of West Virginia's redesignation request, these findings will be automatically rescinded in the Charleston nonattainment area.

3. Fully Approved SIP Under Section 110(k) of the Act

As stated previously, EPA has approved the RACT corrections noted above. Therefore, the State of West Virginia has a fully approved SIP under section 110(k), which also meets the applicable requirements of section 110 and part D as discussed above. Therefore, the redesignation requirement of section 107(d)(3)(E)(ii) has been met.

4. Improvement in Air Quality Due to Permanent and Enforceable Measures

Under the 1977 Act, EPA approved the State of West Virginia SIP control strategy for the Charleston, West Virginia nonattainment area. EPA determined that the rules and the emission reductions achieved as a result of those rules were enforceable. Since enactment of the 1990 amendments, the State of West Virginia submitted corrections to its RACT regulations as identified above. EPA finds that these additional measures contribute to the permanence and enforceability of reductions in ambient ozone levels in the Charleston, West Virginia area.

Between 1988 and 1990, because of permanent and enforceable state and federal provisions, emissions of volatile organic compounds (VOCs) were reduced by 8.14 tons/day and emissions of nitrogen oxides (NO_X) were reduced by 3.1 tons/day in Charleston. Most of the reductions came from mobile sources and gasoline marketing-related activities. The Reid Vapor Pressure (RVP), of gasoline marketed for use in the Charleston, West Virginia area decreased from 10.5 RVP to 9.5 RVP in 1990 and was reduced to 9.0 in 1992. In addition, due to automobile fleet turnover, there was an increase in the percent of automobiles operated in the Charleston area meeting more stringent emission standards as required by the Federal Motor Vehicle Control Program (FMVCP). It must be noted here that since 1992 the federal RVP requirement of 9.0 has been the applicable standard in the Charleston, West Virginia area.

The State of West Virginia maintenance plan requires the continuation of the federal RVP program. These reductions due to lower RVP and more stringent tailpipe standards resulting from the FMVCP were determined using the mobile emission inventory model MOBILE 5.0a and the relevant vehicle miles traveled data.

Permanent and enforceable decreases in VOCs at stationary sources contributed a small amount to the total VOC reduction in the Charleston, West Virginia area. In association with its emission inventory, the State of West Virginia demonstrated that point source VOC emissions were not artificially low due to local economic downturn during the period in which the Charleston, West Virginia area's ambient air quality came into attainment. Reductions due to decreases in production levels or from other unenforceable scenarios such as voluntary reductions were not included in the determination of the emission reductions.

EPA finds that the combination of measures contained in the SIP and federal measures have resulted in permanent and enforceable reductions in ozone precursors that have allowed the Charleston West Virginia area to attain the NAAQS, and therefore, that the redesignation criterion of section 107(d)(3)(E)(iii) has been met.

5. Fully Approved Maintenance Plan Under Section 175A

EPA is proposing approval of the State of West Virginia maintenance plan for the Charleston, West Virginia area because EPA finds that West Virginia's submittal meets the requirements of section 175A of the Act. If EPA determines after notice and comment that it should give final approval to the maintenance plan, the Charleston, West Virginia nonattainment area will have a fully approved maintenance plan in accordance with section 175A of the Act.

Section 175A of the Act sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. The plan must demonstrate continued attainment of the applicable NAAQS for at least ten years after the area is redesignated. Eight years after the redesignation, the state must submit a revised maintenance plan which demonstrates attainment for the ten years following the initial ten-year period.

To provide for the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for implementation, adequate to assure prompt correction of any air quality problems.

5.A. Emissions Inventory—Base Year Inventory

On November 13, 1992, the State of West Virginia submitted comprehensive inventories of VOC and NO_X emissions from area, stationary, and mobile using 1990 as the base year for calculations to demonstrate maintenance. The 1990 VOC inventory is considered most representative of attainment conditions because no violations occurred in 1990 and it reflects the typical inventory for the three-year period demonstrating attainment of the standard.

The State of West Virginia submittal contains detailed inventory data and summaries by source categories. The State of West Virginia submittal also contains information related to how it comported with EPA's guidance, which model and emission factors were used (note MOBILE 5.0a was used), how Vehicle Miles Travelled (VMT) data was generated, what RVP was considered in the base year, and other technical information verifying the validity of the Charleston West Virginia emission inventory.

The State of West Virginia's submittal contains the detailed inventory data and summaries by source category. This inventory was prepared in accordance with EPA guidances. A summary of the base year and projected maintenance year inventories are shown in the following six tables. The TSD which has been prepared for this action contains more in-depth details regarding the base year for the Charleston area.

SUMMARY OF EMISSIONS FROM THE CHARLESTON NONATTAINMENT AREA FOR 1990

Source category	VOC (tpd)	CO (tpd)	NO_X (tpd)
Area	27.5	83.9	16.9
Point	49.0	27.9	389.2
Highway Mobile	28.5	222.2	27.9
Total Emissions	105.0	334.1	434.0

SUMMARY OF EMISSIONS FROM THE CHARLESTON NONATTAINMENT AREA FOR 1993

Source Category	VOC (tpd)	CO (tpd)	NO_X (tpd)
Area	28.4	84.7	17.0
Point	42.3	27.4	392.7
Highway Mobile	23.8	191.7	27.2
Total Emissions	94.5	303.8	437.0

All Emissions in Tons Per Day (tpd).

SUMMARY OF EMISSIONS FROM THE CHARLESTON NONATTAINMENT AREA FOR 1996

Source category	VOC (tpd)	CO (tpd)	NO_X (tpd)
Area	26.8	85.5	17.1
Point	41.0	27.0	356.0
Highway mobile	23.0	179.9	26.7
Total emissions	90.7	292.5	399.8

SUMMARY OF EMISSIONS FROM THE CHARLESTON NONATTAINMENT AREA FOR 1999

Source Category	VOC (tpd)	CO (tpd)	NO_X (tpd)
Area	27.5	87.0	17.3
Point	39.7	26.8	362.0

SUMMARY OF EMISSIONS FROM THE CHARLESTON NONATTAINMENT AREA FOR 1999—Continued

Source Category	VOC (tpd)	CO (tpd)	NO_X (tpd)
Highway mobile	22.6	171.8	26.3
Total emissions	89.8	285.6	405.6

All Emissions in Tons Per Day (tpd).

SUMMARY OF EMISSIONS FROM THE CHARLESTON NONATTAINMENT AREA FOR 2002

Source category	VOC (tpd)	CO (tpd)	NO_X (tpd)
Area	28.2	87.8	17.5
Point	39.0	26.6	364.2
Highway Mobile	22.4	172.0	26.1
Total emissions	89.6	286.4	407.7

SUMMARY OF EMISSIONS FROM THE CHARLESTON NONATTAINMENT AREA FOR 2005

Source category	VOC (tpd)	CO (tpd)	NO_X (tpd)
Area	29.0	89.3	17.6
Point	37.9	26.2	366.9
Highway Mobile	23.0	179.5	27.0
Total emissions	89.9	295.0	411.5

All Emissions in Tons Per Day (tpd).

5.B. Demonstration of Maintenance—Projected Inventories

In addition to the continued use of lower RVP gasoline (9.0) and fleet turnover to automobiles meeting more stringent emission standards, mobile source emission projections are dependent upon the implementation of the federal reformulated gasoline program. Total VOC and NO_X emissions were projected from the 1990 base year out to year 2005. These projected inventories were prepared in accordance with EPA guidance. The projections demonstrate that the ozone standard will be maintained i.e., emissions are not expected to exceed the level of the base year inventory during this time period. EPA believes that the emissions projections demonstrate that the area will continue to maintain the ozone NAAQS because this area achieved attainment through VOC controls and reductions.

5C. Verification of Continued Attainment

Continued attainment of the ozone NAAQS in the Charleston, West Virginia area depends, in part, on the State of West Virginia efforts toward tracking indicators of continued attainment during the maintenance period. The State of West Virginia will track the status and effectiveness of the maintenance plan by periodically updating the emissions inventory every three years. The WVOAQ has committed to perform this tracking on an annual basis in order to enable the State of West Virginia to implement the contingency measures of its maintenance plan as expeditiously as possible.

The State of West Virginia annual update will indicate new source growth, as indicated by annual emission statements. The State of West Virginia will continue to monitor ambient ozone levels by operating its ambient ozone air quality monitoring network in accordance with 40 CFR part 58.

5D. Contingency Plan

The level of VOC and NO_X emissions in the Charleston area will largely determine its ability to stay in compliance with the ozone NAAQS in the future. Despite the State of West Virginia's best efforts to demonstrate continued compliance with the NAAQS, the Charleston area may exceed or violate the NAAQS. Therefore, West Virginia has provided contingency measures with a schedule for implementation in the event of future ozone air quality problems. In the event that exceedances of the ozone NAAQS are measured such that nonattainment is indicated in any of the areas or in the event that periodic emission inventory updates or major permitting activity reveals that excessive or unanticipated growth in ozone precursor emissions has occurred or will occur, the West Virginia will accordingly select and adopt measures including the following to assure continued attainment:

1. Extend the applicability of 45CSR21 (VOC/RACT rule) to include source categories previously excluded.
2. Revised new source permitting requirements requiring more stringent emissions control technology and/or emissions offsets.
3. NO_X RACT requirements.
4. Stage II Vapor Recovery Regulations.
5. Regulations to establish plant-wide emission caps (potentially with emissions trading provisions).
6. Implementation of basic (or enhanced) programs for motor vehicle inspection and maintenance.

One or more of these regulatory revisions would be selected within three (3) months after verification of a monitored ozone standard violation and a draft rule submitted to the WVOAQ. Quality assurance procedures must confirm the monitored violation within 45 days of occurrence. The WVOAQ will be requested to adopt the control measure(s) as emergency rule(s) which will be implemented within six (6) months after adoption. EPA's approval of West Virginia's redesignation request is contingent upon West Virginia

promulgating a revision to its contingency plan that includes a schedule for the mandatory implementation of the selected contingency measures.

5E. Subsequent Maintenance Plan Revision

In accordance with section 175A(b) of the Act, the State of West Virginia has agreed to submit a revised maintenance SIP eight years after the area is redesignated to attainment. Such revised SIP will provide for maintenance for an additional ten years. EPA has determined that the maintenance plan adopted by the State of West Virginia and submitted to EPA on November 13, 1992, meets the requirements of section 175A of the CAA. Therefore, EPA is proposing to approve the maintenance plan submittal. In addition EPA has determined that upon final approval of the maintenance plan the provisions of section 107(d)(3)(E)(iv) for redesignation will have been met.

Proposed Action

EPA proposes to approve the ozone maintenance plan for the Charleston, West Virginia area submitted by the State of West Virginia on November 13, 1992 as a revision to the West Virginia SIP because it meets the requirements of section 175A. In addition, EPA is proposing to redesignate the Charleston, West Virginia nonattainment area to attainment, subject to final approval of the maintenance plan, because the Agency has determined that the provisions of section 107(d)(3)(E) of the Act for redesignation of nonattainment areas to attainment have been met.

EPA is soliciting public comments on this notice and on issues relevant to EPA's proposed action. Comments will be considered before taking final action. Interested parties may participate in the federal rulemaking procedure by submitting written comments to the person and address listed in the ADDRESSES section at the beginning of this document.

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. Ozone State Implementation Plans (SIPs) are designed to satisfy the requirements of part D of the Clean Air Act and to provide for attainment and maintenance of the ozone NAAQS. Today's proposed redesignation action should not be interpreted as authorizing the State of West Virginia to delete, alter, or rescind any of the VOC emission limitations and restrictions contained in the currently approved ozone SIP. Changes to the ozone SIP's regulations rendering them less stringent than those contained in the EPA approved plan cannot be made unless a revised plan for attainment and maintenance is submitted to and approved by EPA. Unauthorized relaxations, deletions, and changes could result in both a finding of nonimplementation under section 173(b) of the Act and in a SIP deficiency call made pursuant to section 110(k)(5).

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000. SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, it does not have any economic impact on any small entities. Redesignation of an area to attainment under section 107(d)(3)(E) of the Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. Accordingly, I certify that EPA's approval of West Virginia's request to redesignate the Charleston ozone nonattainment area to attainment and the associated maintenance plan will not have an impact on any small entities.

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

List of Subjects

40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Authority: 42 U.S.C. 7401–7671q.

Dated: April 28, 1994.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

[FR Doc. 94–14286 Filed 6–10–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[Docket No. 93–48; DA 94–588]

Children's Television Programming

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule; extend comment date.

SUMMARY: The Commission sought comments on the implementation of rules relating to the broadcast of educational and informational programming for children. After a request by several parties, the date for filing comments was extended by one week in order to allow adequate time for parties to prepare their submissions.

DATES: Comments are due June 15, 1994. Reply Comments due July 15, 1994.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Larry Miller, (202) 418–1600.

SUPPLEMENTARY INFORMATION:

In the Matter of: Policies and Rules Concerning Children's Television Programming; Revision of Programming Policies for Television Broadcast Stations.

Order

Adopted: June 2, 1994.
Released: June 2, 1994.
Comment Date: June 15, 1994.
Reply Comment Date: July 15, 1994.

By the Chief, Mass Media Bureau.

1. This action extends the deadline for filing further comments by interested parties and proposed remarks by panelists in the *En Banc* hearing on Children's Television in the above-cited docket (58 FR 14367) pertaining to rules and policies relating to the levels and types of television programming necessary to adequately serve the educational and informational needs of children. The deadline for further comments and proposed remarks by panelists was originally set for June 8, 1994.

2. The Center for Media Education and the American Psychological Association request a one-week extension of the comment period in

order to adequately prepare their presentations for the Commission's hearing.

3. In light of the foregoing, the Bureau finds that good cause exists for an extension. Pursuant to 47 CFR 0.283, the deadline for filing further comments by interested parties and proposed remarks by panelists in the *En Banc* hearing is extended to June 15, 1994. The deadline for filing reply comments remains July 15, 1994.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 94–14215 Filed 6–10–94; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 59, No. 112
Monday, June 13, 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.

ADMINISTRATIVE OFFICE OF THE UNITED STATES COURTS

Interpreters in Courts of the United States; Announcement of Written Segment of Certification Examination for Spanish, Cantonese, Mandarin, and Korean; and Written Segment of "Otherwise Qualified" Examination for Arabic, Hebrew, Italian, Mien, Polish, and Russian

AGENCY: Administrative Office of the United States Courts.

ACTION: Notice of Written Segment of Certification Examination for Spanish, Cantonese, Mandarin, and Korean; and Written Segment of "Otherwise Qualified" Examination for Arabic, Hebrew, Italian, Mien, Polish, and Russian.

SUMMARY: The Administrative Office of the United States Courts will conduct the written portion of the examination for individuals who desire to be certified (in Spanish, Cantonese, Mandarin, and Korean) or "otherwise qualified" (in Arabic, Hebrew, Italian, Mien, Polish, and Russian) to serve as interpreters in courts of the United States. This is in accordance with the Court Interpreter Amendments Act of 1988, Title VII of Pub. L. 100–702, (28 U.S.C. 1827). To take the examination, an individual must file a written application, or apply by telephone.

DATES: The agency will administer the written portion of the examination August 27, 1994, at 1 p.m. The deadline for filing an application is 4 p.m. on July 15, 1994.

ADDRESSES: Applications, along with an $80 money order, cashiers check, or personal check payable to the University of Arizona are to be sent to the Federal Court Interpreter Certification Project, Modern Languages Building, room 445, University of Arizona, Tucson, Arizona 85721.

FOR FURTHER INFORMATION CONTACT: Dr. Roseann Gonzalez, University of Arizona, (602) 621–3687 (Mountain Time). Fax (602) 624–8130.

SUPPLEMENTARY INFORMATION:

I. Background

The Director of the Administrative Office of the United States Courts (AOUSC) is responsible for the establishment of a program to facilitate the use of certified and otherwise qualified interpreters in courts of the United States. He must prescribe, determine, and certify the qualifications of person who may serve as certified interpreters in bilingual proceedings and proceedings involving the hearing impaired (28 U.S.C. 1827(b)). Whenever an interpreter is required for a person in any criminal or civil action initiated by the United States, the presiding judicial officer must utilize the services of the most available certified interpreter, unless no certified interpreter is reasonably available, or the services of an otherwise qualified interpreter.

The AOUSC will provide the courts with a roster of certified, professionally qualified, and language skilled court interpreters selected on the basis of specific qualification criteria and/or the successful completion of written ad oral examinations.

II. This Examination

For Spanish language interpreter candidates, a comprehensive written Spanish/English examination testing bilingual proficiency in Spanish and English will be administered. For candidates in the Cantonese, Mandarin, and Korean languages, a written English examination testing proficiency in English will be administered. Successful candidates will be invited to sit for the second part of the certification examinations, an oral examination. The oral examination will test, in simulated settings, the applicant's ability to: (1) interpret precisely from source language to English, in consecutive and simultaneous modes; (2) interpret from English to the target language in consecutive and simultaneous modes; and (3) perform sight interpretations. The oral portion of the examination does not necessarily require previous experience in court interpreting. Applicants who successfully complete the written examination will receive notice of the time and place of the oral portion of the examination.

For Arabic, Hebrew, Italian, Mien, Polish, and Russian interpreter candidates, a written English examination testing proficiency in English will be administered. The second part of the qualification process as a professional or language skilled court interpreter will require the candidate to provide additional qualifications and credentials or perform back translation exercises successfully.

All of the examinations are developed and administered under contract by the University of Arizona. The written portion of the examination does not require a special knowledge of legal vocabulary.

Testing Sites

Applicants may schedule the written examination at any of the locations identified below. Applicants must identify the testing location which they desire to use to use for taking the written examinations. The following are the cities where the written test will be administered:

Alaska: Anchorage.
Arizona: Phoenix, Tucson.
California: Fresno, Los Angeles, Monterey, Sacramento, San Diego, San Francisco.
Colorado: Denver.
Connecticut: Hartford.
District of Columbia.
Florida: Miami, Orlando.
Georgia: Atlanta.
Hawaii: Honolulu.
Idaho: Boise.
Illinois: Chicago.
Iowa: Sioux City.
Louisiana: New Orleans.
Massachusetts: Boston.
Minnesota: Minneapolis.
Missouri: Kansas City.
Nevada: Las Vegas, Reno.
New Jersey: Newark, Trenton.
New Mexico: Albuquerque, Las Cruces.
New York: Brooklyn, Buffalo, Manhattan.
Ohio: Cincinnati and Cleveland.
Oregon: Portland.
Puerto Rico: San Juan.
Tennessee: Memphis.
Texas: Brownsville, Corpus Christi, Dallas, Houston, Laredo, San Antonio.
Utah: Salt Lake City.
Washington: Seattle.

Oral testing sites will be announced when the examinations are scheduled.

Filing

Written applications are preferred, but phone applications will be accepted if the fee is received by July 15, 1994. Applicants who do not have an application form should type or print the following information on an 8½×11 paper:

1. Name.
2. Mailing address, including zip code.
3. Daytime telephone number.
4. Evening telephone number.
5. Testing location requested (City and State).
6. Date of birth.
7. Social Security Number.
8. Special arrangements necessary because of physical disability or keeping of the Sabbath.
9. I did/did not take the Spanish written and/or oral examination in 1993.
10. I.D. number of exam (if known).
11. Enclosed money order, cashiers check, or personal check payable to University of Arizona Federal Court Project.

Exam Procedures

Each applicant will receive an admission ticket to the exam shortly before the exam date. It will list the exact location of the exam. Each applicant must present the admission ticket and a photo identification: driver's license, passport, work/student identification, etc., to be admitted to the exam.

III. Qualifications

Sucessful completion of the written examination is the first step in the process of receiving certification or "otherwise qualified" status. There is no formal educational requisite, either in languages or interpreting, for successfully completing the written examinations. However, the difficulty of the written examinations are at the college degree level of proficiency in both English and the target languages. Successful completion of the oral portion of the examination normally would require prior training or professional experience in simultaneous and consecutive interpreting and sight translation. Qualification as "otherwise qualified" will require additional credentials and experience as an interpreter.

IV. Duties

Certification or "otherwise qualified" status will not necessarily lead to full-time employment as a staff or contract interpreter. Most of the requirements for court interpretation services in the Federal courts are met by independent interpreter contractors on an as-needed basis. However, where full-time interpreters are needed, only certified interpreters are eligible for appointment.

As the federal courts require full-time salaried interpreters, these interpreters will be chosen from the eligibility lists. The annual salary range is JSP–10 to JSP–14 ($31,898–$76,733) for full-time salaried interpreters. For certified interpreters who provide services as independent contractors, the fee is $250 per day.

Court interpreters perform all or some of the following duties: (1) Interpret verbatim in simultaneous and consecutive modes a foreign language into English, and vice versa, at arraignments, preliminary hearings, pretrial hearings, trials, and other court proceedings; (2) transcribe and translate electronic sound recordings; and (3) sight translate or translate in written form technical, medical, and legal documents and correspondence for introduction as evidence.

Dated: June 6, 1994.

Robert Lowney,

Acting Chief, District Court Administration Division.

[FR Doc. 94–14219 Filed 6–10–94; 8:45 am]

BILLING CODE 2210–55–M

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 059–AB47

Animal Damage Management

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed policy; request for comment.

SUMMARY: The Forest Service gives notice of and requests comment on proposed revisions to its policy on animal damage management to be published in the Forest Service Manual Chapter 2650. This direction would replace current agency procedures for implementing the provisions of a Memorandum of Understanding (MOU) between the Animal and Plant Health Inspection Service (APHIS)—Animal Damage Control unit and the Forest Service. This proposed policy is intended to clarify the role and responsibility of the Forest Service in coordinating with APHIS on animal damage management and in cooperating with APHIS in discharging Federal obligations to manage wild vertebrates causing damage on National Forest System lands under the Animal Damage Control Act of 1931.

DATES: Comments must be received in writing by August 12, 1994.

ADDRESSES: Send written comments to the Director, Wildlife, Fish and Rare Plants Staff (2650), Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

The public may inspect comments received on this proposed policy in the Office of the Director, Wildlife, Fish and Rare Plants Staff, 4th floor, Northwest, Auditor's Building, 205 14th Street, SW., Washington, DC. Those wishing to inspect comments are encouraged to call ahead (202–205–1367) to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Tom Darden, Wildlife Program Leader, (202–205–1206).

SUPPLEMENTARY INFORMATION: The Forest Service and APHIS cooperate in discharging Federal obligations under the Animal Damage Control Act of 1931 (7 U.S.C. 426–426b) which governs animal damage management activities on National Forest System lands. These activities include actions to provide wildlife damage management through direct control, as well as technical assistance to achieve desired management objectives. APHIS, in cooperation with the Forest Service and states, carries out animal damage management activities on some National Forest System lands, mostly to minimize livestock losses from predation by coyotes, black bears, and other predators. Under other authorities (e.g., Multiple-Use Sustained-Yield Act of 1960 [16 U.S.C. 528(note), 528–531]), the Forest Service conducts activities to control animal damage caused by small mammals and other animals to National Forest System resources, such as timber stands and roads.

APHIS has responsibility for animal damage management activities, as designated by the Secretary of Agriculture (7 CFR 2.51(41)). The principal change being proposed in existing Forest Service Manual policy (FSM 2650) is the designation of APHIS as the lead agency for preparing environmental documentation on animal damage management activities initiated by APHIS on National Forest System lands. The Forest Service will cooperate with APHIS and the states in environmental analysis and documentation of actions proposed by APHIS that will occur on or affect National Forest System lands and provide mitigation measures needed to ensure that animal damage management activities performed by APHIS are compatible with direction provided in forest land and resource management plans.

The proposed policy would bring the Forest Service Manual provisions into

conformance with current field-level animal damage management practice. Current operational procedures for animal damage management activities are outlined in an August 25, 1992 letter to Forest Service Regional Foresters from Deputy Chief James C. Overbay and the subsequent Memorandum of Understanding (MOU) between APHIS and the Forest Service, signed June 18, 1993. Notice of availability of the MOU was published in the **Federal Register** on July 13, 1993 (58 FR 37704).

The 1993 MOU clarifies the role of each Forest Supervisor in cooperating with APHIS and the states in documentation of environmental actions proposed by APHIS, and in providing mitigation measures to ensure that animal damage management activities performed by APHIS are compatible with direction provided in forest plans. The MOU also clarifies that APHIS, in cooperation with the Forest Service, develops work plans for animal damage management activities on National Forest System lands. These plans address control areas, specific control techniques, emergency control procedures, timeframes, and other limitations and restrictions. The MOU recognizes APHIS work plans as the definitive plans for predator control actions on National Forest System lands.

After discussion with the Council on Environmental Quality, the Forest Service has decided to publish this proposed animal damage management policy in the **Federal Register**, inviting public comment on the role and responsibility of the Forest Service in coordinating with APHIS on animal damage management. In the interim, the Forest Service and APHIS will follow procedures outlined in the 1993 MOU for which notice was published in the **Federal Register**.

Environmental Impact

Section 31.1b(2) of Forest Service Handbook 1909.15 (57 FR 43180, Sept. 18, 1992) excludes from documentation in an environmental assessment or impact statement "rules, regulations, or policies to establish Servicewide administrative procedures, program processes, or instructions." This proposed policy would provide administrative instructions to Forest Service field offices on the procedures and processes to follow in the case of coordination with APHIS on animal damage management activities. Accordingly, the agency's preliminary assessment is that this proposed policy falls within this category of action and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement. A final determination will be made upon adoption of the final policy.

Controlling Paperwork Burden on the Public

This policy will not result in additional paperwork. Therefore, the review provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507) and implementing regulations at 5 CFR part 1320 do not apply.

Regulatory Impact

This proposed policy has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is not a significant policy.

Dated: May 23, 1994.

David A. Harcharik,

Acting Chief.

Proposed Manual Revision

Note: The Forest Service organizes its directive system by alpha-numeric codes and subject headings. Only those sections of the Forest Service Manual that are the subject of this notice are set out here. The audience for this direction is Forest Service employees charged with coordinating with the Animal and Plant Health Inspection Service—Animal Damage Control Unit on animal damage management activities on National Forest System lands.

Forest Service Manual—Chapter 2650—Animal Damage Management

The Forest Service and Animal and Plant Health Inspection Service (APHIS)—Animal Damage Control unit, along with the states, cooperate in discharging the Federal obligations under the Animal Damage Control Act of 1931 to manage animal damage on National Forest System lands. These activities include actions to provide wildlife damage management through direct control, as well as technical assistance to achieve desired management objectives. APHIS carries out animal damage management activities on National Forest System lands, mostly to minimize livestock losses from predation by coyotes, black bears, and other predators. The Forest Service conducts activities to control animal damage caused by small mammals and other animals to National Forest System resources, such as timber stands and roads.

2650.1—Authority. In addition to the authorities listed in FSM 2601, the following authorities govern animal damage management activities on National Forest System lands:

1. The Animal Damage Control Act of March 2, 1931 (7 U.S.C. 426–426b) as amended by the Rural Development, Agriculture, and Related Agencies Appropriations Act of 1988 (Pub. L. 100–202) authorizes the Secretary of Agriculture to provide animal damage management services, to maintain technical expertise for evaluating and recommending animal damage management techniques, and to conduct forest and range animal damage research. The Secretary has delegated this authority to the Animal and Plant Health Inspection Service (APHIS)—Animal Damage Control unit.

2. Executive Order 12342, January 24, 1982, permits the use of chemical toxicants registered by the Environmental Protection Agency for predator damage control on federal lands.

3. Department of Agriculture Regulation (DR) 9500–4 (FSM 2601.2) requires Department of Agriculture programs to include measures to alleviate damage by plant and animal pests; develop new techniques and methodologies through management and research programs to limit damage to agriculture or forestry production; and apply integrated pest management practices, where feasible, in carrying out these responsibilities.

4. A Memorandum of Understanding (MOU) between APHIS and the Forest Service outlines the cooperative approach to animal damage management on National Forest System lands. Both agencies have a joint responsibility for limiting damage caused by wildlife. In this MOU, APHIS and state agencies are recognized as having the authority and expertise to conduct predator control on National Forest System lands, to determine livestock losses, and to determine methodology for animal damage management. See FSM § 1543.14 for the full text of the MOU.

2650.2—Objective. The objective of animal damage management activities is to protect National Forest System resources, to protect activities taking place on National Forest System lands, and to reduce threats to human health and safety.

2650.3—Policy. National Forest System resources must be adequately protected during animal damage management activities authorized by the states and conducted by the states or Animal and Plant Health Inspection Service (APHIS)—Animal Damage Control unit. When the Forest Service conducts animal damage management activities, such as controlling small mammal populations on plantations, the agency must comply fully with state and federal laws. In carrying out animal damage management activities:

1. Rely upon APHIS or the state agencies to provide the expertise and conduct predator control on National Forest System lands, to determine livestock losses, and to determine methodology for animal damage management.

2. Cooperate with APHIS, the lead agency, in preparing environmental documentation for predator control and other animal damage management activities initiated by APHIS on National Forest System lands. The Forest Service shall cooperate to ensure that the animal damage management plans developed by APHIS will provide for protection of National Forest System resources.

3. Cooperate with APHIS in the development of work plans to ensure consistency with forest land and resource management plans.

4. Conduct non-predator animal damage management, such as controlling small mammal populations on plantations, and necessary environmental analysis and disclosure on National Forest System lands consistent with forest plans.

5. Recognize that taking of predators, including removal of depredating animals (for example, removal of a nuisance bear in a high-use recreation area), may be carried out on National Forest System lands by an individual in accordance with state and federal law.

6. Coordinate with the Bureau of Land Management (BLM) and other federal and state agencies to improve effectiveness of control program activities conducted on National Forest System and other public lands.

7. Use an integrated approach to the prevention of animal damage and management of animal damage control programs. Consider a full range of methods, including physical barriers, repellents, habitat manipulation, biological controls, silvicultural methods (for example, fertilizing to improve soil fertility), pesticides, and hunting and trapping. Use licensed hunting, fishing, and trapping as a control technique where practicable.

8. Use only pesticides that are properly registered in accordance with federal and state requirements for animal damage management and that conform to policies on pesticide-use management and coordination (FSM 2150). Follow label directions.

9. Follow direction in FSM 2670. Threatened, Endangered, and Sensitive Plants and Animals, for federally proposed, threatened, endangered, or sensitive species listed by the Forest Service to determine whether proposed control measures conducted by the Forest Service are likely to have an effect on these species. The lead agency for completing environmental documentation (40 CFR 1508.16) is responsible for completion of all Endangered Species Act-mandated interagency consultations (16 U.S.C. 1536.7; FSM 2671.4).

2650.4—Responsibility.

2650.42—Deputy Chief for National Forest System. The Deputy Chief for the National Forest System is responsible for resolving any difficulties arising between Regions and Animal and Plant Health Inspection Service (APHIS)—Animal Damage Control unit that cannot be resolved by Regional Foresters under the Memorandum of Understanding (FSM 1543.14).

2650.42—Regional Foresters. Regional Foresters are responsible for:

1. Reviewing and approving all proposed pesticide uses for animal damage management on National Forest System lands (FSM 2151). Regional Foresters may redelegate this authority to Forest Supervisors; however, only Regional Foresters may approve animal damage management in wilderness (FSM 2323).

2. Establishing or amending existing Memorandums of Understanding between the Region and appropriate state and other federal agencies regarding animal damage management.

3. Reviewing all proposed Forest Service animal damage management activities within areas occupied by and habitat of federally proposed or listed threatened or endangered species and Regional Forester approved sensitive species. Regional Foresters may redelegate this authority to Forest Supervisors.

4. Meeting with state or regional representatives, such as the APHIS Regional Director, as needed to coordinate animal damage management operations. Regional Foresters may designate a representative.

5. Resolving any difficulties arising among APHIS personnel and Forest Supervisors under the Memorandum of Understanding (FSM 1543.14). Or referring them to the Chief for resolution.

2650.43—Forest Supervisors. Forest Supervisors are responsible for:

1. Ensuring appropriate environmental analysis requirements are met for proposed non-predator control activities conducted by the Forest Service and ensuring consistency with forest plan direction.

2. Recommending changes in state hunting, fishing, or trapping regulations to accommodate animal damage management activities on National Forest System lands (FSM 2640).

3. Meeting with APHIS personnel and responsible state agencies to cooperate where proposed predator control is needed to ensure coordination of Forest Service resources or activities on National Forest System lands.

4. Cooperating with APHIS in preparation of environmental documentation for predator control or other animal damage management activities conducted by APHIS on National Forest System lands (40 CFR 1508.15).

5. Referring any difficulties arising from activities with APHIS under the Memorandum of Understanding (FSM 1543.14) for resolution by the Regional Forester.

6. When needed, requesting training in animal damage management techniques by APHIS.

7. Ensuring that licensing and certification of Forest Service personnel performing animal damage management activities comply with applicable federal and state regulations. Only certified pesticide applicators may use or supervise the use of restricted-use pesticides on National Forest System lands (FSM 2150).

2650.6—Cooperation in Animal Damage Management Activities. Both the Forest Service and Animal and Plant Health Inspection Service (APHIS)—Animal Damage Control unit have a responsibility for limiting damage caused by wildlife, consistent with other wildlife values and resource management objectives. APHIS responsibilities are generally directed toward the management and control of animals causing damage to livestock, agriculture, wildlife, human health and safety. Forest service responsibilities are related to the management of National Forest System resources. See FSM § 1543.14 for the text of the Memorandum of Understanding between the Forest Service and APHIS for animal damage management activities.

The role of APHIS (7 CFR 2.51(41)) is as follows:

1. Evaluate animal damage management needs and conduct predator control in cooperation with the Forest Service, state agencies, and permittees.

2. Serve as lead agency for preparing environmental documentation on animal damage management activities initiated by APHIS on National Forest System lands.

3. Develop and update animal damage management work plans in cooperation with the Forest Service and appropriate state and federal agencies, and interested publics to ensure compliance with forest plans.

4. Inform the Forest Service about animal damage management requests, management activities, and results on a timely basis.

5. Provide the Forest Service with technical information on recommended animal damage management tools and techniques.

6. Conduct animal damage management training sessions for Forest Service personnel, when requested.

2651—Wildlife and Fish Damage Management

2651.1—Threatened and Endangered Species. Follow specific species control plans for federally listed species (for example, grizzly bear and wolf) cleared through consultation with the Fish and Wildlife Service and National Marine Fisheries Service.

2651.2—Game and Furbearers. Control damage caused by game animals and furbearers through hunting or trapping, where practicable, in cooperation with the state fish and wildlife agencies, and APHIS, where appropriate.

2651.3—Nongame Species. Control damage caused by nongame species on National Forest System lands in close cooperation with the state fish and wildlife agencies, or other involved state or federal agencies.

2651.4—Birds. Where birds damage reforestation or other resources or where they create health hazards, nonlethal repellents, frightening devices, pesticides, or physical barriers may be used to prevent or reduce resource damage or hazards. Obtain permits from the Fish and Wildlife Service for any lethal control of species protected under the Migratory Bird Treaty Act. Consult the Fish and Wildlife Service for permit requirements and procedures.

2651.5—Fish and Aquatic Animals. States or other responsible agencies have the authority to control undesirable fish and aquatic animals in National Forest System waters. The Forest Service is responsible for coordinating with the responsible agencies to develop a work plan to ensure control activities are consistent with direction provided in forest plans. Control activities conducted by the Forest Service must meet appropriate environmental analysis requirements and be consistent with forest plan direction.

2651.6—Wildlife and Fish Damage Management in Wilderness Areas. Follow direction in FSM 2151, FSM 2323, and FSM 4063 for management of wildlife or fish damage in wilderness and Research Natural Areas. Animal damage management is permitted in wilderness when it was used prior to wilderness designation; when it conforms with direction in FSM 2323.33 on resource management in wilderness; and when it is needed for the recovery of federally listed threatened or endangered species.

2652—Reports. Report pesticide uses annually following direction in FSM 2158.

[FR Doc. 94–14306 Filed 6–10–94; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–812]

Antidumping Duty Order: Calcium Aluminate Flux From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 13, 1994.

FOR FURTHER INFORMATION CONTACT: V. Irene Darzenta or Katherine Johnson, Office of Antidumping Duty Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–6320 or (202) 482–4929, respectively.

Scope of Order

The product covered by this order is calcium aluminate (CA) flux, other than white, high purity CA flux. This product contains by weight more than 32 percent but less than 65 percent alumina and more than one percent each of iron and silica.

CA flux is currently classifiable under *Harmonized Tariff Schedule of the United States* (HTSUS) subheading 2523.10.0000. Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this investigation remains dispositive.

Antidumping Duty Order

In accordance with section 735(d) of the Act, on March 25, 1994 the Department published in the **Federal Register** its final determination that CA flux from France is being sold at less than fair value (59 FR 14136). We amended our final determination on May 9, 1994 (see 59 FR 25446, May 16, 1994) to correct a clerical error. On June 6, 1994, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department that imports of CA flux from France materially injure a U.S. industry.

Suspension of Liquidation

In accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs officers to assess antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of CA flux from France. These antidumping duties will be assessed on all unliquidated entries of CA flux from France entered, or withdrawn from warehouse, for consumption on or after March 25, 1994, the date on which the Department published its final determination notice in the **Federal Register**.

On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties, the following cash deposits for the subject merchandise:

Manufacturer/producer/exporter	Weighted-average margin percentage (percent)
Lafarge Fondu International	37.93
All Others	37.93

This notice constitutes the antidumping duty order with respect to CA flux from France, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: June 8, 1994.

Susan G. Esserman,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–14310 Filed 6–10–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–423–807]

Preliminary Determination of Sales at Less Than Fair Value: Steel Wire Rod From Belgium

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 13, 1994.

FOR FURTHER INFORMATION CONTACT: Ellen Grebasch or Erik Warga, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230;

telephone (202) 482–3773 or (202) 482–0922.

Preliminary Determination

We preliminarily determine that imports of steel wire rod from Belgium 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 March 7, 1994, (59 FR 11773, March 14, 1994), the following events have occurred:

On March 31, 1994, the U.S. International Trade Commission (ITC) issued an affirmative preliminary injury determination in this case.

On April 7, 1994, the Department issued an antidumping duty questionnaire to Forges de Thy-Marcinelle ("Thy-Marcinelle") for the investigation. The questionnaire had four sections: section A, requesting general information; section B, requesting information on U.S. sales; section C, requesting information on home market sales; and section D, requesting information on cost of production and constructed value. In that same month, the Department presented the antidumping duty questionnaire to Thy-Marcinelle, because it represented at least 60 percent of exports to the United States during the POI.

On April 22, 1994, Thy-Marcinelle requested a two-week extension for filing the response to the Department's questionnaire. The Department granted this extension request.

In May 1994, Thy-Marcinelle notified the Department that it would not be participating in this investigation.

Scope of Investigation

The products covered by this investigation are hot-rolled carbon steel and alloy steel wire rod, in coils, of approximately round cross section, between 0.20 and 0.75 inches in solid cross-sectional diameter. The following products are excluded from this investigation:

- Free-machining steel containing 0.03% or more of lead, 0.05% or more of bismuth, 0.08% or more of sulfur, more than 0.4% of phosphorus, more than 0.05% of selenium, and/or more than 0.01% of tellurium;
- Wire rod, which is 5.5 mm or less in diameter, with tensile strength greater than or equal to 1040 Mega-Pascals (MPa), and the following chemical content, by weight: carbon greater than or equal to 0.79 percent, aluminum less than or equal to 0.005 percent, phosphorous plus sulfur less than or equal to 0.040 percent and nitrogen less than or equal to 0.006 percent;
- Wire rod, which is 7.9 to 18.0 mm in diameter, containing 0.48 to 0.73 percent carbon by weight and certified as having partial decarburization and seams no more than 0.075 mm in depth; and
- Stainless steel rods, tool steel rods, ball bearing steel and deformed concrete reinforcing bars (as defined in the *Harmonized Tariff Schedule of the United States* (HTSUS)).

The products under investigation are currently classifiable under subheadings 7213.31.3000, 7213.31.6000, 7213.39.0030, 7213.39.0090, 7213.41.3000, 7213.41.6000, 7213.49.0030, 7213.49.0090, 7213.50.0020, 7213.50.0040, 7213.50.0080, 7227.20.000, 7227.90.6000, and 7227.90.6050 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation is September 1, 1993, through February 28, 1994.

Such or Similar Comparisons

We have determined that the merchandise covered by this investigation constitutes a single category of "such or similar" merchandise.

Best Information Available

Because Thy-Marcinelle failed to respond to our questionnaire, we based our determination on best information available (BIA) pursuant to section 776(c) of the Act which provides that the Department shall use BIA when a party refuses to provide requested information.

In determining what rate to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents who cooperated in an investigation and margins based on more adverse assumptions for those respondents who did not cooperate in an investigation. According to the Department's two-tiered BIA methodology outlined in the *Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Belgium*, 58 FR 37083 (July 9, 1993), when a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to that company the higher of (1) The highest margin alleged in the petition, or (2) the highest calculated rate of any respondent in the investigation. (See *Allied Signal Aerospace Co.* v. *United States*, 996 F. 2d 1185, 1191–92 (Fed. Cir. 1993).) Because there were no cooperative respondents in this investigation, we are assigning to all exporters, as BIA, a margin of 52.34 percent, the highest margin calculated in the petition (adjusted for methodological errors as explained in the initiation notice).

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 steel wire rod from Belgium 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.

Manufacturer/producer/exporter	Margin percentage
All Companies	52.34

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.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than June 28, 1994, and rebuttal briefs, no later than July 1, 1994. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on July 7, 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 by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, 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. Requests should contain: (1) The party's name, address, and 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 issues raised in the briefs. If this investigation proceeds normally, we will make our final determination within 75 days of the signing of this preliminary determination.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: June 6, 1994.

Susan G. Esserman,

Assistant Secretary for Import Administration.

[FR Doc. 94–14311 Filed 6–10–94; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

Final Policy Guidance on Public Participation Under § 306(d)(14) of the Coastal Zone Management Act (CZMA)

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Issuance of final policy guidance section 306(d)(14) of the CZMA.

SUMMARY: The Office of Ocean and Coastal Resource Management is issuing final policy guidance on section 306(d)(14) of the Coastal Zone Management Act, which requires that state coastal management programs provide public participation in permitting decisions, consistency determinations, and other similar decisions. This final guidance follows review and consideration of comments of draft guidance issued in the **Federal Register**, Vol. 58, No. 212, Nov. 4, 1993, pp 58840–58841.

DATES: States with approved coastal zone management programs must comply with this guidance June 13, 1995.

FOR FURTHER INFORMATION CONTACT: Elaine Vaudreuil at NOAA/NOS/OCRM, 1305 East-West Hwy, N/ORM4, Silver Spring, MD 20910, by telephone at 301–713–3086, or by FAX at 301–713–4370.

SUPPLEMENTARY INFORMATION:

I. Authority

This guidance is issued pursuant to the authority of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451–1464)

II. Background

The following guidance outlines OCRM standards for states and territories with Federally approved coastal management programs, and those developing management programs, to meet the public participation requirement under the Coastal Zone Management Act section 306(d)(14), as amended by Pub. L. 101–508, the Coastal Zone Act Reauthorization Amendments of 1990. This section states that before approving a management program submitted by a coastal state, the Secretary of Commerce shall find that "[t]he management program provides for public participation in permitting processes, consistency determinations, and other similar decisions."

The scope of this requirement extends to all activities that require specific or general authorization through permitting, consistency review, or other means pursuant to the enforceable policies of the coastal management program, and applicable state law. This guidance applies to all state authorizations subject to the statutory public participation requirement and shall not conflict with existing state or Federal regulations pertaining to Federal permitting processes, state permitting processes, and Federal consistency review of Federally permitted or licensed activities.

NOAA has reviewed public participation opportunities under state coastal zone management programs and has determined that existing public participation procedures under state law satisfy the public participation requirement under section 306(d)(14) for state permits. For applications under state general permits, public participation in the review of administrative procedures or regulations allowing for a general determination of consistency with the Federally approved state coastal management program will satisfy the public participation requirement. NOAA's regulations already require public participation in state Federal consistency reviews of Federally permitted or licensed activities.

Therefore, NOAA finds that section 306(d)(14) imposes a new requirement for effective public participation only on the state's review of Federal agency consistency determinations for direct Federal activities under section 307(c)(1) of the CZMA and any other state coastal management decisions not now covered by an existing public participation procedure.

The following guidance outlines an acceptable standard for meaningful public participation. State coastal zone management programs will have one year to comply with this guidance. Within one year, each state is to: (1) Develop public participation procedures for the review of direct Federal activities under section 307(c)(1) of the CZMA, if necessary, and submit a copy of those procedures to OCRM as a program change or submit documentation that procedures are already incorporated into the approved program and (2) conduct a review to determine if other public participation procedures are necessary. If additional procedures are necessary, the state must submit a copy of the procedures developed to OCRM as a program change. If no further procedures are needed, the state must submit to OCRM a notice that a review has been conducted and that no additional procedures are necessary.

This guidance is sufficiently broad to give states flexibility in developing public participation procedures that meet the intent of section 306(d)(14). OCRM will review each state's procedures during regularly scheduled evaluations of state coastal zone management programs under section 312 of the CZMA for compliance with the public participation requirement under section 306(d)(14), and will recommend procedural changes if necessary to meet OCRM's guidance.

III. Availability of Comments

All comments received in response to the notice of draft policy guidance (58 FR 58840, November 4, 1993) are available for inspection at the Office of Ocean and Coastal Resource Management during normal business hours (8:00 to 4:30 p.m.) in room 11614, 1305 East-West Highway, Silver Spring, Maryland, 20910.

IV. Response to Comments

The following comments were received on the draft policy guidance. NOAA's response appears below:

Comment: The draft language of the Policy Guidance itself does not clearly specify that the procedures apply only to consistency reviews under section 307(c)(1) of the CZMA and other state coastal management decisions not now

covered by an existing public participation procedure, although that fact is stated in the discussion preceding the guidance.

Response: NOAA concurs and has added specific language in the guidance to clarify this point.

Comment: Several states expressed concern that implementing this guidance will add to the state's administrative costs.

Response: NOAA is sensitive to this issue and structured the guidance to provide coastal states with a range options for implementing the requirement in a cost-effective manner.

Comment: NOAA should change the language under (a)(1) to say that "States must issue, or cause to be issued, public notice * * *".

Response: Recognizing that this comment is consistent with the provision allowing for joint public notice with Federal agencies, NOAA has clarified this point in the final guidance.

Comment: The use of the word "guidance" coupled with the use of mandatory terms such as "must", "mandatory", and "at a minimum" may be confusing.

Response: This guidance represents NOAA's interpretation of the statutory requirement by outlining what it considers to be effective public public participation. NOAA recognizes that the guidance itself is not the enforceable policy. Rather, the obligation of coastal states to comply rests in the language of section 306(d)(14).

V. Guidance to Implement CZMA Section 306(d)(14)

Section 306(d)(14) imposes a new requirement for effective public participation only on the state's review of Federal agency consistency determinations for direct Federal activities under section 307(c)(1) of the CZMA and any other state coastal management decisions not now covered by an existing public participation procedure. For applications under state general permits, public participation in the review of administrative procedures or regulations allowing for a general determination of consistency will satisfy the public participation requirement. The public should have an opportunity to comment on a project's relationship with the state coastal management program's goals and policies. NOAA interprets the statute to require the following:

(a) States must provide timely public notice.

(1) States must issue, or cause to be issued, public notice at the earliest practicable time after the application and/or consistency determination has been received by the lead state coastal management agency, except in cases where earlier public notice on the consistency determinations by the relevant Federal agency meets OCRM's standards for acceptable public notice listed below.

(2) A public comment period must be provided. The length of the comment period may vary in accordance with state or Federal law, and as appropriate for the type of authorization involved. However, the comment period must be sufficient to give the public a meaningful opportunity to develop and provide comments.

(b) Public participation, at a minimum, must consist of written public notice and solicitation of public comments. Provision for a public hearing or meeting may also be provided. If a state chooses to use public hearings or public meetings to provide for effective public participation, such hearings or meetings should be held in a location accessible to most interested or affected parties to the maximum extent possible.

The written public notice must:

(1) specify that the proposed activity is subject to review for consistency uunder the policies of the state coastal management program;

(2) provide sufficient information to serve as a basis for meaningful comment;

(3) specify a source for additional information; and

(4) specify a contact for submitting comments to the state coastal management program.

(c) At a minimum, the public notice must be provided in the area(s) of the coastal zone likely to be affected by the activity. Procedural options that may be used include, but are not limited to, the options listed below.The use of one or more of the following must also conform with the guidelines set forth in (a) and (b) above.

(1) public notice through an official state gazette;

(2) public notice through a local newspaper serving areas of coastal zone likely to be affected by the activity;

(3) public notice through individual state mailings;

(4) public notice through a state coastal zone management newsletter;

(5) arrangements between a state coastal management program and appropriate Federal agencies for joint public notice to be provided by the state and Federal agency where direct Federal activities under section 307(c)(1) are involved OCRM also encourages other streamlined procedures for providing public participation. Federal agency notice of a proposed activity would suffice if it meets the guidelines set forth in (a) and (b) above.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 94–14221 Filed 6–10–94; 8:45 am]

BILLING CODE 3510–08–M

[Docket No. 940420–4120]

RIN 0648–ZA05

Announcement of Opportunities for Research Funding in the National Estuarine Research Reserve System for Fiscal Year 1995

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice.

SUMMARY: The Sanctuaries and Reserves Division of the Office of Ocean and Coastal Resource Management is soliciting proposals for funding research within the National Estuarine Research Reserve System. The focus of funding for the upcoming annual grant period is the restoration of estuarine and estuarine-like ecosystems. This notice sets forth funding priorities, selection criteria, and procedures for proposal submission.

DATES: All pre-proposals must be postmarked no later than July 15, 1994. Notification regarding the disposition of the pre-proposals will be issued on or about September 1, 1994. Final proposals must be postmarked no later than November 1, 1994.

ADDRESSES: CAPT. Francesca M. Cava, Chief, Sanctuaries and Reserves Division, NOAA/Office of Ocean and Coastal Resource Management, 1305 East-West Highway, SSMC4, #12520, Silver Spring, MD 20910, Attn: FY95 NERRS Research. FAX: 301–713–0404. See Appendix I for National Estuarine Research Reserve addresses.

FOR FURTHER INFORMATION CONTACT: For further information on research opportunities under the National Estuarine Research Reserve System, contact the on-site personnel listed in Appendix I or CAPT. Francesca M. Cava of the Sanctuaries and Reserves Division (see **ADDRESSES** above).

SUPPLEMENTARY INFORMATION:

I. Authority and Background

Section 315 of the Coastal Zone Management Act of 1972, as amended (CZMA), 16 U.S.C. 1461, establishes the

National Estuarine Research Reserve System (NERRS). 16 U.S.C. 1461 (e)(1)(B) authorizes the Secretary of Commerce to make grants to any coastal state or public or private person for purposes of supporting research and monitoring within a national estuarine reserve that are consistent with the research guidelines developed under subsection (c). This program is listed in the Catalog of Federal Domestic Assistance under "Coastal Zone Management Estuarine Research Reserve," Number 11.420.

II. Information on Established National Estuarine Research Reserves

The NERRS consists of estuarine areas of the United States which are designated, developed, and managed for research and educational purposes. Each National Estuarine Research Reserve (Reserve) within the NERRS is chosen to reflect regional differences and to include a variety of ecosystem types in accordance with the classification scheme of the national program as presented in 15 CFR part 921.

Each Reserve is suited to support a wide range of beneficial uses of ecological, economic, recreational, and aesthetic value which are dependent upon maintenance of a healthy ecosystem. Each site provides habitat for a wide range of ecologically and commercially important species of fish, shellfish, birds, and other aquatic and terrestrial wildlife. Each Reserve has been designed to ensure its effectiveness as a conservation unit and as a site for long-term research and monitoring. As part of a national system, the Reserves collectively provide an excellent opportunity to address research questions and estuarine management issues of national significance. For a detailed description of the sites, contact individual site Managers and/or Research Coordinators. The on-site contacts and addresses of the National Estuarine Research Reserves are provided in Appendix I.

III. Availability of Funds

Funds are available on a competitive basis to any public or private university, qualified public or private institution, individual, or coastal state (including Great Lakes States, Puerto Rico, Virgin Islands, Guam, American Samoa, and the Northern Marianas Islands) to conduct research within National Estuarine Research Reserves. Because NOAA has substantial involvement in the research, NERRS research funds are normally awarded through a cooperative agreement. NOAA may be involved in the project in the following manner:

The Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management, reserves the right to immediately halt activity on this project if it becomes obvious that the project is not fulfilling the mission of the National Estuarine Research Reserve System goals. Day-to-day management is the responsibility of the Principal Investigators, however, frequent guidance and direction is provided by the Federal Government for the successful conduct of this project. Non-compliance with a Federally approved management plan may result in immediate halting of the project.

It is our intention to review and approve each stage of work before the next begins to assure quality scientific progression and results that will produce viable information on which to form valid, productive coastal management decisions.

Managers, Research Coordinators, and all other staff at NERRS sites are ineligible to submit competitive research proposals under this Announcement. In FY92 through FY94, SRD provided funding in the amount of approximately $700,000, each year, for research in the NERRS. The approximate range of funding per successful project in recent years has been between $30,000 and $70,000. In FY95, it is expected that approximately $700,000 will be available for funding new one- and two-year projects at similar levels. Federal funds requested must be matched by the applicant by at least 30% of the total cost of the project. For example, it the total project cost is $10,000, the Federal share is $7,000, the non-Federal match is $3,000.

Note: The match requirement was decreased from 50% to 30% by Coastal Zone Act Reauthorization Amendments of 1990.

The required match must be with cash or the value of goods and services directly benefiting the project in accordance with 15 CFR part 24, "Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments," and OMB Circular A–110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations." It is anticipated that projects receiving funding under this announcement will begin in the spring/summer of 1995. Earliest anticipated start date is May 1, 1995. Applicants not familiar with the requirements of a cooperative agreement or who need additional information on application requirements are encouraged to contact SRD.

IV. Purpose and Priorities

Research funds are used to support management-related projects that will: enhance scientific understanding of Reserve environments; provide information needed by Reserve Managers and coastal zone decision makers; and improve public awareness of estuaries and estuarine management issues. Research projects may be oriented to specific Reserves; however, projects that involve or benefit more than one Reserve in the national system will be given higher priority.

The primary research objective for the NERRS is the study of the causes and effects of natural and anthropogenically-induced change in the ecology of esturaine and estuarine-like ecosystems. All research funded through SRD should be designed to provide information of significant value to the development and implementation of resource management policy governing the U.S. coastal zone, for which NOAA's Office of Ocean and Coastal Resource Management has management and regulatory responsibilities. Beginning in FY93, SRD established a series of two-year research priority categories to serve as foci for the SRD competitive research program (see below). The FY95–96 research priority, which is the subject of this notice, is habitat restoration. Every two years, SRD will review future research needs and establish the next two-year research priority.

NERRS Research Priorities for FY 1993–1998

FY 1993, 1994: Non-point Source Pollution.

FY 1995, 1996: Habitat Restoration.

FY 1997, 1998: Effects of Habitat Alteration on Coastal Biota.

Research proposals for FY95 should be designed to answer some aspect(s) of the following broad management-oriented question: What are the most appropriate methods, experimental designs, models and/or evaluative criteria for restoring estuarine and estuarine-like ecosystems? While this theme is the primary funding priority for SRD in FY95/96, consideration may also be given to other projects of special merit that address other significant coastal management issues (e.g., non-point source pollution) on a regional or national scale. The availability of funding for such projects of special merit will, however, be extremely limited, and will be determined after the primary research priority has been addressed.

Research proposals submitted in response to this announcement must: address coastal management issues identified as having regional or national significance; relate them to the National Research Priority described in this announcement; and be conducted (at least partially) within one or more designated NERRS sites. Research

projects are funded for a duration of either one or two years. Multiple year projects will always be initiated in the first year of a two-year priority. One-year projects may be submitted in either year of a two-year priority. Therefore, proposals submitted under this announcement for FY95 funding may be of one- or two-year duration.

The research topic and the Reserve must be carefully chosen to ensure that the resource management issues of primary concern to the Reserve and the NERRS are addressed. Thus, it is critical that all prospective researchers contact the appropriate Reserve manager or research coordinator before submitting a proposal responding to this announcement.

V. Guidelines for Proposal Preparation, Proposal Review and Evaluation, and Reporting Requirements

Applicants for SRD research funds must follow the guidelines presented herein when preparing pre-proposals and proposals for research in Reserves. Pre-proposals and proposals not following these guidelines will be returned to the applicant without further review.

Proposals for research in the NERRS are solicited annually for award the following fiscal year. Proposal due dates and other pertinent information are contained in this announcement of research opportunities. All proposals sent to SRD must cite and reference this **Federal Register** notice. Proposers must submit an original and two (2) copies of each proposal and all supporting documents (curricula vitae, literature referenced, etc.).

Each proposal will be reviewed only as a one- or two-year project, as specified by the applicant. Applicants whose pre-proposals are approved for further review must submit an original and two (2) copies of their full proposals as well.

A. Pre-proposals

Pre-proposals will be used by SRD to evaluate the applicability of the research plan with regard to the goals of this announcement. Pre-proposals may not exceed six (6) double-spaced pages including the abstract, introduction, objectives, statement of hypothesis, brief methods description, and discussion of anticipated results and benefits. A discussion of coordination with other research in progress or proposed is encouraged. Each pre-proposal must include a cover page which lists principal investigator(s) name(s), address(es) and telephone number(s), proposal title, name of institution providing matching funds, amount of Federal funds requested and amount of match, requested start date (month), and site(s) where research is to be conducted. Curricula vitae (not to exceed 3 pages each) for each researcher and a detailed budget showing matching funds must be included. The 6 double-spaced page limit does not include budget and budget description, cover page, curriculum vitae, literature cited section, and any tables or figures. No Federal forms need be submitted with a pre-proposal. The pre-proposal and additional sections should be submitted to CAPT Francesca M. Cava at the address provided in the Addresses section. Receipt of all pre-proposals will be acknowledged and a copy sent to the appropriate Reserve Manager. All pre-proposals will be reviewed by SRD research staff, the SRD Headquarters Regional Managers and their staff, an outside technical review panel, and the relevant Reserve Manager, Research Coordinator, and their research advisory committees, where applicable. Pre-proposals will be rated using the criteria listed in section C below, "Proposal Review and Evaluation." Applicants whose research projects are selected for further consideration will be requested to submit full proposal. Applicants whose projects are eliminated at this point will be notified.

Incomplete pre-proposals will be returned to the Principal Investigator without further review.

B. Full Proposals

Full proposals may be submitted only by those individuals requested to do so following review of pre-proposals. Unsolicited full proposals will be returned without review. One (1) original and two (2) copies of the proposal (including all forms, curricula vitae, etc.) must be submitted to the same address as the pre-proposals. The proposal may not exceed 20 double-spaced pages, excluding Federal forms, table of contents, title page, literature cited, curricula vitae, budget, and figures and table. Incomplete proposals will be returned without further review.

An Application Kit will be sent to those individuals who are requested to submit full proposals. This kit will include all required Federal forms, with instructions, as well as SRD guidelines for content and format of the full proposal.

C. Proposal Review and Evaluation

Pre-proposals will be reviewed as outlined in section A, "Pre-proposals," above. All full proposals will be reviewed by: SRD research staff; at least two outside individuals who are acknowledged experts in the particular field represented by the proposal; and an outside panel of experts. Each full proposal is also forwarded to the appropriate SRD Regional, State Coastal Zone Management, and Reserve staffs for comments. Verbatim copies of all peer reviews, excluding the name of the reviewer, will be sent to the applicant. Applicants will have two weeks to address and rebut peer reviews. These rebuttals will be considered by SRD when final funding decisions are made. All recommendations for funding by SRD must be approved by the NOAA Grants Management Division before awards are made.

In order to provide for the fair and equitable selection of the most meritorious research projects for support, SRD has established specific criteria for their review and evaluation. These criteria are intended to be applied to all research proposals in accordance with the SRD Research Priorities set forth in this announcement. The criteria used in both pre-proposal and full proposal review process are listed below, together with the elements that constitute each criterion and their relative weights (in parenthesis):

1. Scientific Merit (40%). This criterion is used to evaluate whether the objectives of the proposal are: important to the field; consistent with the stated national research priorities; and likely to improve the scientific understanding of estuarine processes within the Reserve(s) as well as in other similar estuaries.

2. Technical Approach (40%). This criterion is used to assess: the technical feasibility of the proposed effort; the reasonableness of the hypotheses; the degree to which the proposed timeline is realistic; the appropriateness and scientific validity of the proposed analytical methods; the degree to which the proposal demonstrates an understanding of the Reserve environment and management needs; the current state of knowledge in the particular field of research interest; and the total research requirements.

3. Qualifications of P.I. and Key Personnel (10%). This criterion relates to the experience and past performance of the principal investigator and key personnel, their familiarity with the geographic area of the proposed study, and their publication record.

4. Institutional Support and Capabilities (5%). This criterion relates to the extent of the applicant institution's support for and commitment to the proposed research and what facilities, equipment, and other resources are available to the principal investigator and key personnel

from his/her institution for use in accomplishing the proposed work.

5. Budget (5%). This criterion is used to determine whether the budget is realistic and reasonable for accomplishing the proposed tasks.

The external panel will review and rank the proposals based solely on the technical criteria above. The panel will submit its rankings to SRD. In making final funding decisions among qualified proposals ranked highly by the above technical criteria, SRD will also take into consideration the following programmatic policy factors:

Utility to Reserve Management and to Regional Coastal Management Issues. This criterion is used to assess the likelihood that results of this research will support the management of the affected Reserve(s) and will enhance wise coastal resource management within the region(s) of study.

Relevance to National Research Priorities and Utility to National Coastal Management Issues. This criterion is used to assess the relationship between the objectives of the proposed project and the National Research Priorities established by NOAA, and to assess the likelihood that results of this research will be important to national coastal management issues across the NERR System and coastal states.

Consequently, proposals ranked highest on technical criteria will not necessarily receive funding from SRD. Final funding decisions will be made by the Chief of the Sanctuaries and Reserves Division, based upon review panel rankings and programmatic considerations.

VI. Other Requirements

Recipients and subrecipients are subject to all Federal laws and Federal and DOC policies, regulations, and procedures applicable to Federal financial assistance awards.

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.

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either: (1) The delinquent account is paid in full; (2) A negotiated repayment schedule is established and at least one payment is received; or (3) Other arrangements satisfactory to the Department of Commerce are made.

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding. In addition, any recipients who are past due for submitting acceptable final reports under any previous SRD-funded research will be ineligible to be considered for new awards until final reports are received, reviewed and deemed acceptable by SRD.

A false statement on an application 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.

If an application is selected for funding, the Department of Commerce (DOC) has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC. However, funding priority will be given to the second year of multi-year proposals upon satisfactory completion of the first year of research.

Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matter; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:

1. 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;

2. 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;

3. 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 the use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form which applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

4. 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.

5. Lower Tier Certifications. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed 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." The original form CD–512 is intended for the use of recipients. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Buy American-Made Equipment or Products: Applicants are hereby notified that any equipment or products authorized to be purchased with funding provided under this program should be American-made to the extent feasible in accordance with Public Law 103–121, sections 606(a) and (b).

Indirect Costs: The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

Preaward Activities: If applicants 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 or written assurance that may have been received, there is no obligation on the part of DOC to cover preaward costs.

VII. Classification

This notice has been determined to be "not significant" for purposes of E.O. 12866.

This action is categorically excluded from the requirement to prepare an environmental assessment by NOAA Administrative Order 216–6.

This notice does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 12612.

This notice contains a collection of information requirement subject to the Paperwork Reduction Act. The

collection of this information has been approved by the Office of Management and Budget, OMB Control Number 0648–0121.

(Federal Domestic Assistance Catalog Number 11.420 Coastal Zone Management Estuarine Research Reserves)

Dated: June 1, 1994.

Frank W. Maloney,

Deputy Assistant Administrator, Ocean Services and Coastal Zone Management.

Appendix I—Nerrs On-Site Staff

Alabama

Mr. Thomas McAlpin, Manager, Weeks Bay National Estuarine Research Reserve, 10936–B, U.S. Highway 98, Fairhope, AL 36532, (205) 928–9792

California

Mr. Steve Kimple, Manager, Dr. Andrew deVogelaere, Research Coordinator, Elkhorn Slough National Estuarine Research Reserve, 1700 Elkhorn Road, Watsonville, CA 95076, (408) 728–2822

Mr. Ed Navarro, Acting Manager, Tijuana River National Estuarine Research Reserve, 3990 Old Town Ave., Suite 300C, San Diego, CA 92110, (619) 220–5400

Delaware

Mr. Lee Emmons, Manager, Dr. Bill Meredith, Research Coordinator, Delaware NERR, Department of Natural Resources and Environmental Control, P.O. Box 1401, Dover, DE 19903, 302–739–6444

Florida

Mr. Woodard Miley II, Manager, Mr. Lee Edmiston, Research Coordinator, Apalachicola River National Estuarine Research Reserve, 261 7th Street, Apalachicola, FL 32320, (904) 653–8063

Mr. Gary Lytton, Manager, Dr. Thomas Smith, Research Coordinator, Rookery Bay National Estuarine Research Reserve, 10 Shell Island Road, Naples, FL 33942, (813) 775–8845

Georgia

Mr. Buddy Sullivan, Manager, Dr. Stuart Stevens, Research Coordinator, Sapelo Island National Estuarine Research Reserve, Department of Natural Resources, P.O. Box 19, Sapelo Island, GA 31327, (912) 485–2251 (Sullivan), (912) 264–7218 (Stevens)

Hawaii

Mr. William Stormont, Manager, Waimanu Valley National Estuarine Research Reserve, Department of Land and Natural Resources, Division of Forestry & Wildlife, 1151 Punchbowl Street, Honolulu, HI 96813, (808) 587–0051

Note: The State of Hawaii has requested that Waimanu Valley NERR be formally removed from the NERRS. This may affect future research resources and opportunities at this site.

Maine

Mr. James List, Manager, Dr. Michelle Dionne, Research Coordinator, Wells National Estuarine Research Reserve, RR #2, Box 806, Wells, ME 04090, (207) 646–1555.

Maryland

Ms. Mary Ellen Dore, Manager, Chesapeake Bay National Estuarine Research Reserve in Maryland, Dept. of Natural Resources, Tawes State Office Building, B–3, 580 Taylor Avenue, Annapolis, MD 21401, (410) 974–3382

Massachusetts

Ms. Christine Gault, Manager, Dr. Richard Crawford, Research Coordinator, Waquoit Bay National Estuarine Research Reserve, Dept. of Environmental Management, P.O. Box 92W, Waquoit, MA 02536, (508) 457–0495

New Hampshire

Mr. Peter Wellenberger, Manager, Great Bay National Estuarine Research Reserve, New Hampshire Fish and Game Department, 37 Concord Road, Durham, NH 03824, (603) 868–1095

New York

Ms. Elizabeth Blair, Manager, Mr. Chuck Nieder, Research Coordinator, Hudson River National Estuarine Research Reserve, New York State Department of Environmental Conservation, c/o Bard College Field Station, Annandale-on-Hudson, NY 12504, (914) 758–5193

North Carolina

Dr. John Taggart, Manager, Dr. Steve Ross, Research Coordinator, North Carolina National Estuarine Research Reserve, University of North Carolina at Wilmington, 7205 Wrightsville Avenue, Wilmington, NC 28403, (919) 256–3721

Ohio

Mr. Eugene Wright, Manager, Dr. David Klarer, Research Coordinator, Old Woman Creek National Estuarine Research Reserve, 2514 Cleveland Road, East, Huron, OH 44839, (419) 433–4601

Oregon

Mr. Michael Graybill, Manager, Dr. Steve Rumrill, Research Coordinator, South Slough National Estuarine Research Reserve, P.O. Box 5417, Charleston, OR 97420, (503) 888–5558

Puerto Rico

Mr. Ramon Martinez, Manager, Mr. Carlos J. Cianchini, Research Coordinator, Jobos Bay National Estuarine Research Reserve, Dept. of Natural Resources, P.O. Box 1170, Guayama, PR 00655, (809) 864–0105

Rhode Island

Mr. Al Beck, Manager, Narragansett Bay National Estuarine Research Reserve, Dept. of Environmental Management, Box 151 Prudence Island, RI 02872, (401) 683–5061

South Carolina

Mr. Michael D. McKenzie, Manager, Dr. Elizabeth Wenner, Research Coordinator, Ashepoo-Combahee-Edisto (ACE) Basin, South Carolina Wildlife and Marine Resources Department, P.O. Box 12559, Charleston, SC 29412, (803) 762–5052

Dr. Dennis Allen, Manager, Dr. Joe Schubauer-Berigan, Research Coordinator, North Inlet-Winyah Bay, Baruch Marine Field Laboratory, P.O. Box 1630, Georgetown, SC 29442, (803) 546–3623

Virginia

Dr. Maurice P. Lynch, Manager, Dr. Jeffrey Shields, Research Coordinator, Chesapeake Bay National Estuarine Research Reserve in Virginia, Virginia Institute of Marine Science, College of William and Mary, P.O. Box 1347, Gloucester Point, VA 23062, (804) 642–7135

Washington

Mr. Terry Stevens, Manager, Dr. Douglas Bulthuis, Research Coordinator, Padilla Bay National Estuarine Research Reserve, 1043 Bayview-Edison Road, Mt. Vernon, WA 98273, (206) 428–1558

[FR Doc. 94–14222 Filed 6–10–94; 8:45 am]

BILLING CODE 3510–08–M

[I.D. 051994B]

Draft National Contingency Plan for Response to Unusual Marine Mammal Mortality Events

AGENCY: National Marine Fisheries Service (NMFS), National Oceanographic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: NMFS announces the availability of the draft National Contingency Plan for Response to Unusual Marine Mammal Mortality Events prepared in accordance with section 404 of Marine Mammal Protection Act.

DATES: Comments on the draft report must be received by September 12, 1994.

ADDRESSES: Written comments and requests for copies of the draft plan should be sent to Dean Wilkinson, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910–3226.

FOR FURTHER INFORMATION CONTACT: Dean Wilkinson at (301) 713–2322.

SUPPLEMENTARY INFORMATION: Section 404 of the Marine Mammal Protection Act, as amended (16 U.S.C. *et seq.*) outlines the procedures to be followed if an unusual mortality event affecting marine mammals occurs. An unusual mortality event is defined as an event that: (1) Is unexpected, (2) involves a significant die-off of any marine mammal population, and (3) demands an immediate response.

Section 404 also mandates preparation of a national contingency plan for responding to unusual

mortality events. The plan is to be made available for public comment before being finalized. The plan is to be in place by November 1994. NMFS has prepared a draft plan detailing contacts to be made, sources of information, analyses to be conducted, and the logistics of response. This plan is available to the public (see **ADDRESSES**).

Dated: June 6, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–14249 Filed 6–10–94; 8:45 am]

BILLING CODE 3510–22–F

Advisory Council; Meeting

AGENCY: Sanctuaries and Reserves Division (SRD), Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Monterey Bay National Marine Sanctuary Advisory Council Open Meeting.

SUMMARY: The Advisory Council was established in December 1993 to advise and assist the Secretary of Commerce in the implementation of the management plan for the Monterey Bay National Marine Sanctuary.

TIME AND PLACE: June 24, 1994 from 9 until 12:30. The meeting location will be at the Hilton Park Center, Monterey, California.

AGENDA: General issues related to the Monterey Bay National Marine Sanctuary are expected to be discussed, including the water quality protection program and vessel traffic.

PUBLIC PARTICIPATION: The meeting will be open to the public. Seats will be available on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Aaron King at (408) 647–4257 or Elizabeth Moore at (301) 713–3141.

Federal Domestic Assistance Catalog Number 11.429 Marine Sanctuary Program

Dated: June 7, 1994.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 94–14287 Filed 6–10–94; 8:45 am]

BILLING CODE 3510–08–M

[I.D. 052694C]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application to modify permit no. 843 (P771 #68).

SUMMARY: Notice is hereby given that the Alaska Fisheries Science Center, NMFS, NOAA, National Marine Mammal Laboratory, 7600 Sand Point Way, NE., Bldg. 4, Seattle, WA 98115, has requested a modification to permit No. 843.

ADDRESSES: The modification request 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, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221); and

Director, Northwest Region, NMFS, NOAA, 7600 Sand Point Way, NE., BIN C15700, Seattle, WA 98115 (206/526–6150).

Written data or views, or requests for a public hearing on this request should be submitted to the Director, Office of Protected Resources, NMFS, NOAA, U.S. Department of Commerce, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject modification to permit No. 843, issued on June 2, 1993 (58 FR 32520), is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 843 authorizes the permit holder to conduct aerial, boat, and ground surveys and scat collections for harbor seals (*Phoca vitulina*) at haulouts and rookeries in Alaska over a 4-year period ending in 1997. The permit holder now seeks authorization to capture and radio tag up to 50 harbor seals in order to determine a correction factor to be applied towards the number of seals at sea or moving between haulout sites, and thus missed by aerial surveys. The permittee estimates that up to 200a dditional seals may be disturbed incidental to the capture/tagging activities.

Dated: June 3, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources, National MarineFisheries Service.

[FR Doc. 94–14250 Filed 6–10–94; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 052594A]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification No. 1 to scientific research permit No. 868 (P539).

SUMMARY: Notice is hereby given that a request for modification of Scientific Research Permit No. 868 submitted by Dr. Norihisa Baba, Chief, Fur Seal Section, the National Research Institute of Far Seas Fisheries, Fisheries Agency of Japan, 5–7–1 Orido, Shimizu, Shizuoka, 424 Japan, has been granted.

ADDRESSES: The modification 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, Suite 13130, Silver Spring, MD 20910 (301/713–2289); and

Director, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

SUPPLEMENTARY INFORMATION: On April 25, 1994, notice was published in the **Federal Register** (59 FR 19695) that a modification of permit No. 868, issued July 16, 1993 (58 FR 39525), had been requested by the above-named individual. The requested modification has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of §§ 216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*), and fur seal regulations at 50 CFR part 215.

Permit No. 868 has been modified to initiate the field season on June 15, 1994, to extend the effective date through September 1996, and to increase the number of fur seals authorized as subjects of the research.

Dated: June 6, 1994.

William W. Fox, Jr., Director,

Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–14300 Filed 6–10–94; 8:45 am]

BILLING CODE 3510–22–F

[I.D. 052494A]

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of scientific research permit (P420C).

SUMMARY: Notice is hereby given that Permit No. 801 issued to Dr. Michael Castellini, Ph.D., Institute of Marine Science, University of Alaska, on October 16, 1992 (57 FR 48512, October 26, 1992) has been modified. The modification becomes effective upon publication in the **Federal Register**.

ADDRESSES: The Permit, as modified, and associated documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Suite 7324, Silver Spring, MD 20901 (301/713–2289); and

Director, Alaska Region, National Marine Fisheries Service, Federal Annex, 9109 Mendenhall Mall Road, Suite 6, Juneau, AK 99802 (907/586–7221).

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of §§1A216.33(d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the subject Scientific Research Permit authorized harassment of up to 3200 Weddell seals (*Leptonychotes weddellii*), 30 each of crabeater seals (*Lobodon carcinophagus*), leopard seals (*Hydrurga leptonyx*), Ross seals (*Ommatophoca rossii*), Antarctic fur seal (*Arctocephalus gazella*) and southern elephant seal (*Mirounga leonina*) during various scientific experiments, and import specimens from McMurdo Sound, Antarctica.

The Permit has been modified to expand the research protocol on animals already authorized by inserting catheters in six pups. No increase in the total take authority is authorized.

Dated: June 6, 1994.

William W. Fox, Jr., Ph.D.

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–14301 Filed 6–10–94; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Czech Republic

June 7, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: June 15, 1994.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, 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 Bilateral Textile Agreement, effected by exchange of notes dated August 12, 1993 and April 11, 1994, between the Governments of the United States and the Czech Republic establishes limits for the period beginning on June 1, 1994 and extending through May 31, 1995.

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).

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.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 7, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on December 9, 1993; pursuant to the Bilateral Textile Agreement, effected by exchange of notes dated August 12, 1993 and April 11, 1994, between the Governments of the United States and the Czech Republic; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 15, 1994, entry into the United States for consumption and withdrawal from warehouse for consumption of wool and man-made fiber textile products in the following categories, produced or manufactured in the Czech Republic and exported during the twelve-month period beginning on June 1, 1994 and extending through May 31, 1995, in excess of the following levels of restraint:

Category	Twelve-month restraint limit[1]
410	1,515,000 square meters.
433	5,950 dozen.
435	3,915 dozen.
443	72,533 numbers.
624	1,590,000 square meters.

[1] The limits have not been adjusted to account for any imports exported after May 31, 1994.

Imports charged to these category limits for the period June 1, 1993 through May 31, 1994 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and the Czech Republic.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–14308 Filed 6–10–94; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits for Certain Wool Textile Products Produced or Manufactured in the Slovak Republic

June 7, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: June 15, 1994.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, 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 Bilateral Textile Agreement, effected by exchange of notes dated August 6, 1993 and October 6, 1993, between the Governments of the United States and the Slovak Republic establishes limits for the period beginning on June 1, 1994 and extending through May 31, 1995.

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).

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.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 7, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on December 9, 1993; pursuant to the Bilateral Textile Agreement, effected by exchange of notes dated August 6, 1993 and October 6, 1993, between the Governments of the United States and the Slovak Republic; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 15, 1994, entry into the United States for consumption and withdrawal from warehouse for consumption of wool textile products in the following categories, produced or manufactured in the Slovak Republic and exported during the twelve-month period which began on June 1, 1994 and extends through May 31, 1995, in excess of the following levels of restraint:

Category	Twelve-month restraint limit[1]
410	395,635 square meters.
433	11,050 dozen.
435	16,691 dozen.
443	92,315 numbers.

[1] The limits have not been adjusted to account for any imports exported after May 31, 1994.

Imports charged to these category limits for the period June 1, 1993 through May 31, 1994 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and the Slovak Republic.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–14309 Filed 6–10–94; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Membership of the DIA Performance Review Committee

AGENCY: Defense Intelligence Agency (DoD).

ACTION: Notice of Membership of the DIA Performance Review Committee (PRC).

SUMMARY: This notice announces the appointment of the Performance Review Committee (PRC) of the Defense Intelligence Agency. The PRC's jurisdiction includes the entire Defense Intelligence Senior Executive Service (DISES). Publication of PRC membership is required by 10 U.S.C. 1601 (a)(4).

The PRC provides fair and impartial review of DISES performance appraisals and makes recommendations to the Director, DIA, regarding performance, performance awards, pay adjustments, and at the applicable 3-year cycle, DISES recertification.

EFFECTIVE DATE: 1 July 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Michael T. Curriden, Office for Human Resources, Defense Intelligence Agency (DAH–1), 3100 Clarendon Boulevard, Arlington, VA 22201–5322, 703–284–1341.

Primary Members

Mr. Dennis M. Nagy, Deputy Director (Chairman)
Mr. A. Denis Clift, Chief of Staff
MG John A. Leide, USA, Director, National Military Intelligence Collection Center
Ms. Dolores D. Greene, Associate Director for Estimates
Mr. William J. Allard, General Counsel

Alternate Members

Ms. Cheryl Roby, Deputy Director for Intelligence Program Evaluation
Ms. Margaret R. Munson, Director of Administration
Mr. Lewis A. Prombain, Comptroller
Mr. William R. Grundmann, Director for Combat Support
Mr. John A. Shackelford, Chief, Functional Management Staff
Mr. John J. Sloan, Director for Policy Support
Mr. John K. Kiehm, Deputy Director for HUMINT Services

Dated: June 8, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–14273 Filed 6–10–94; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on the DoD Biological Defense Program

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on the DoD Biological Defense Program will meet in closed session on June 27–29, 1994, at the Joint Program Office for Biological Defense (JPO–BD), Falls Church, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will review the ongoing Military Departments research,

development, and acquisition programs and provide recommendations to the JPO–BD. The Task Force should also review the biological defense aspects of the medical research and development program to ensure that the scope of the science and technology is adequate.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: June 8, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–14270 Filed 6–10–94; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Information Architecture for the Battlefield

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Information Architecture for the Battlefield will meet in closed session on July 11–12 and August 4–5, 1994 at Strategic Analysis, Inc., Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will provide recommendations for implementing an information architecture for commanders and forces at all levels.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II (1988)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

Dated: June 8, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–14272 Filed 6–10–94; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Joint Advanced Strike Technology Program (JASTP)

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Joint Advanced Strike Technology Program (JASTP) will meet in closed session on June 29–30, July 5–6, and July 19–20, 1994 at the Institute for Defense Analyses, Alexandria, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will provide recommendations for implementing a Joint Advanced Strike Technology Program in the FY 95–05 period.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II (1988)), it has been determined that these DSB Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

Dated: June 8, 1994.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–14271 Filed 6–10–94; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF ENERGY

Pittsburgh Energy Technology Center; Unsolicited Financial Assistance Award

AGENCY: Pittsburgh Energy Technology Center, DOE.

ACTION: Acceptance of an Unsolicited Proposal Application for a Cooperative Agreement with Southern Company Services, Inc.

SUMMARY: The U.S. Department of Energy (DOE), Pittsburgh Energy Technology Center (PETC) announces that pursuant to 10 CFR 600.14 (d) and (e), it intends to award a Cooperative Agreement to Southern Company Services, Inc. for "Generic NO_X Control Intelligent System". The application has been determined to be meritorious in a general evaluation in accordance with 10 CFR 600.14(d) and would not be eligible for financial assistance under a recent, current or planned solicitation and a competitive solicitation would be inappropriate.

ADDRESSES: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–118, Pittsburgh, PA 15236–0940.

FOR FURTHER INFORMATION CONTACT: David L. Hunter, Contract Specialist, 412/892–4524.

SUPPLEMENTARY INFORMATION:

Cooperative Agreement No.

DE–FC22–94PC94253.

Title of Research Effort

Generic NO_X Control Intelligent System.

Awardee

Southern Company Services, Inc.

Term of Assistance Award

6 months.

Cost of Assistance Effort

The total estimated project value is $435,357.

Objective

The objective of this project is to develop a "Generic NO_X Control Intelligent System" that is designed to be an enhancement to a power plant's existing digital control system to allow identification of operating conditions that reduce NO_X emissions while meeting other operational constraints on the unit.

Dated: May 11, 1994.

Richard D. Rogus,

Contracting Officer.

[FR Doc. 94–14302 Filed 6–10–94; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award; Intent To Award Cooperative Agreement To University of Illinois

AGENCY: Department of Energy (DOE).

ACTION: Notice of intent.

SUMMARY: DOE announces that pursuant to 10 CFR 600.6(a)(5), it is making a discretionary financial assistance award based on the criteria set forth at 10 CFR 600.7(b)(2)(i) (B), (C), (D) and 600.14(d) to the University of Illinois, Department of the Illinois State Geological Survey (ISGS) under cooperative agreement number DE–FC01–94E124855. The purpose of the proposed agreement is to revise the Energy Information Administration (EIA) demonstrated reserve base (DRB) of coal for the State of Illinois, with new quantity/quality data. This agreement is necessary to achieve program objectives, conserve public funds and is essential to the

public interest. This effort will have a total estimated cost of $83,000 to be provided by the DOE.

The (ISGS) is the State authority on Illinois coal resources. This agreement will assist the State of Illinois in its efforts to continually collect analyses on coal quality and perform geological mapping to determine the quantity and quality of coal reserves in the state.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Placement and Administration, Attn: Shirley A. Jones, HR-531.21, 1000 Independence Ave., SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The cooperative agreement will provide funding for the ISGS to develop Phase I Coal Reserves Data Base (CRDB) coal resource data for updated estimates of the demonstrated reserve base (DRB) and recoverable reserves of coal in Illinois, allocated to specified ranges of sulfur content and heat content. The DRB constitutes the foundation data for coal reserve analyses. Recoverable reserve data derived from the DRB comprise the pivotal data base for analyzing future coal supplies. Data development may include analyses of coal geology, resource quantities, coal quality characteristics, and other factors that affect resource accessibility and minability. Data output must include remaining identified resources, DRB, remaining accessible reserve base, recoverable reserves, allocated by coal rank, type of mining, and (excepting identified resources) heat and sulfur content.

DOE has determined that the proposed agreement meets the criteria set forth at 10 CFR 600.7(b)(2) (B), (C) and (D) in that (1) The activities are being conducted by the applicant using its own resources or those donated or provided by third parties; however, DOE support of that activity would enhance the public benefits to be derived and DOE knows of no other entity which is conducting or is planning to conduct such an activity, (2) the ISGS is a unit of state government and the activity to be supported is related to performance of a governmental function within the subject jurisdiction, thereby precluding DOE provision of support to another entity, and (3) the ISGS has exclusive domestic capability to perform the activity successfully, based upon unique equipment, proprietary data and technical expertise, or other such unique qualifications.

The ISGS is charged with the responsibility of mapping and estimating the coal resources for the State of Illinois and possesses over 1,300 agency-collected analyses including sulfur contents and heat values. This data, along with data from other sources, will enable them to revise the coal reserves by quality and mining method for Illinois. No other private or government entity is known to have the data and mapping capability required to estimate the coal reserves by quality for the State of Illinois.

Term: The term of the proposed cooperative agreement is expected to be 12 months from the effective date of award.

Issued in Washington, DC on June 6, 1994.

Scott Sheffield,

Director, Headquarters Operations, Division B, Office of Placement and Administration.

[FR Doc. 94-14303 Filed 6-10-94; 8:45 am]

BILLING CODE 6450-01-P

Federal Energy Regulatory Commission

[Docket No. ER87-483-005, et al.]

Southern California Edison Co., et al.; Electric Rate and Corporate Regulation Filings

June 6, 1994.

Take notice that the following filings have been made with the Commission:

1. Southern California Edison Company

[Docket No. ER87-483-005]

Take notice that on May 27, 1994, Southern California Edison Company (Edison or Company), tendered for filing its compliance filing in the above-referenced docket.

Comment date: June 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Virginia Electric and Power Company

[Docket No. ER94-1022-000]

Take notice that on May 31, 1994, Virginia Electric and Power Company, tendered for filing an amendment to its filing in the above-captioned docket. The Power Sales Tariff, which was submitted as an amendment, provides for the sale for resale of Merom unit power, system power, and emergency energy to eligible purchasers under the tariff.

Copies of the filing were served upon intervenors in this docket as well as upon the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: June 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Pacific Gas and Electric Company

[Docket No. ER94-1150-000]

Take notice that on June 1, 1994, Pacific Gas and Electric Company (PG&E) tendered for filing an Amendment to its April 12, 1994, filing of a Control Area Rate Schedule for the City of Redding (Redding) provided by PG&E.

According to PG&E, on May 31, 1994, it reached an interim letter agreement that will make the Western Area Power Administration a "Third Party Provider of Spring Reserve and Regulation services" under the proposed Control Area Rate Schedule. PG&E states that "this event is of great relevance to the Commission's consideration of the [Control Area Rate Schedule]."

Comment date: June 17, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Entergy Services, Inc.

[Docket No. ER94-1306-000]

Take notice that on May 27, 1994, Entergy Services, Inc. (Entergy Services), on behalf of Mississippi Power & Light Company (MP&L), Arkansas Power & Light Company, Gulf States Utilities Company, Louisiana Power & Light Company, New Orleans Public Service Company (collectively, the Entergy Operating Companies), and itself, filed the Amendment (Amendment) to Interconnection Agreement between MP&L and Municipal Energy Agency of Mississippi (MEAM), effective as of July 1, 1984, as amended (Interconnection Agreement), which is on file with the Commission as MP&L Rate Schedule FERC No. 268. Entergy Services states that the purpose of the Amendment is to set forth how MEAM may use the Entergy Operating Companies Transmission Service Tariff in conjunction with the Interconnection Agreement. Entergy Services asks that the Amendment be made effective on May 17, 1994.

Comment date: June 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Golden Spread Electric Cooperative, Inc.

Docket No. ER94-1307-000]

Take notice that on May 27, 1994, Golden Spread Electric Cooperative, Inc. tendered for filing proposed changes to Schedule A of its FERC Electric Service Rate Schedule Nos. 12-22, and in addition filed a related Special Facilities Agreement with one of its members, Midwest Electric Cooperative, Inc.

Golden Spread proposes to amend Schedule A for each Rate Schedule to add a special facilities charge provision

and a Rider A, which contains the formula to be used in calculating the special facilities charge. The special facilities charge will allow Golden Spread to recover costs from a member related to a transmission or distribution facility which that member has requested that Golden Spread acquire, construct, or cause to be constructed. In addition, Golden Spread filed a Special Facilities Agreement with Midwest which provides for the construction by Golden Spread of a nine mile segment of 69 Kv line on the Midwest system, with associated costs being recovered from Midwest under the special facilities charge provision.

Copies of the filing were served upon Golden Spread's jurisdictional customers, the Public Utility Commission of Texas, and the Oklahoma Corporation Commission.

Comment date: June 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Northeast Utilities Service Company

[Docket No. ER94–1309–000]

Take notice that on May 31, 1994, Northeast Utilities Service Company (NUSCO) tendered for filing two Service Agreements to provide non-firm transmission service under the NU System Companies' Transmission Service Tariff No. 2 to Central Vermont Public Service Corporation (CVPS) and to city of Holyoke, Massachusetts Gas and Electric Department (Holyoke). NU requests that the Service Agreements become effective on the date of receipt of the filing by the Commission.

NUSCO states that a copy of this information has been mailed to CVPS and Holyoke.

Comment date: June 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Central Vermont Public Service Corporation

[Docket No. ER94–1310–000]

Take notice that on May 31, 1994, Central Vermont Public Service Corporation (CVPS) tendered for filing the Actual 1993 Cost Report required under Article 2.4 on Second Revised Sheet No. 18 of FERC Electric Tariff, Original Volume No. 3, of Central Vermont under which Central Vermont provides transmission and distribution service to the following Customers: Vermont Electric Cooperative, Inc., Lyndonville Electric Department, Village of Ludlow Electric Light Department, Village of Johnson Water and Light Department, Village of Hyde Part Water and Light Department, Rochester Electric Light and Power Company, Woodsville Fire District Water and Light Department.

Comment date: June 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Central Vermont Public Service Corporation

[Docket No. ER94–1311–000]

Take notice that on May 31, 1994, Central Vermont Public Service Corporation (CVPS) tendered for filing the Actual 1993 Cost Report required under Article 2.3(A) on Original Sheet No. 21 of FERC Electric Tariff, Original Volume No. 4, of Central Vermont Public Service Corporation (Company) under which the Company provided Unreserved System Power Service to the following Customers: Lyndonville Electric Department, Village of Ludlow Electric Light Department, Village of Johnson Water and Light Department, Village of Hyde Park Water and Light Department.

Comment date: June 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Central Vermont Public Service Corporation

[Docket No. ER94–1312–000]

Take notice that on May 31, 1994, Central Vermont Public Service Corporation (CVPS) tendered for filing the Actual 1993 Cost Report required under Paragraph Q–1 on Original Sheet No. 18 of the Rate Schedule FERC No. 135 (RS–2 rate schedule) under which Central Vermont Public Service Corporation (Company) sells electric power to Connecticut Valley Electric Company Inc. (Customer). The Company states that the Cost Report reflects changes to the RS–2 rate schedule which were approved by the Commission's June 6, 1989, order in Docket No. ER88–456–000.

Comment date: June 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. United Illuminating Company

[Docket No. ER94–1313–000]

Take notice that on May 31, 1994, The United Illuminating Company (UI) submitted for informational purposes all individual Purchase Agreements executed under UI's Wholesale Electric Sales Tariff, FERC Electric Tariff, Original Volume No. 2 during the six-month period of November 1, 1993, through April 30, 1994.

Comment date: June 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. Niagara Mohawk Power Corporation

[Docket No. ER94–1314–000]

Take notice that on May 31, 1994, Niagara Mohawk Power Corporation (Niagara) tendered for filing with the Commission a Transmission Services Agreement (TSA) between Niagara and the New York Power Authority (NYPA) and Supplement No. 1 to the TSA between Niagara, NYPA and the Municipal Electric Utilities Association (MEUA). The TSA provides for firm transmission service from NYPA to its Municipal and Cooperative Customers (M&C Customers) at rates phased-in over five years. Supplement No. 1 to the TSA provides that future changes in the TSA be negotiated prior to filing with the Commission. Niagara Mohawk requests and effective date of August 1, 1994.

Comment date: June 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

12. Northern States Power Company (Wisconsin)

[Docket No. ER94–1315–000]

Take notice that on May 31, 1994, Northern States Power Company, Wisconsin (NSP–W) filed Amendment No. 1 to its Power and Energy Supply Agreement with the Village of Bloomer. According to the filing utility the Amendment extends the term of the agreement in exchange for a discount on the power and energy supply rate.

Comment date: June 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14232 Filed 6–10–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP94-265-000]

Algonquin LNG, Inc.; Petition for Waiver

June 7, 1994.

Take notice that on May 31, 1994, Algonquin LNG, Inc. (ALNG) filed a request for waiver of § 284.8(b)(3)-(5) of the Commission's Regulations, requiring an electronic bulletin board (EBB), including the Order No. 563 standardization requirements. ALNG states that it will not be able to provide standardized downloadable data sets by June 1, 1994, as required by Order No. 563. ALNG also states that it has concluded that the cost of operating an EBB outweighs the benefits to ALNG's customers. ALNG proposes to provide information concerning the availability of service by means of telephone and facsimile.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 14, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94-14233 Filed 6-10-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-273-000]

Columbia Gas Transmission Corporation; Compliance Filing

June 7, 1994.

Take notice that Columbia Gas Transmission Corporation (Columbia) on June 1, 1994, tendered for filing a filing in compliance with the Commission's May 31, 1994 Order (Order) in this docket containing support for the reconciliation of transportation and exchange imbalances.

Columbia states that the Order stated that "[i]f Columbia intends to propose recovery of T&E imbalances during the nine-month close-out period [October 31, 1993 to July 31, 1994], Columbia should provide complete support for such a proposal." (Order, mimeo at p. 7). The nine-month close-out period is specified in section 39 (section 39) of the General Terms and Conditions of Columbia's FERC Gas Tariff, Second Revised Volume No. 1. On May 2, 1994, Columbia filed a request for rehearing of the Order in which, among other things, Columbia indicated that it would make the instant filing in connection with the Commission's statement regarding transportation and exchange imbalances.

In this compliance filing, Columbia is also seeking a waiver of the nine-month close-out period in section 39 that ends July 31, 1994. Specifically, Columbia is requesting that the Commission extend the close-out period for an additional eight months to March 31, 1995.

Columbia states that copies of the filing were served upon each of Columbia's former sales customers and interested State Commissions, and to each of the parties set forth on the Official Service List in these proceedings.

Any person desiring to intervene or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 or 385.214). All such interventions or protests should be filed on or before June 14, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene in accordance with the Commission's rules. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-14234 Filed 6-10-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP94-582-000]

National Fuel Gas Supply Corp.; Request Under Blanket Authorization

June 7, 1994.

Take notice that on June 2, 1994, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York, 14203, filed in Docket No. CP94-582-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the National Gas Act (18 CFR 157.205 and 157.212) for authorization to construct and operate a delivery point and appurtenant facilities to provide service to an existing firm transportation customer, National Fuel Gas Distribution Corporation (Distribution) under authorization issued in Docket No. CP83-4-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, National proposes to construct and operate a delivery point located in the Town of Clarence, Erie County, New York. The facilities will include valves, regulators, heaters, filters, meters, piping and appurtenant facilities. National indicates that all facilities will be placed in a previously disturbed area.

National indicates that the total volume to be delivered to the customer is estimated to be 250,000 Mcf annually. National states that the total volumes to be delivered to the customer would not exceed the total volume authorized prior to this request. National states that this FERC Gas Tariff does not prohibit the addition of delivery points. National further states that it has sufficient capacity to accomplish the deliveries proposed herein without detriment or disadvantage to its other customers and that this will have a minimal impact on its peak day and annual deliveries.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity is deemed to be authorized effective on the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filling a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94-14235 Filed 6-10-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM94-10-59-000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 7, 1994.

Take notice that on June 3, 1994, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1.

Northern filed Eleventh Revised Sheet No. 53 to establish the May 1994 Index Price for determining the dollar/volume equivalent for any transportation imbalances that may exist on contracts between Northern and its Shippers.

Northern states that copies of the filing were served upon the company's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 14, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-14236 Filed 6-10-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-281-000]

Pacific Interstate Transmission Co.; Intent to Recover Costs of Gas Purchase Agreement Restructuring

June 7, 1994.

Take notice that on June 2, 1994, Pacific Interstate Transmission Co., (PITCO) tendered for filing its notice of intention to recover from its sole customer Southern California Gas Company (SoCalGas) on or immediately following August 15, 1994, pursuant to PITCO's cost-of-service tariff, $192 million in payments made to Northwest Alaska Pipeline Company's (Northwest Alaskan) supplier, Pan-Alberta Gas Ltd. (Pan-Alberta) as consideration for revisions to the terms of gas purchase agreements among PITCO and Northwest Alaskan, Northwest Alaskan and Pan-Alberta.

PITCO states that the revised gas purchase agreement's pricing mechanism is designed to assure that PITCO's sales to SoCalGas will be at a market sensitive rate. PITCO further states that the term of the agreement will be reduced by ten years, from a termination date of October 31, 2012 to October 31, 2003.

PITCO states that recovery by PITCO of its payment to Pan-Alberta shall be achieved by a single payment from SoCalGas. SoCalGas, with the prior approval of the California Public Utilities Commission (CPUC) will raise the necessary funds and pursuant to CPCU authorization will recover a portion of its payment to PITCO from its customers over a five-year period.

PITCO states that Northwest Alaskan shall make the necessary tariff filings to reflect the new pricing provisions and terms of the sale agreements.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 14, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell

Secretary.

[FR Doc. 94-14237 Filed 6-10-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-67-011]

Southern Natural Gas Co; GSR Revised Tariff Sheets

June 7, 1994.

Take notice that on June 2, 1994, Southern Natural Gas Company (Southern) filed in accordance with the Commission's Order Accepting in Part and Rejecting in Part Compliance Filings, and Granting and Denying Rehearing in Part and Accepting Tariff Filing Subject to Conditions and Refund issued in Docket Nos. RP94-67-003, et al. RP94-133-001, et al., and RP94-165-001, et al., on May 27, 1994 (May 27 Order) to revise its GSR demand surcharge for May and June 1994. Southern submitted for filing the following tariff sheets to its FERC Gas Tariff, Seventh Revised Volume No. 1, with the indicated proposed effective dates:

Submitted Effective May 1, 1994

First Substitute Seventh Revised Sheet No. 15
First Substitute Seventh Revised Sheet No. 17

Submitted Effective June 1, 1994

First Substitute Eighth Revised Sheet No. 15
First Substitute Eighth Revised Sheet No. 17

Southern states that copies of the filing were served upon Southern's customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before June 14, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of Southern's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary,

[FR Doc. 94-14238 Filed 6-10-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-165-004 and RP94-264-001]

Southern Natural Gas Co.; GSR Revised Tariff Sheets

June 7, 1994.

Take notice that on June 1, 1994, Southern Natural Gas Company (Southern) filed in accordance with the Commission's Order Accepting in Part and Rejecting in Part Compliance Filings, and Granting and Denying Rehearing in Part and Accepting Tariff Filing Subject to Conditions and Refund issued in Docket Nos. RP94-67-003, et al., RP94-133-001, et al., and RP94-165-001, et al., on May 27, 1994 (May 27, Order). Southern submitted for filing the following tariff sheets to its FERC Gas Tariff, Seventh Revised Volume No. 1, with the indicated proposed effective dates:

Submitted Effective April 1, 1994

Second Substitute Fifth Revised Sheet No. 15
Second Substitute Fifth Revised Sheet No. 17
Second Substitute Fifth Revised Sheet No. 18

Withdrawn Effective July 1, 1994

Ninth Revised Sheet No. 15
Ninth Revised Sheet No. 17
Seventh Revised Sheet No. 18
First Alternate Ninth Revised Sheet No. 15
First Alternate Ninth Revised Sheet No. 17
First Alternate Seventh Revised Sheet No. 18

Submitted Effective July 1, 1994

First Substitute Ninth Revised Sheet No. 15
First Substitute Ninth Revised Sheet No. 17
First Substitute Seventh Revised Sheet No. 18

Southern states that copies of the filing were served upon Southern's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 14, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Copies of Southern's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14239 Filed 6–10–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–276–000]

Tennessee Gas Pipeline Co.; Proposed Settlement and Proposed Changes in FERC Gas Tariff

June 7, 1994.

Take notice that on May 26, 1994, Tennessee Gas Pipeline Company (Tennessee) filed a Stipulation and Agreement (Stipulation) proposing amendments to its FERC Gas Tariff, Fifth Revised Volume No. 1, pursuant to Rule 602 (18 CFR 385.602). Tennessee has included an appendix with pro forma tariff sheets containing the modifications necessitated by the Stipulation.

The Stipulation effects service changes in three areas: (1) Supply aggregation through pooling; (2) automatic balancing through storage in conjunction with a balancing agreement; and (3) determination and resolution of imbalances. Tennessee states that these service changes are the result of discussions between Tennessee and various groups of customers on its system. Tennessee states that the Stipulation serves to complement the service structure recently implemented pursuant to Order No. 636 so as to provide customers with enhanced services while protecting operational integrity. Tennessee states that the filing has been served on all parties listed in the Docket No. RS92–23 service list.

All parties to the proceedings in Docket No. RS92–23, *et al.* are automatically parties to this proceeding. Any other person desiring to be heard or to make any protest with reference to said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214. All such petitions or protests should be filed on or before June 15, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to this proceeding. Any persons wishing to become a party must file a petition to intervene. Copies of this filing are on file and available for public inspection in the public reference room. Pursuant to Rule 602, initial comments on the proposed Stipulation must be filed on or before June 15, 1994, and reply comments on June 27, 1994.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14240 Filed 6–10–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–4–49–001]

Williston Basin Interstate Pipeline Co.; Annual Take-or-Pay Reconciliation Filing

June 7, 1994.

Take notice that on June 3, 1994, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing a revision to its Annual Take-or-Pay Reconciliation Filing, which was filed May 31, 1994, pursuant to the General Terms and Conditions of its FERC Gas Tariff.

Williston Basin has requested that the Commission accept Substitute First Revised Sheet No. 308 of this filing to become effective July 1, 1994.

Williston Basin states that the substitute tariff sheet is being filed to correct the recalculated fixed monthly surcharges in Docket No. RP90–137–000 to be effective during the period July 1, 1994 through June 30, 1995 pursuant to the procedures contained in Section 36 of the General Terms and Conditions of Williston Basin's FERC Gas Tariff, Second Revised Volume No. 1.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214). All such protests should be filed on or before June 14, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14241 Filed 6–10–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4997–5]

Ohio: Final Determination of Adequacy of State Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination of full program adequacy for Ohio's application.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste will comply with the revised Federal Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the United States Environmental Protection Agency (USEPA) to determine whether States have adequate permit programs for MSWLFs, but does not mandate issuance of a rule for such determinations. The USEPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which the USEPA will approve, or partially approve, State/Tribal MSWLF permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes

may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal MSWLF permit programs provide interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States/Tribes with approved MSWLF permit programs can use the site-specific flexibility provided by the revised Federal Criteria to the extent the State/Tribe MSWLF permit program allows such flexibility. The USEPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the revised Federal Criteria apply to all permitted and unpermitted MSWLF facilities.

Ohio applied for a determination of adequacy under section 4005 of RCRA. At the same time, Ohio proposed rule revisions that would facilitate full approval of its solid waste program. The proposed rule revisions added definitions and requirements that were no less stringent than portions of the revised Federal Criteria. The USEPA reviewed Ohio's application and tentatively determined that Ohio's existing MSWLF permit program, along with the incorporation of certain portions of the revised Federal Criteria, would be adequate to assure compliance with the revised Federal Criteria. Ohio successfully incorporated the needed portions of the revised Federal Criteria into its MSWLF permit program and the revised regulations are now fully effective. Review of the finalized Ohio Environmental Protection Agency (OEPA) regulations occurred prior to the USEPA's final determination of program adequacy. After consideration of all comments received during the public comment period, the USEPA is today issuing a final determination that the State's program is adequate.

EFFECTIVE DATE: The determination of adequacy for Ohio shall be effective on June 13, 1994.

FOR FURTHER INFORMATION CONTACT: USEPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Attn: Mr. Andrew Tschampa, mailcode HRP–8J, telephone (312) 886–0976.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, the USEPA promulgated revised Federal MSWLF Criteria (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the revised Federal Criteria. Subtitle D also requires in section 4005 that the USEPA determine the adequacy of State MSWLF permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill these requirements, the Agency has drafted and is in the process of proposing the State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

The USEPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of the STIR. The USEPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to the revised Federal Criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, the USEPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authority to take specific action against any owner or operator who fails to comply with an approved MSWLF permit program.

The USEPA Regional offices will determine whether a State/Tribe has submitted an adequate program based on the interpretation outlined above. The USEPA plans to provide more specific criteria for this evaluation when it proposes the STIR. The USEPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF permit program before it gives full approval to a MSWLF permit program.

As provided in the revised Federal Criteria, the USEPA's national subtitle D standards took effect on October 9, 1993. On October 1, 1993, the USEPA published a final ruling which modified the effective date of the landfill criteria for certain classifications of landfills (58 FR 51536). For certain small landfills that accept less than 100 tons of waste per day, the Federal landfill criteria were not effective until April 9, 1994, instead of October 9, 1993. The exact classifications of landfills and details on the effective date extensions are contained in the final rule. See 58 FR 51536 (October 1, 1993).

B. State of Ohio

On October 9, 1993, Ohio submitted an application to obtain a MSWLF program adequacy determination. On January 14, 1994, the USEPA published a tentative determination of adequacy for all portions of the Ohio program. Further background information on the tentative determination of adequacy appears in 59 FR 2406 (January 14, 1994).

The current Ohio regulations, contained in the Ohio Administrative Code (OAC–3745–27), are considered equivalent to the revised Federal Criteria. In its application, Ohio demonstrated that the State's revised permit program would adequately meet all elements of the revised Federal Criteria. The USEPA reviewed the finalized OEPA regulations prior to making today's final determination of program adequacy. The revised Ohio regulations were officially adopted on May 2, 1994, by the Director of the Ohio Environmental Protection Agency (OEPA), and the effective date of the requirements which fully incorporate the revised Federal Criteria was June 1, 1994. The USEPA recognizes the complexity of the rulemaking process in Ohio, and feels that an effective date of June 1, 1994, for revised State rules incorporating the Federal Criteria is adequate. The revised OEPA regulations apply to all existing units designated by the landfill owner or operator, as well as all new units.

Along with the tentative determination, the USEPA announced the availability of the application for public comment and the date of a public hearing on the application. A public hearing was held at the offices of the Ohio Environmental Protection Agency in Columbus, Ohio, on March 1, 1994.

C. Comments

The USEPA received public comment concerning the tentative determination of full program adequacy for Ohio's MSWLF permit program. One commenter suggested that the USEPA approve the State's existing groundwater sampling and analysis procedures with regard to the field filtration requirement currently set forth in 40 CFR 258.53. The revised Federal Criteria require unfiltered groundwater samples to be used in laboratory analysis. Currently, Ohio regulations require sampling and analysis procedures which ensure monitoring results that provide an "accurate representation" of groundwater quality. Because this is currently interpreted to require unfiltered samples, the USEPA is approving this provision of the State's

program. However, the USEPA intends to revisit this issue during a proposed rulemaking. If the proposed rulemaking upholds the ban on field filtering, the State has agreed to continue to incorporate the provisions of 40 CFR 258.53(b) into its policy regarding groundwater sampling and analysis procedures.

One commenter expressed concern about the adequacy of OEPA's MSWLF permit program because it lacked provisions against what the commenter referred to as "strategic lawsuits against public participation." The commenter described such lawsuits as preventing an individual or group from communicating their views to the government on public issues. The revised Federal Criteria require a State/Tribe to provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. The Ohio MSWLF permit program provides three opportunities for public involvement during the permitting process. This process is delineated in the Ohio Revised Code(ORC), section 3734.05(a)(2)(d)–(f). The Ohio MSWLF program further provides a verified complaint procedure, delineated in ORC section 3745.08, for members of the public who are or will be aggrieved or adversely affected by a violation of the Ohio solid waste regulations. In addition, members of the public may commence civil action against any person, the State, or a political subdivision alleged to be in violation of the Ohio regulations by utilizing citizens' suit provisions delineated in ORC section 3734.101(A). It is the opinion of the USEPA that the provisions detailed above and further explained in Ohio's application fulfill the requirements of section 7004(b) of RCRA.

The same commenter also expressed concern regarding the adequacy of various other aspects of the Ohio MSWLF program, such as staff and financial resources for effective implementation, organizational structure of the OEPA to support the program, and administrative costs associated with the MSWLF permitting process. In its application for program approval, Ohio described an organizational structure with staffing and financial resources that the State feels will be appropriate to effectively support the permitting and enforcement activities associated with its MSWLF permitting program. The USEPA feels that Ohio demonstrated that it will be able to provide adequate resources to effectively administer and support its MSWLF permit program. Regarding the administrative costs associated with the MSWLF permitting process, this issue lies outside the scope of the revised Federal Criteria.

Another commenter expressed concern regarding the proper implementation of the location restrictions for wetland areas contained in the revised Federal Criteria (40 CFR 258.12) by the Ohio MSWLF permit program. The commenter acknowledged that the Ohio regulations incorporating the Federal Criteria for wetlands location restrictions were adequate, however, concern was expressed regarding implementation of this provision in actual practice. The commenter specifically referenced a site located in Richland County, Ohio, where a permit is under consideration by the OEPA for a proposed landfill which is adjacent to the Fowler Woods State Nature Preserve. A portion of the proposed site would displace existing wetlands and be located immediately adjacent to sensitive wetland areas of the nature preserve area. He referred to the application of the wetland restrictions, particularly in this situation, as being arbitrary and subject to political influence. Another commenter noted that the application of the wetland restrictions in this case is inconsistent with the intent of the revised Federal Criteria.

The USEPA agrees with the commenter's opinion that the Ohio regulations, as written, incorporate the wetland restrictions adequately to ensure compliance with the wetlands restrictions contained in the revised Federal Criteria (40 CFR 258.12). In addition, the USEPA shares the concern of the commenter that all portions of the revised Federal Criteria are implemented appropriately and uniformly in actual practice. Since Ohio has properly adopted into regulation the location restrictions for wetland areas contained in the revised Federal Criteria, the USEPA has no reason to not approve this portion of the Ohio MSWLF permit program. However, Ohio has been formally advised of the concerns of the commenter as well as USEPA regarding the proper implementation of the location restrictions for wetlands.

Finally, one commenter expressed concern with the practice of allowing the applicant for a MSWLF permit to demonstrate compliance with the regulations using its own contractors or consultants. The commenter noted the absence of independent or State controlled field analysis of reports and data to confirm the accuracy of the information. The commenter also suggested that the State should choose a consultant or contractor to perform the required demonstrations of compliance with the regulations for individual MSWLF permit applications.

The USEPA shares the concern of the commenter that all information and data submitted to the State which serve to support MSWLF permitting decisions be performed properly and accurately. The USEPA is aware of the State's practice of extensively reviewing all submitted information and data to ensure compliance with all applicable regulations. It is the opinion of the USEPA that the procedures outlined in the Ohio application for adequacy determination will support the effective implementation of the revised Federal Criteria. The issue of requiring independent or State chosen contractors and consultants to provide data and information to support permitting decisions lies beyond the scope of the revised Federal Criteria.

D. Decision

After reviewing the public comment, I conclude that Ohio's application for adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Ohio is granted a determination of adequacy for all portions of its MSWLF permit program.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the revised Federal Criteria independent of any State/Tribal enforcement program. As the USEPA explained in the preamble to the final revised Federal Criteria, the USEPA expects that any owner or operator complying with the provisions in a State/Tribal program approved by the USEPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Today's action takes effect on the date of publication. The USEPA believes it has good cause under section 553(d) of the Administrative Procedures Act, 5 U.S.C. 553(d), to put this action into effect less than 30 days after publication in the **Federal Register**. All of the requirements and obligations in the State's program are already in effect as a matter of State law. The USEPA's action today does not impose any new requirements with which the regulated community must begin to comply. Nor do these requirements become enforceable by the USEPA as Federal law. Consequently, the USEPA finds that it does not need to give notice prior to making its approval effective.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this notice from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this tentative approval will not have a significant impact on a substantial number of small entities. It does not impose any new burdens on small entities. This proposed notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of sections 2002, 4005, and 4010(c) of the Solid Waste Disposal Act, as amended; 42 U.S.C. 6912, 6945, 6949a(c).

Dated: June 3, 1994.

David A. Ullrich,

Acting Regional Administrator.

[FR Doc. 94–14283 Filed 6–10–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

June 6, 1994.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on these information collections should contact Timothy Fain, Office of Management and Budget, room 3221 NEOB, Washington, DC 20503, (202) 395–3561.

Note: The Commission has requested expedited review of these items by June 29, 1994, under the provisions of 5 CFR 1320.18.

OMB Number: 3060–0563.

Title: Section 76.915, Change in status of cable operator.

Action: Extension of currently approved collection.

Respondents: State or local governments, and businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 465 responses; 2.39 hours average burden per response; 1,111 hours total annual burden.

Needs and Uses: Section 76.915 is used to determine whether or not a cable television system is subject to effective competition and therefore, not subject to rate regulation under the 1992 Cable Act. If the collection of information was not conducted under §§ 76.915(b) and (d), the potential for franchise authority error in determining the presence of effective competition would be unchecked and could lead to deregulation of cable rates for systems not subject to effective competition in contravention of the 1992 Cable Act. Franchising authority decisions on petitions for change in status must be made within 30 days after the pleading cycle set for in § 76.915(a) closes. Franchising authorities must notify the Commission within ten (10) days of any decision changing status. Unless the Commission receives an opposition to such changes in status, the decision will become final 30 days after adoption by the franchising authority.

OMB Number: 3060–0564.

Title: Section 76.924, Cost accounting and cost allocation requirements.

Action: Revision of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: Recordkeeping requirement.

Estimated Annual Burden: 30,070 recordkeepers; 80 hours average burden per recordkeeper; 2,405,600 hours total annual burden.

Needs and Uses: The requirements of this section are applicable to cable operators for which the basic service tier is regulated by local franchising authorities or the Commission, or, with respect to a cable programming services tier, for which a complaint has been filed with the Commission. The requirements of this section are applicable for purposes of rate adjustments on account of external costs and for cost-of-service showings. Cable operators shall maintain their accounts in accordance with generally accepted accounting principles, except as otherwise directed by the Commission. Cable operators shall maintain accounts in a manner that will enable identification of appropriate costs and application of the Commission's cost assignment and allocation procedures, to cost categories necessary for rate adjustments due to changes in external costs and for cost-of-service showings. Such categories shall be sufficiently detailed and supported to permit verification and audit against the company's accounting records. The Commission determined that it will include a Second Further Notice of Proposed Rulemaking issues pertaining to what cost accounting and cost allocation requirements it should adopt on a permanent basis.

OMB Number: 3060–0565.

Title: Section 76.944, Commission review of franchising authority decisions on rates for the basic service tier and associated equipment.

Action: Extension of a currently approved collection.

Respondents: State or local governments, business or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 2,000 responses; 40 hours average burden per response; 80,000 hours total annual burden.

Needs and Uses: Section 76.944 ensures that any participant at the franchising authority level in a ratemaking proceeding may file an appeal of the franchising authority's decision with the Commission within 30 days of release of the text of the franchising authority's decision. Oppositions may be filed within 15 days after the appeal is filed, and must be served on the party(ies) appealing the rate decision. Replies may be filed 7 days after the last day for oppositions and shall be served on the party(ies) to the proceeding. Commission review of appeals is necessary to ensure uniformity of interpretation of these federal guidelines. Otherwise, rulings by state or local courts in different parts of the country could produce varying and conflicting determinations about Section 623 and the Commission's Rules which could frustrate the purpose of having federal guidelines.

OMB Number: 3060–0569. .

Title: Section 76.975, Commercial leased access dispute resolution.

Action: Extension of a currently approved collection.

Respondents: Individuals or households, businesses or other for-profit (including small businesses).

Frequency of Responses: On occasion reporting requirement.

Estimated Annual Burden: 500 responses; 8 hours average burden per response; 4,000 hours total annual burden.

Needs and Uses: Section 76.975 provides that (1) any person aggrieved by the failure or refusal of a cable operator to make commercial channel

capacity available or to charge rates for such capacity may file a petition for relief with the Commission; (2) this petition must state concisely the facts constituting a violation of the FCC's leased access rules and the specific rule or regulation violated, and certify that the petition for relief was served on the cable operator; and (3) any petition for relief must be filed within 60 days of the alleged violation. A cable operator would then have 30 days from the date of filing the petition in which to respond. These requirements are designed to assure that the leased access option brings about the intended diversity of programming and competition in programming delivery. The information will be reviewed by FCC staff to resolved access disputes. These expedited leased access procedures may obviate the need for oral rulings or other emergency processing of leased access disputes.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–14216 Filed 6–10–94; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Mutual-to-Stock Conversions of State Nonmember Savings Banks

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice; request for comments.

SUMMARY: As previously indicated in Congressional testimony and in public statements, the FDIC has been at work on a fundamental review of the process by which mutual thrifts convert to stock form. This request for comments reflects that study. The intended effect of this notice is to obtain comments on the suggested approach to resolving fundamental concerns about the current mutual-to-stock conversion process.

DATES: Written comments must be received by the FDIC on or before August 12, 1994.

ADDRESSES: Written comments shall be addressed to the Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. Comments may be hand-delivered to room F–400, 1776 F Street, NW., Washington, DC, on business days between 8:30 a.m. and 5 p.m. (FAX number: (202) 898–3838). Comments will be available for inspection in room 7118, 550 17th Street, NW., Washington, DC between 9 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Robert H. Hartheimer, Acting Director, Division of Resolutions (202/898–8789), John G. Finneran, Jr., Acting Deputy General Counsel, Legal Division (202/898–3766), Robert F. Miailovich, Associate Director, Division of Supervision (202/898–6918), Robert W. Walsh, Manager, Planning and Program Development Section, Division of Supervision (202/898–6911), Joseph A. DiNuzzo, Counsel, Legal Division (202/898–7349), Federal Deposit Insurance Corporation, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Historical Background

Mutual savings institutions were founded to fill gaps in the market—and for a social purpose. Commercial banks have not always welcomed retail customers as either depositors or borrowers. Mutual savings banks were in many respects charitable organizations designed to encourage and facilitate thrift on the part of urban wage-earners. Their trustees were self-perpetuating groups of leading citizens, some of whom may have contributed the capital to establish the bank in the first place, who took no fees and did no business with the bank. Savings and loan associations were essentially cooperatives. One became a "member" in order to save—in order eventually to borrow the money to build a home. There were limitations on the ability to withdraw one's funds. The right to be the next borrower, when enough funds had accumulated, was often decided by lot. Trustees were elected by the members—and in the early days members were required to attend meetings and take their turn as officers. The notion of "self-help" motivated both sorts of formations. At one time, people spoke of the spread of these institutions as a "movement."

As a legacy of that tradition, today there are approximately 1,100 mutuals in the United States. (Ten years ago there were about 2,500, five years ago 1,775.) From time to time, one or another of them desires to convert to stock form. It may be that they need more capital—in some cases on an urgent basis. It may be that they see expansion opportunities and need a currency (stock) with which to acquire. For many small institutions, it makes sense to join a larger organization, and they often need to convert to be able to do so. Based on our own research and analysis, as well as published cases, there is also little question that some institutions have converted primarily to enrich those who controlled them.

The existing form of transaction by which both federal and state mutuals convert was developed by the Federal Home Loan Bank Board ("FHLBB") in 1974. What happens, essentially, is that the mutual sells itself, for cash, to whoever buys its newly issued stock. Various categories of potential purchasers get priority. In general, depositors stand at the head of the line. To the extent depositors and others with priority rights do not subscribe for stock, an attempt is made to sell it locally. If stock is still left over, it is sold to investors with no particular connection to the converting institution.

The FHLBB was conscious, when it first wrote rules for conversions, that there might be value to the right to subscribe for stock in a conversion. For example, if a mutual with $100 million of net worth raised only $20 million of new capital in converting, whoever got to buy the stock would have a claim on $120 million of net worth. In such a situation, the stock would almost certainly be worth much more than the buyers had paid for it. For about a year, in the early '70s, the FHLBB took the view that rights to buy stock in a converting institution should be distributed to its depositors, who could either exercise and become owners or sell the rights for their intrinsic value.

The FHLBB subsequently abandoned this approach, however, primarily out of concern that depositors would shift funds from association to association, hoping to capture the intrinsic value of the rights when the conversion occurred—and on a scale that could be destabilizing. At the same time, it adopted the current approach, which included an "appraisal" requirement, providing that a converting institution issue and sell its capital stock at a total price equal to the estimated *pro forma* value of such stock in the converted institution.

Because of moratoria imposed in 1973 and 1974, the existing form of transaction was not tested in great numbers until the '80s. At that point, it worked quite well, because many converting institutions had little net worth or economic value, and the market was extremely wary even of those that did. Depositors and other investors who subscribed for stock got securities with a market value approximately equal to what they paid for them.

Problems With the Existing Process

In the last two-plus years, as non-viable institutions have been closed and the industry has returned to health, the existing form of transaction has delivered windfalls to those who

subscribed. In the more than 100 standard conversions in 1992 and 1993, the trading price at the end of the first day has exceeded the subscription price by, on average, 26%. In 40 instances, this price increase (the "pop") has exceeded 30%; in 6 instances it exceeded 50%.

As it has become obvious to everyone familiar with the process that buying stock in a conversion is an easy way to make money, a class of "professional depositors" has emerged—wealthy individuals and investment partnerships with $50 to $500 accounts at literally hundreds of mutuals across the country. Investment banking firms active in the conversion arena advise us that there are perhaps 500 to 1,000 such professional depositors, and that they can take the account list of almost any mutual in the nation and recognize hundreds of names at sight. These professional depositors buy the maximum amount of stock allowed—and consequently the overwhelming majority of the stock issued in almost every conversion. Market participants have told us that in a typical conversion, less than 5% of depositors participate at all—and that the majority of them are professionals or insiders.

Giving depositors the *opportunity* to subscribe for stock has not resulted in broad distribution of stock among them. The vast majority of depositors in mutual savings institutions keep their savings there precisely because they are risk-averse. They are likely to read and ignore or discard the offering circular. The money they keep in a savings institution has been put aside for retirement, or for emergencies, or for the down payment on first house, and cannot be invested in an initial public offering. They do not participate. The existing conversion process does not benefit them at all.

As it has become obvious to everyone who understands the process that the stock of converting institutions often trades up sharply on the first day of issue, those who control mutual institutions have become more and more interested in converting. Managers and even non-executive trustees have been awarded free stock and options (at the subscription price). Employee Stock Ownership Plans ("ESOPs") have been created and given priority in buying stock. These and other devices have resulted in substantial transfers of value.

As it has become clear that most conversions would be oversubscribed, the "allocation" process has clearly been subject to abuse. For example, we have been told that in transactions where allocations were likely to be based on size of deposit because of expected oversubscription, insiders and others in a position to know the relevant record date have been able to transfer large amounts of money into their accounts on that single day. Where the right to subscribe has been limited to long-term depositors, or depositors with local addresses, we are told that professionals are sometimes able to persuade other depositors to "front" for them (despite rules to the contrary).

Problems With Appraisals

As market valuation of thrifts has risen (and as conversions have come to be oversubscribed, with stocks generally trading up), the integrity of the appraisal process has been compromised. The FDIC's experience with appraisals is that they typically follow a certain pattern. A "peer group" of stock savings institutions is identified. (How they were selected out of the much larger universe of potential "peers" typically is not well explained.) The peer group market/book ratio is calculated. It is then stated that the converting institution should be valued (on a pro forma basis) at a discount from that ratio. Two reasons for this are typically given. The first is that the converting mutual is actually inferior to the peer group—which raises the question, why were they chosen as peers in the first place. The second, discussed below, is the need for a "new issue discount." (Price/earnings ratios are also calculated, but there is rarely a cogent analysis of the converting institution's earnings potential once it appropriately deploys its new capital.)

At March 31, 1994, the thrift industry average market/book ratio was 99% and the median was 95%. (At year-end 1993, those figures were five percentage points higher, a year before that 15 percentage points lower.) The market tends to value recently converted institutions below the industry average—primarily, in our judgment, because the return on a newly converted institution's book, or capital, will be low by industry standards until it is able to leverage the new capital it raises in the conversion. During 1992 and 1993 as a whole, the average market/book ratio of a newly converted institution, at the end of the first day of trading, was 72%. To meet the "appraisal" requirement that an institution's stock trade at what it was sold for in a situation where a 72% market/book ratio was a reasonable expectation, a mutual would have to more than triple its capital base. To be precise, a mutual with a $100 million net worth would need to raise $257 million (ignoring expenses and the effects of establishing an ESOP or a management retention plan), since 72% of $357 million (the resulting book value) equals $257. It is extremely hard for a company in a highly competitive industry prudently to employ that much new capital.

What appraisal firms did, in 1992 and 1993, was to "appraise" converted institutions on average at 57% of book. They did this despite the fact that, on average, these institutions traded up the first day by 26%.

Appraisers' principal rationalization for this discrepancy has been that, in the context of an initial public offering, a "new issue discount" is required. While it is certainly true that it is difficult to bring a company public without pricing the shares at a level that stimulates unfilled demand—resulting in a "pop"—we question the magnitude required in an environment where virtually all conversions are trading up. In some circumstances, the need for a "new issue discount" has been asserted in appraisal updates issued *after* the end of the subscription period, and in the face of 100–300% oversubscriptions. We would also observe that the literal language of the OTS regulations and guidelines on conversion appraisals does not allow for a market discount. The question to be answered is: how much stock has to be sold to eliminate any "pop"?

We suspect that the practices we describe developed over time as appraisers, and mutuals and their advisers, attempted to deal in good faith with the inherent contradictions of, on the one hand, a form of transaction perfectly suited to institutions on the brink of failure, or which the market feared, and, on the other, a thrift industry that has returned to health.

As a footnote to the conversions of the 80's, it is worth observing that many institutions which emerged with very high capital ratios were so anxious to earn a good return for their new, demanding stockholders, that they grew their balance sheets more quickly than they should have and took risks they did not fully understand. A total of 77 New England savings banks converted in the years 1984 through 1989; these transactions increased their weighted average capital ratio to 15.2% from 6.6%; 16 of them (or 21%) subsequently failed.[1] In addition, the rush by converted institutions to increase assets quickly tended to reduce credit standards throughout the market, imperiling other institutions.

[1] "Understanding the Experience of Converted New England Savings Banks," Eccles and O'Keefe, FDIC (1994).

Changing the Process

What this history demonstrates is the need for fundamental change:

• The "appraisal" process puts the government in the awkward position of substituting its judgement for that of the market...

• . . . and forces most converting institutions to raise far more capital than they can prudently deploy...

• . . . but still fails to eliminate windfalls.

• This has put well-intended individuals involved in more than a few conversions in the ethically uncomfortable position of pretending the appraisal requirement is met when they know it isn't.

• The required form of transaction transfers the existing value of the mutual to a small group of individuals with the cash, sophistication and risk appetite to buy the stock.

• Because value is being "given away," the process invites insider abuse. And because the value has to go somewhere, the ingenuity of market participants eventually frustrates attempts to eliminate the problem.

We share with others a desire to address problems arising under the existing rules. We do not in any way want to prevent valid conversions from taking place—nor encourage conversions that fail to meet a valid business need. We also desire that our handling of conversions be generally consistent with that of the OTS.

For these reasons we are publishing elsewhere in this issue of the **Federal Register** a proposed rule which: (a) reaffirms our intention to review conversion applications submitted by state-chartered nonmember insured savings banks (and applications for insurance from newly established associations to be owned by mutual holding companies), and (b) explicitly establishes certain criteria which are comparable to those of the OTS.

At the same time, we feel it is only fair to put the public on notice that we believe it may be difficult for a healthy mutual to develop a sound business plan while raising enough new capital to receive a valid appraisal.

The noted investment manager, Peter Lynch, describes this problem, and the existing form of conversion generally, in graphic terms. Buying stock in a converting mutual, he writes, is like going to an automobile dealer to buy a car, giving him a check for the purchase price, and discovering on the way home that the dealer has put your check in the glove compartment of the car. Unless the car is an extraordinary lemon, this is bound to be a good deal. And increasing the size of the check—which is what "disciplining the appraisal process" amounts to—won't make it stop being a good deal.

It is possible that the recent OTS amendments (and the requirements in the FDIC proposed rule mentioned above) which aim to give long-term, local depositors more rights—but within the framework of the existing form of transaction—may produce similarly frustrating results. As noted earlier, "real" depositors are not going to benefit, no matter what priorities they receive, because "real" depositors still may not subscribe in significant numbers.

We believe that "insider abuse," which is the focus of much recent discussion and of several of the OTS amendments and the requirements of the FDIC proposed rule, is only a piece of the problem. In one recent conversion, for example, state authorities forced the institution to rescind stock grants which would have benefited insiders by approximately $40 million.

This was laudable. But the "pop" in the price of the converted institution's shares benefited those who subscribed by more than $200 million on the first day of trading and by $275 million after one month's trading. All who had their subscriptions filled were depositors—but only 5% of all depositors subscribed. We question whether it can be an adequate response to the trustees' fiduciary duty to deliver that much value to the tiny fraction of a mutual institution's depositors with the capacity to line up and collect it.

We continue to believe—as stated in testimony before the Congressional Banking Committees—that the conversion process is fundamentally flawed. Thus, in addition to the proposed rule published elsewhere in this issue of the **Federal Register** (which is intended to address concerns within the existing mutual-to-stock conversion framework) we also are issuing this request for comments seeking views on an approach which might address the basic flaws in the existing scheme.

The (Misguided) Question of "Ownership"

The most vexing question facing everyone who has ever dealt with mutual-to-stock conversions is: "Who owns mutuals?" That may be the wrong way to ask the question. As indicated earlier, mutuals were originally closer to charities or community organizations than to commercial enterprises. As a by-product of doing what they were founded to do, they have accumulated net worth. The trustees hold that value in trust. The right question more likely should be: "If the trustees decide to convert, to whom should that value be delivered?"

We believe there are two ways to answer the question: leaving it to the trustees in the reasonable exercise of their fiduciary duty, or legislation.

Leaving the decision to the trustees is logical, but may be impractical. The best argument in favor of this approach is that the history and circumstances of institutions vary, that boards are designed to balance competing interests and considerations, that existing law should be adequate to prevent abuse, and that the government should not interfere unless it has to. As different boards of trustees wrestle with the issues, a consensus should *tend* to emerge.

The argument against leaving the decision to the trustees is twofold. Taking the positive view of such boards, it places an unfair burden on them and their institutions. They will be lobbied by potential claimants. Someone will object to whatever decision they make. Taking the skeptical view—and there is no question that *some* boards have interpreted their fiduciary responsibilities rather loosely—leaving the decision to the trustees is unwise. The FDIC will in the end have to expend significant resources providing informal guidance to the conscientious and making sure that trustees' determinations *are* reasonable.

Some could well believe that the preferable way to answer the question of "to whom the value should be delivered" would be legislation. In fact, the main purpose of this notice and request for comments is to solicit views from the public on a legislative proposal that the FDIC could prepare and present to the appropriate legislative body(ies). Legislation could take the form of state law, through which each state would decide the question for the mutual banks it charters (or has chartered), or federal legislation, through which the Congress decides the issue on a nationwide basis. Uniformity argues for federal legislation, but questions of federal preemption of state law would have to be considered.

If federal legislation is decided upon, the Congress could either establish in the statute explicit value-distribution rights or authorize the appropriate federal agency (presumably, the FDIC for state savings banks and the OTS for federal and state savings associations) to determine to whom the value of the mutual institution should be delivered.

Who Should Get the Value?

We are aware of at least seven groups (in no particular order) which might lay a claim to a mutual's value:

(1) Depositors.

(2) Other creditors, including holders of subordinated debt.

(3) Borrowers.

(4) Employees—whether through the medium of an ESOP, which acquires shares in the conversion, or other arrangements designed for senior management.

(5) Trustees.

(6) The Bank Insurance Fund or the Savings Association Insurance Fund, the U.S. Treasury or the relevant state government.

(7) Charitable organizations or trusts serving the community and purposes for which the converting institution was originally founded.

The question of who receives the value is primarily a political one. Accordingly, we do not believe the FDIC should be the one to decide among these (or other) claimants. We have a supervisory interest in seeing the question answered, however, and answered in a way that is generally seen to be sensible and fair.[2] To that end, the following comments are intended to focus public discussion of the question.

Taking each of the seven parties in turn, we believe that at least some of the value will have to go to depositors. Although the law of many states implies that they are not "owners" of mutual institutions in the classic sense of the term, and, at least since the creation of the FDIC, they have not borne significant risk, they have supplied the institution with its resources and in many cases have a vote on conversion. Although we have scant sympathy for those professional depositors who have opened small accounts in the expectation of large windfalls and whose hopes would be disappointed by the reforms we propose, it is perhaps the case that some depositors of all types have known that conversion was a possibility, and in a sense may have "bargained for" at least some share of the value of the institution. The fact that existing OTS regulations and most states' laws give savings and loan association depositors preference in subscribing for stock may not create an *entitlement*, but it has probably created an *expectation*—which will probably have to be satisfied to some degree.

Among depositors, there are questions of allocation: by size, by tenure, by address. What is theoretically desirable is often beyond the scope of the converting institution's data processing systems. Attempts to favor "local" depositors can be frustrated in various ways. There is also the question of record date—and the problem of long-term depositors who unwittingly close their accounts shortly before the record date. Our current inclination would be to make the record date fairly recent (as a convenience) and to award one share of the aggregate value going to depositors for each year that each account has been open. We expect that allocating shares to accounts closed prior to the record date, while theoretically equitable, would prove impractical.

In contrast to depositors, creditors are uninsured and do take risk—especially since the adoption of federal depositor preference. On the other hand, most creditors have that status as an incident of some other relationship—*e.g.*, as a supplier of goods and services—and would be surprised (if delighted) to discover that it gave them any claim on the value of the institution. We would therefore expect a consensus to emerge favoring their exclusion.

The argument for giving debtholders part of the value is stronger. They have the position they do because of a conscious financial transaction. In most cases, such debt is subordinated and does represent capital. Debtholders, while subordinating themselves to depositors for a higher rate of return, did not "bargain for" any share of the mutual's net worth—but neither did most depositors. Were it to be established that subordinated debtholders were entitled to a share of the value, it might make it slightly easier for small mutuals to raise debt capital, which has appeal from a safety and soundness standpoint. As an equitable approach and from our perspective as insurer, we would favor giving debtholders some of the value of a converting institution, and we would not expect such a decision to strike people as unreasonable or unfair.

If such a decision is made, we believe the most feasible method of allocation is by size of holding, with debtholders as a whole receiving a share of the value going to debtholders and depositors combined that is proportionate to debt's share of the institution's combined liability to depositors and debtholders. The length of time the debt has been outstanding, or in any particular holder's hands in the case of tradable debt, should not, in our judgement, have bearing.

Federal Home Loan Bank advances are an important part of the liability structure of many banks. The question arises: if other debtholders should receive some of the value of a converting institution, why not the relevant Federal Home Loan Bank? We believe there is a good reason for excluding them: the fact that advances are fully secured, making the Banks effectively senior to depositors.

Although borrowers are technically "members" of some mutual savings institutions, we believe most borrowers think of the institution as having a claim on them, rather than the reverse. During that period when they are borrowers, they are in fact already receiving a benefit. Borrowers are typically required to open deposit accounts as well. Finally, borrowers' loans can be, and often are, sold to third parties; distinguishing their rights from those of borrowers whose loans have not been sold would present formidable legal and logistical challenges. For all these reasons, we do not believe the consensus would be to give them a claim, as borrowers, on the value being transferred.

We would point out, however, that at least some knowledgeable observers view the rights of depositors to a share of the converting institution's value as not really that much stronger than those of borrowers. The vast majority of both groups do business with mutuals on an arms-length basis, at market terms, at no significant risk, and with no expectation of a windfall. In the view of some observers, it is only the absence of any other "owners," the fact that depositors turn up on the side of the balance sheet where stockholders would be if there were any, and the practice of treating depositors as stand-ins for owners that give depositors the presumption of a right to receive value.

Rewarding Employees and Managers

It is sometimes said that managers—and to a lesser degree employees—of mutual institutions enjoy more job security and a less demanding work environment that their counterparts at organizations subject to stockholder discipline, but are in turn less well compensated. Conversion changes their situation. Some argue that these considerations—and years of loyal service—entitle managers to a share of the value. The opposing view is that managers of mutuals chose to work there and "bargained for" whatever pay they got.

We understand both sets of arguments. The no-entitlement view, if

[2] Pending a legislative determination of this question, we also have a supervisory interest in ensuring that the boards of mutual institutions fulfill their fiduciary duties in preserving the value of the institution. Accordingly, the FDIC will continue to review proposed conversion transactions of state mutual savings banks and take appropriate action where the transaction raises fiduciary concerns.

we can call it that, has logical purity. The view that managers deserve part of the value has emotional appeal, especially when they have spent decades at the converting institution. The issue of appropriate treatment of long-serving employees is a good example of the essentially political nature of the value-distribution question.

Were we required to decide this issue without legislative guidance, we would prefer to see all benefits to employees of insured institutions be delivered as *compensation*. We would certainly endorse the creation of an ESOP immediately after conversion. If the conversion process has entailed extra effort on the part of some (or all) employees, they may be entitled to bonuses. And if conversion entails a radical reduction in job security, it may be appropriate to adopt a severance policy consistent with standard industry practice for stock institutions.

Focussing on the top few executives and non-executive trustees, it is certainly the case that their jobs become harder and less secure following conversion. They may be entitled to significant raises. It may be appropriate for a few senior executives to receive employment contracts. Again, all such steps should be evaluated within the context of "compensation." We believe that for individuals who control the conversion transaction to lay any claim, in their capacity as managers and trustees, to a portion of the value being transferred creates a conflict of interest.

It is currently common practice for converting institutions to create stock option plans. We believe it is appropriate for stock institutions to have incentive compensation plans of this type. As indicated in the FDIC proposed rule mentioned above, we agree with the OTS that such plans should, at the earliest, be adopted at the first stockholders' meeting following conversion and that the exercise price for any such options should be set at that time, rather than being based on the conversion price. The latter practice, which had been common, gave those who controlled the transaction an incentive to underprice the shares, and masked transfers of value to those executives receiving options, which, if properly measured, and viewed as compensation, would have been deemed excessive.

A "Government" Share?

Several individuals and organizations have suggested that a share of the existing value of converting mutuals should go to one of the deposit insurance funds, or to the U.S. Treasury, or to the government of the state which chartered the institution. We are uncomfortable with the first suggestion. Converting institutions have been paying premiums, just as stock institutions have. No one would lay claim to a portion of the latter's net worth. The FDIC should not do so with regard to mutuals.

Some have advanced the argument—based on the cost of the savings and loan crisis—that taxpayers generally, through the medium of the Treasury, should get a portion of the value that conversion releases. As a fairness matter, we believe this argument is flawed: Institutions now converting have *not* failed, and have *not* cost taxpayers anything. Most state savings banks, whose conversions fall under our jurisdiction, are insured by the Bank Insurance Fund, which taxpayers have not had to support.

Another argument for conveying the value of converting mutuals to the government—whether state or federal—is that "no one owns them," and that the fairest course is therefore to avoid giving the value to anyone in particular. We will have more to say on this topic later in this Notice, but would observe that if the form of transaction suggested below is adopted, many of those who receive the value of the institution will get cash, and will pay taxes on it as income, giving government its "share."

Fulfilling Mutuals' Original Purpose?

As indicated earlier, mutuals were created for reasons that have now largely disappeared. Ordinary citizens have plenty of places to put their savings. A host of private- and public-sector entities facilitate home-ownership. The trustees of a mutual savings institution having regard for their fiduciary duties might liken their situation to that of the board of the March of Dimes, which had to redefine its mission after polio ceased to be a major threat. From that perspective, it may be appropriate for a portion of the value of a converting mutual to be transferred to one of more community organizations or charities.

This approach raises the question, "*Which* organizations?"—which could be extremely hard to answer. As with the matter of dividing up the value in the first place, leaving the decision to the trustees places a burden on them. Nevertheless, under this approach, the trustees are the ones to decide. If no appropriate vehicles existed, a trust might be established to receive the transferred value and make grants over time. The responsibility for allocating funds is borne by thousands of trustees of colleges and hospitals and foundations and charities all over the country; there are plenty of examples to follow—and laws to prevent abuse.

An alternative to endowing a new or existing charitable organization is for the converted institution to accept special obligations to serve the convenience and needs of the community for banking services. This is a very broad subject, which we are not prepared to explore exhaustively here. We would make three basic points, however. First, while all banks clearly have public obligations, it seems likely that imposing different burdens on institutions which are otherwise direct competitors will ultimately create safety and soundness concerns. For that reason alone we would oppose this approach.

Second, the value transfer inherent in an institution's voluntary acceptance of a special obligation to the community—*e.g.*, a promise to make affordable housing loans, or to open branches in distressed neighborhoods—is difficult to measure against immediately cashable value delivered to depositors or others. We think it would be difficult for trustees to know what they'd actually done.

Third, the history of mutual savings banks does suggest that organizations to which any portion of the value of a converting institution might be transferred should be locally focussed, and should have the encouragement of self-help as a major objective. To give only two of many possible examples, helping to capitalize a community development bank, or establishing a day care facility which permitted single mothers to work, would have satisfying historic resonance.

No Entitlement; No Forced Conversion

The idea that some of the value of a converting institution should be delivered to the "community" it was chartered to serve is as strongly opposed by some as it is supported by others. This is another excellent example of the political (rather than regulatory) character of the issue.

At least two arguments against a "community" share have been advanced. The first is that the "wrong" charities and community organizations would be chosen—wrong from the speaker's point of view, that is—because of their skill and persistence in lobbying the board. The second is that such organizations, seeing latent wealth available, would put pressure on boards to convert.

This second argument is also advanced, as it was in the early '70s, against giving *depositors* transferrable rights: if value is "available," they will put pressure on institutions to convert.

Being *exempt* from constituent "pressure" is unhealthy for any organization. Legislators have to face the voters. Independent agencies are subject to oversight. Stock organizations can be taken over. We do not believe that the trustees of mutuals should be allowed to ignore completely the views of those the institution exists to serve.

Nevertheless, we would emphasize that however one decides the value-distribution issue, that does *not* answer the (misguided) question, "Who owns a mutual?" It does not, in our view, give anyone standing to demand that an institution convert—any more than a group of private citizens could demand that the Red Cross "convert"! Conversion is a decision for the trustees, and until they make such a decision, the FDIC will not get involved—except where inadequate capital makes it desirable from a safety and soundness standpoint. Mutuality has a distinguished history in America. In the aggregate, mutuals have cost the FDIC proportionately less than have stock institutions. We would not endorse a system that compelled mutual institutions to change their character.

New Form of Transaction

Having adopted *an* answer to the question, "Who gets the existing value?", the problem of delivering that value is easier to address. We would suggest the following approach:

- The trustees decide how much capital they need to raise as a business matter. (There is no "appraisal" process.)
- The trustees hire underwriters to conduct an initial public offering—and an escrow agent for the purposes described below.
- Rights to subscribe for the stock of the converted institution are distributed to "rightholders" in accordance with the principles outlined above.
- Each of these rights will have value. For example, if a mutual with $100 million of net worth elected to raise $20 million, and distributed 4 million rights to buy 4 million shares (at $5 each), and the market valued the converted institution at 80% of resulting book (or $96 million), the shares would trade at $24 each, and the right to buy a share for $5 would be worth $19.
- The rights would be "transferrable" only in the sense that, at the end of the subscription period, the escrow agent would exercise on behalf of any rightholder who had not done so, turn the stock over to the underwriter for sale, give $5/share of the proceeds to the company and send the difference to the rightholder.

It is likely, under this form of transaction, that very few rightholders would chose to exercise, and that the underwriters would essentially be selling the whole institution. This gives rise to several questions. For example, wouldn't the transaction costs be awfully high, relative to the amount of new capital being raised? The answer has to be yes—but the cost should be measured relative to the major strategic accomplishment of conversion itself; presumably there was a reason to convert, or the trustees wouldn't have undertaken it. It is also worth observing that the need (opportunity) to sell nearly 100% of the stock will lead many more underwriting firms to compete for the business.

Another question is why not just distribute stock certificates instead of rights? The basic answer is that the selling effort of a public offering is what gets the market to focus on the fair value of the shares, and gets a group of underwriters committed to make a market in them afterwards. A direct distribution of shares could saddle the bank with an uneconomically large number of shareholders. It would leave unsophisticated holders of small numbers of shares in danger of being persuaded to sell at prices below intrinsic value. Finally, to the extent that rights were distributed to a community-oriented charity, a stock sale should probably be required to avoid leaving a controlling block of stock in the hands of a foundation or organization which might be governed by the directors of the converted mutual.

One argument advanced against this form of transaction is that the existing process has raised enormous amounts of money to recapitalize ailing thrifts, and that while the industry is healthy now, we may need to be able to do that again some day. True—but the approach here proposed would be able to do that as well. If a thrift with a low equity ratio wanted to convert, it could distribute rights and hire an escrow agent and an underwriter, just the same. The shares could be priced wherever they had to, to be sold. The rights just wouldn't have much value—but that would appropriately reflect the institution's perilous condition.

Another argument advanced is that the recent market is a highly unusual one, that the embarrassing increases in share price on the day of conversion have already begun to shrink and could soon disappear. They may or may not—and "pops" *per se*, though on a more modest scale, are effectively a requirement of the initial public offering market—but the transactions the existing conversion process requires would still be inefficient to the point of being improper. Under current rules, a well capitalized thrift is only able to avoid a "pop" by increasing its equity ratio to the point where its market/book ratio falls below industry norms—which says that a lot of the new capital will either be underutilized for several years, or used imprudently. What all parties at interest should want is the *highest* market/book ratio that can be obtained, because that suggests the right business judgements have been made regarding capital structure and growth prospects. The elimination of "pops" would suggest a destruction of the value the trustees hold in trust, and a violation of their fiduciary duty of care—regardless of who that duty is owed to.

Merger Conversions

The OTS interim final rule would prohibit merger conversions—whereby a stock institution acquires the assets and assumes the liabilities of a mutual with no significant payment to anyone—except where the survival of the converting institution is in question. The form of transaction we here propose would permit merger conversions, but would make them essentially a purchase of subscription rights by the acquiror, with the value paid for the rights—either in cash or other consideration—going to rightholders. This would have efficiency benefits for those smaller institutions whose decision to convert flowed from a decision to affiliate with a larger organization. Trustees who decided to convert and be acquired would of course have the same obligation to get the best possible price for rightholders.

Mutual Holding Companies

The Competitive Equality Banking Act of 1987 and the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 authorized conversion of mutual savings institutions into federal mutual holding companies, which in turn transfer virtually all their assets and liabilities to new, stock savings institutions, part of whose stock is acquired by subscribers in the conversion, with the majority retained by the mutual parent. This structure has the benefit of permitting converting institutions to raise only the amount of new capital they actually need. It has, however, in our view, potential for even a higher level of insider abuse than in standard conversions. We note that many newly formed mutual holding companies propose to refuse dividends declared by their operating subsidiary—with no corresponding change in their

percentage ownership of the subsidiary as dividends flowed to its minority stockholders. It seems to us that this could constitute a breach of fiduciary duty on the part of the trustees—which would be particularly acute were the trustees significant stockholders of the subsidiary. (It is worthy of note that "pops" in conversions involving mutual holding have been in the 40% range, compared to 26% for standard conversions.) As our suggested form of standard conversion would eliminate the need to raise excessive amounts of capital, we believe use of the mutual holding company structure should be discouraged in future conversions.

Summary

As we have studied the mutual-to-stock conversion process, it has become clear that there are two intertwined problems to be solved. One is technical: how to do it? The other is political: who should get the value? The first problem is interesting and challenging, but the second one is fundamental.

Deciding who should get the value makes a lot of people uncomfortable. Almost every answer makes someone angry. As we read the history, the FHLBB settled on the existing form of transaction precisely because it allowed them to avoid answering the value-distribution question. We have come to believe that the primary appeal of some value-distribution schemes—*e.g.*, giving it to depositors or to "the government"—is that they appear to disperse value enough to make the issue moot. As we have discussed the subject over the past two months, we have observed how tempting it is to continue to avoid it. Lawyers and investment bankers and professional depositors with a vested interest have urged us to drop the subject—which is not surprising. But even disinterested individuals wind up asking, "Do we care?"—and they reach that point with remarkable consistency.

We should care. The integrity of a banking system is a national treasure. Careless distribution of the value of converting institutions undermines that integrity. A form of transaction in part designed to avoid the value-distribution question—though it worked well for a while—today forces well-meaning bankers and lawyers and trustees and regulators to wink at polite fictions. Many have suggested that this is hardly a crime, since there is no victim. We disagree. Honor is the victim.

Life is full of compromises. There is no "right" answer to the value-distribution question. But there is a right process for addressing it. We invite broad participation in fashioning a compromise, as only democracy can, with which no one is entirely satisfied, but in which all can take pride.

Questions on Which Comment Is Sought

The FDIC is hereby requesting comment during a 60-day comment period on all aspects of this notice, including the following specific issues:

(1) Should a mutual institution be required, as a threshold issue, to demonstrate a need to convert—or is it sufficient that it provide an adequate business plan for the future?

(2) In the absence of legislation, could and should the FDIC adopt guidelines or set standards for the distribution of the existing value of a converting institution, or could or should the matter be left entirely to the trustees?

(3) Whether it is legislation or the FDIC or the board of trustees that sets standards, what should they be? Who should get some of the value, how much, and how specific should the rules be?

(4) If depositors (or creditors or borrowers or employees) are to receive some of the value, how should it be allocated among them? Should amount of deposit or tenure of association be accorded more weight? Must depositors and debtholders be treated identically? What practical constraints exist, based on mutuals' information systems and resources? What should the record date be?

(5) If charitable organizations or foundations are to receive a portion of the value, how should the suitability of the recipients be determined? Should there be a presumption that the trustees' selection of recipients is reasonable? Do there need to be rules to prevent abuse of such entities—*e.g.*, through "consulting contracts" with trustees? Should such entities be required to sell at the time of conversion, or should they be permitted to diversify over time, in accordance with existing federal tax and banking laws?

(6) Does "pressure to convert" from parties who would receive value if an institution did so represent a legitimate public policy concern? How great might that pressure be? How can trustees of institutions which have not elected to convert be protected from unreasonable litigation?

(7) What potential problems (including tax issues and insider abuses) are there with the proposed new form of transaction, and how can they be avoided or alleviated? On the assumption that the market will gradually improve on any form of transaction, how specific does legislation or regulation need to be in that area?

(8) Should converting institutions (including those doing merger conversions) be required or encouraged to obtain "fairness opinions" from independent financial advisors? Should the FDIC attempt to "police" the market judgements involved in the process in any way?

(9) Should new mutual holding company creations be permitted? If not, how should existing ones be regulated?

By the order of the Board of Directors.

Dated at Washington, D.C., this 31 day of May, 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

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FEDERAL RESERVE SYSTEM

Banco Bilbao; Acquisition of Company Engaged in Permissible Nonbanking Activities

Banco Bilbao Vizcaya, S.A., Bilbao, Spain (Applicant), a foreign banking organization subject to the Bank Holding Company Act (BHC Act), has applied pursuant to section 4(c)(8) of the BHC Act and § 225.23(a)(2) and (3) of the Board's Regulation Y (12 CFR 225.23(a)(2) and (3)), to retain an interest in its indirect subsidiary, Probursa International Incorporated, New York, New York (Company), and thereby engage in the following securities-related activities:

(1) providing investment advisory services pursuant to § 225.25(b)(4) of the Board's Regulation Y (12 CFR 225.25(b)(4));

(2) providing full service brokerage services pursuant to §§ 225.25(b)(4) and (b)(15) of Regulation Y (12 CFR 225.25(b)(4) and (b)(15)), including exercising investment discretion on behalf of institutional customers;

(3) buying and selling, on the order of customers, all types of securities as a riskless principal; and

(4) engaging in the private placement of all types of securities as agent.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must

determine that the activity is, as a general matter, "closely related to banking." Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may be reasonably be expected to produce public benefits that outweigh possible adverse effects.

The Board previously has determined by regulation that the proposed investment advisory and full-service brokerage activities are closely related to banking under section 4 of the BHC Act. *See* 12 CFR 225.25(b)(4) and (b)(15). Applicant has committed that it will conduct these activities in accordance with the Board's limitations and restrictions on the conduct of such activities. The Board also has previously determined that the proposed riskless principal and private placement activities are closely related to banking, subject to certain prudential limitations on the conduct of such activities which address the potential for conflicts of interest, unsound banking practices, and other adverse effects. *See, e.g., J.P. Morgan & Company Inc.*, 76 Federal Reserve Bulletin 26 (1990); *Bankers Trust New York Corporation*, 75 Federal Reserve Bulletin 829 (1989). Applicant has committed to conduct the proposed riskless principal and private placement activities subject to the conditions and limitations contained in these and other Board orders approving these activities.

In order to satisfy the proper incident to banking test, section 4(c)(8) of the BHC Act requires the Board to find that the performance of the activities by Company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices. Applicant believes that the proposed activities will benefit the public by promoting competition and by providing a wider range of services and added convenience to Company's customers. Thus, Applicant believes that the proposed activities will result in benefits to the public that would outweigh any adverse effects associated with the proposal.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act.

Any views or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than July 6, 1994. Any request for hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, June 7, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-14263 Filed 6-10-94; 8:45 am]

BILLING CODE 6210-01-F

BNCCORP, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 5, 1994.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. BNCCORP, Inc., Bismarck, North Dakota; to engage *de novo* in providing management consulting to nonaffiliated bank and nonbank depository institutions pursuant to § 225.25(b)(11) of the Board's Regulation Y. These activities will be conducted in North Dakota, South Dakota, Minnesota, and Montana.

Board of Governors of the Federal Reserve System, June 7, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-14264 Filed 6-10-94; 8:45 am]

BILLING CODE 6210-01-F

FirsTier Financial, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 7, 1994.

A. Federal Reserve Bank of Kansas City (Stephen E. McBride, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *FirsTier Financial, Inc.*, Omaha, Nebraska; to merge with Cornerstone Bank Group, Inc., Council Bluffs, Iowa, and thereby indirectly acquire First National Bank, Council Bluffs, Iowa; Nevada National Bank, Nevada, Iowa; Security Savings Bank, Williamsburg, Iowa; and Valley State Bank, Rock Valley, Iowa.

B. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. *D.L. Evans Bancorp*, Burley, Idaho; to become a bank holding company by acquiring 100 percent of the voting shares of D.L. Evans Bank, Burley, Idaho.

2. *Heritage Oaks Bancorp*, Paso Robles, California; to become a bank holding company by acquiring 100 percent of the voting shares of Heritage Oaks Bank, Paso Robles, California.

Board of Governors of the Federal Reserve System, June 7, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-14265 Filed 6-10-94; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Workshop to Assist in Developing Criteria for Establishing Medical Surveillance Programs in Communities Exposed to Hazardous Substances: Meeting

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the following meeting.

Name: Workshop to Assist in Developing Criteria for Establishing Medical Surveillance Programs in Communities Exposed to Hazardous Substances.

Time and Date: 8:30 a.m.–4 p.m., June 23, 1994.

Place: Days Hotel at Lenox, (soon to be Holiday Inn), 3377 Peachtree Road, NE, Atlanta, Georgia 30326.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: This workshop is to assist ATSDR in developing standardized criteria for recommending the establishment of medical surveillance programs in communities where exposure to hazardous substances has resulted in an increased risk of disease.

Matters To Be Considered: Participants will be divided into the following three workgroups:

Workgroup 1: Exposure Criteria.

Workgroup 2: Outcome Criteria.

Workgroup 3: System Criteria.

Workgroup participants will discuss aspects of the working draft criteria developed by ATSDR and provide individual recommendations regarding the criteria.

Contact Person For More Information: Joyce Smith, Division of Health Studies, ATSDR (MS E31), 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 404/639–6200.

Dated: June 7, 1994.

William H. Gimson,

Acting Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–14251 Filed 6–10–94; 8:45 am]

BILLING CODE 4163–70–M

Centers for Disease Control and Prevention

Notice of Meeting

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) will convene the following meeting sponsored by the Division of Environmental Health Laboratory Sciences.

Name: Development of Innovative Technology for Measurement of Lead in Blood; Meeting of Grant Recipients and Cooperative Research and Development Agreement (CRADA) Partners.

Time and Date: 6:30 p.m.–9 p.m., July 19, 1994.

Place: New Orleans Marriott Hotel, 555 Canal Street, Mardi Gras Ballroom Sections F & G, New Orleans, Louisiana 70140.

Status: Open to the public, limited only by space available.

Purpose: The primary of this meeting is to brief the grantees and CRADA partners about CDC expectations for the grant and CRADA program, to encourage collaboration among grantees and CRADA partners and to review progress toward the objectives of the program.

Matters to be Discussed: Topics to be discussed include objectives of the CDC grant and CRADA program for the development of innovative technology for the measurement of lead in blood, impact of the Clinical Laboratory Improvement Act on the Technology, and an overview of each grantee and CRADA organization.

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Robert L. Jones, Ph.D., Supervisory Research Chemist, Nutritional Biochemistry Branch, Division of Environmental Health Laboratory Sciences, (F18), NCEH, CDC, 4770 Buford Highway, NE, Atlanta, Georgia 30341–3724, telephone 404/488–4367.

Written comments are welcome and should be received by the contact person no later than July 13, 1994. Persons wishing to make oral comments at the meeting should notify the contact person in writing or by telephone no later than July 13, 1994. All requests to make oral comments should contain the name, address, telephone number, and organizational affiliation of the presenter. Depending on the time available and the number of requests to make oral comments, it may be necessary to limit the time of each presenter.

Dated: June 2, 1994.

William H. Gimson,

Acting Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–14253 Filed 6–10–94; 8:45 am]

BILLING CODE 4163–18–M

Neurobehavioral Health Risks in Farmworkers: Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Neurobehavioral Health Risks in Farmworkers.

Time and Date: 9 a.m.–4 p.m., June 30, 1994.

Place: Robert A. Taft Laboratories, Room B–28, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Status: Open to the public, limited only by the space available.

Purpose: The purpose of the meeting is to review a NIOSH project entitled, "Neurobehavioral Health Risks in Farmworkers." The project will evaluate existing tests and develop new methods that can be caused in agricultural environments for assessing neurobehavioral impairment in groups of agricultural workers or in individual farmers who have been exposed to chemical and physical hazards. Participants will evaluate the scientific and technical dimensions of the project protocol, seek individual suggestions, and identify and address any deficiencies in the experimental study design. Copies of the protocol maybe obtained prior to the meeting from the contact persons listed below. Viewpoints and suggestions from industry, labor, other government agencies, and the public are invited.

Contact Person For Additional Information: Robert B. Dick, Ph.D., NIOSH, CDC, 4676 Columbia Parkway, Mailstop C–24, Cincinnati, Ohio 45226, telephone 513/533–8383.

Dated: June 2, 1994.

William H. Gimson,

Acting Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–14252 Filed 6–10–94; 8:45 am]

BILLING CODE 4163–19–M

National Institutes of Health

National Cancer Institute; Meeting (Division of Cancer Treatment Board of Scientific Counselors)

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, DCT, National Cancer Institute, National Institutes of Health, June 13–14, 1994, Building 31C, Conference Room 10, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on June 13 from 9 a.m. to approximately 4:45 p.m., and again on June 14 from 11 a.m. to approximately 12 p.m., to review program plans, concepts of contract recompetitions and budget for the DCT program. In addition, there will be scientific reviews by several programs in the Division. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public on June 13 from approximately 4:45 p.m. to approximately 5:45 p.m., and again on June 14 from approximately 8 a.m. to approximately 11 a.m., for the review, discussion and evaluation of individual programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Carole Frank, Committee Management Officer, National Cancer Institute, Executive Plaza North Building, Room 630, National Institutes of Health, Bethesda, Maryland 20892 (301–496–5708) will provide summaries of the meeting and rosters of committee members upon request.

Dr. Bruce A. Chabner, Director, Division of Cancer Treatment, National Cancer Institute, Building 31, Room 3A44, National Institutes of Health, Bethesda, Maryland 20892 (301–496–4291) will furnish substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Bruce Chabner (301–496–4291) in advance of the meeting.

This notice is being published less than 15 days prior to the meeting due to difficulty of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: June 9, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–1443 Filed 6–9–94; 2:25 pm]

BILLING CODE 4140–01–M

Public Health Service

National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 59 FR 25952–25953, May 18, 1994) is amended to reflect the reorganization of the nutrition research coordination function within the NIH. The reorganization consists of (1) transferring the functions of the Division of Nutrition Research Coordination (DNRC) from the Office of Disease Prevention (ODP), Office of the Director, NIH (OD/NIH), to the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK); (2) abolishing the DNRC within the ODP, OD/NIH; and (3) establishing the Division of Nutrition Research within the NIDDK. The transfer of the nutrition coordination function is consistent with Title VI of the NIH Revitalization Act of 1993 (Pub.L. 103–43) which reiterates the lead role of the NIDDK in nutrition and obesity research and mandates an expanded NIDDK role in the coordination of trans-NIH nutrition research and translation efforts.

Section HN–B, Organization and Functions, is amended as follows: (1) Under the heading *Office of the Director (HNA), Office of Disease Prevention (HNA2)*, delete the title and functional statement of the *Division of Nutrition Research Coordination (HNA24)* in their entirety.

(2) Under the heading *National Institute of Diabetes and Digestive and Kidney Diseases (HNK)*, insert the following after the heading *Division of Extramural Activities (HNK7):*

Division of Nutrition Research Coordination (HNK8). (1) Through the NIDDK Director, advises the NIH Director and others on nutrition research issues; (2) coordinates the nutrition research and training activities of the research institutes; (3) works with the NIH organizational components to coordinate the development of RFAs, PAs, and RFPs to enhance the nutritional research activities of the NIH; (4) coordinates the NIH contribution to the Departmental Research Initiative in Nutrition that includes developing the 5-year Plan on Nutrition and Training, and the NIH Program in Biomedical and Behavioral Nutrition Research and Training; (4) inputs and maintains all Federal (NIH, FDA, DOD, etc.) nutrition research into the Human Nutrition Research and Information Management System; (6) represents the NIH and provides liaison at the DHHS and interagency level on various committees on nutrition research and policy issues such as the Interagency Committee on Human Nutrition Research and Nutrition Policy Board; (7) prepares the *Annual Report of the NIH Program in Biomedical and Behavioral Nutrition Research and Training;* and (8) develops and maintains effective liaison with other departments and agencies that have nutrition mechanisms.

Dated: May 25, 1994.

Harold Varmus,

Director, HIH.

[FR Doc. 94–14217 Filed 6–10–94; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health, Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 59 FR 25952–25953, May 18, 1994) is amended to reflect the establishment of the Office of Health Education and Communications (HNW14) within the Office of the Director, NEI (HNW1).

Section HN–B, Organization and Functions, is amended as follows: (1) Under the heading *National Eye Institute (HNW), Office of the Director (HNW1)*, insert the following after the *Office of Administrative Management (HNW13):*

Office of Health Education and Communication (HNW14). (1) Plans, implements, and evaluates all activities related to the National Eye Health Education Program—the first Federally sponsored nation-wide eye health education program; (2) plans and directs all special projects related to eye health education; (3) plans, implements, and evaluates nation-wide mass media

campaigns for various aspects of eye disease prevention, early detection, and treatment; (4) plans, designs, carries out, and evaluates a comprehensive scientific and public information program for the Institute to disseminate research results to the public, the media, the biomedical community, Congress, and private health organizations; (5) advises Institute management on all aspects and phases of NEI and NIH scientific reporting, knowledge transfer, health education, public information, and press relations; (6) provides responses to inquiries from the public, patients and families, health professionals, and the media as well as inquiries from the White House, the Department, and Members of Congress; (7) prepares and produces publications, reports, articles, exhibits, displays, and other materials on Institute research, activities, programs, structure, and function; (8) works with voluntary and professional health organizations to exchange information and plan cooperative activities related to the health education and research results; and (9) overseas compliance with the Freedom of Information Act.

Dated: May 24, 1994.

Harold Varmus,

Director, NIH.

[FR Doc. 94–14218 Filed 6–10–94; 8:45 am]

BILLING CODE 4140–01–M

Social Security Administration

1994 Advisory Council on Social Security; Meeting

AGENCY: Social Security Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice announces a meeting of the 1994 Advisory Council on Social Security (the Council).

DATES: June 24, 1994, 9 a.m. to 5:30 p.m.; June 25, 1994, 9 a.m. to 1 p.m.

ADDRESS: Embassy Row Hotel, 2015 Massachusetts Avenue, NW., Washington, DC 20036, (202) 939–4123.

FOR FURTHER INFORMATION CONTACT: Dan Wartonick, 1994 Advisory Council on Social Security, room 639H, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, (202) 205–4861.

SUPPLEMENTARY INFORMATION:

1. Purpose

Under section 706 of the Social Security Act (the Act), the Secretary of Health and Human Services (the Secretary) appoints the Council every 4 years. The Council examines issues affecting the Social Security Old-Age, Survivors, and Disability Insurance (OASDI) programs, as well as the Medicare and Medicaid programs, which were created under the Act.

In addition, the Secretary has asked the Council specifically to address the following:

- Social Security financing issues, including developing recommendations for improving the long-range financial status of the OASDI programs;
- General program issues such as the relative equity and adequacy of Social Security benefits for persons at various income levels, in various family situations, and various age cohorts, taking into account such factors as the increased labor force participation of women, lower marriage rates, increased likelihood of divorce, and higher poverty rates of aged women.

In addressing these topics, the Secretary suggested that the Council may wish to analyze the relative roles of the public and private sectors in providing retirement income, how policies in both sectors affect retirement decisions and the economic status of the elderly, and how the disability insurance program provisions and the availability of health insurance and health care costs affect such matters.

The Council is composed of 12 members in addition to the chairman: Robert Ball, Joan Bok, Ann Combs, Edith Fierst, Gloria Johnson, Thomas Jones, George Kourpias, Sylvester Schieber, Gerald Shea, Marc Twinney, Fidel Vargas, and Carolyn Weaver. The chairman is Edward Gramlich.

The Council is to report to the Secretary, and such reports shall thereupon be transmitted to the Congress and to the Board of Trustees of each of the Trust Funds.

II. Agenda

The Council will discuss:

- Economic well-being of today's elderly and those soon to retire;
- Prognoses for baby-boom cohorts and beyond;
- Issues facing the Social Security program;
- Issues concerning pensions and other retirement saving; and
- Matters relating to technical panels of experts.

The agenda items are subject to change as priorities dictate.

The meeting is open to the public to the extent that space is available, beginning at 1:00 p.m. on June 24, 1994. That day's morning session will deal only with internal personnel and administrative matters of the Council not relating to the substantive purpose of the meeting. Therefore, under the Government in the Sunshine Act (5 U.S.C. 552b(c)(2)), that session is exempt from being open to the public. Interpreter services for persons with hearing impairments will be provided. A transcript of the meeting will be available to the public on an at-cost-of duplication basis. The transcript can be ordered from the Designated Federal Officer of the Council.

(Catalog of Federal Domestic Assistance Program Nos. 93.802, Social Security-Disability Insurance; 93.803, Social Security-Retirement Insurance; 93.805, Social Security-Survivors Insurance.)

Dated: June 3, 1994.

David Lindeman,

Designated Federal Officer, 1994 Advisory Council on Social Security.

[FR Doc. 94–14056 Filed 6–12–94; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–94–3761; FR–3538–N–01]

NOFA for Vacancy Reduction Program: Technical Correction

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Correction of NOFA.

SUMMARY: This notice corrects a NOFA to be published on June 13, 1994, in the **Federal Register**. This correction is necessary because of errors that were discovered in the document after it had been submitted to the **Federal Register** for publication. The correction clarifies that program funds are not intended to be used to support the normal maintenance associated with routine turnover of units.

FOR FURTHER INFORMATION CONTACT: MaryAnn Russ, Director, Office of Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street SW., room 4204, Washington, D.C. 20410, telephone (202) 708–1800 or (202) 708–1380 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Accordingly, the NOFA for Vacancy Reduction Program, scheduled for publication in the **Federal Register** on Monday, June 13, 1994, as Part V, is amended as follows:

1. In the Summary, a new sentence is added as the sixth sentence, immediately preceding the sentence

beginning "The NOFA contains information on the following:", to read as follows:

It is still the PHA's responsibility to support the normal maintenance associated with routine turnover of units from operating or other funds.

* * * * *

2. In Section I.D, "Definitions", the word "routine" is removed from the definition of *"Repair"*.

Authority: 42 U.S.C. 1437l and 3535(d).

Dated: June 9, 1994.

Myra L. Ransick,

Assistant General Counsel for Regulations.

[FR Doc. 94–14461 Filed 6–10–94; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

RIN 1094–AA45

Use of Alternative Dispute Resolution (ADR)

AGENCY: Office of the Secretary.

ACTION: Notice of interim ADR policy and opportunity for comment.

SUMMARY: The Department of the Interior (Department) has developed this two-year interim policy to implement the requirements of the Administrative Dispute Resolution Act (ADR Act), Public Law No. 101–552. This interim policy also addresses the Negotiated Rulemaking Act, Public Law No. 101–648. The Department is adopting this interim policy to allow time to acquire data on the applicability of ADR techniques to selected program disputes. During this interim period, the Department through its bureaus and offices will implement ADR pilot programs and other program initiatives in an effort to establish a baseline of experience in the practical uses of ADR. At the conclusion of this interim phase, the Department will assess the results of the ADR initiatives in conjunction with both external and internal comments received, develop a proposed final policy, allow for public comment, and publish a final ADR policy in the **Federal Register**.

The Department seeks comments from the public, including, among others, those persons whose activities the Department regulates, on any aspect of this interim policy and its implementation, and those persons who have engaged in or may in the future engage in ADR processes with the Department. At the end of the 60 day comment period the Department will consider issues raised by interested persons and may modify the interim policy based on public comment.

DATES: Comments must be received on or before August 12, 1994.

ADDRESSES: Written comments should be mailed or delivered to Philip G. Kiko, Deputy Director, Office of Hearings and Appeals (OHA), U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Philip G. Kiko, Deputy Director and the Alternate Dispute Resolution Specialist, OHA (703) 235–3810.

SUPPLEMENTARY INFORMATION:

I. Administrative Dispute Resolution Act

The Administrative Dispute Resolution Act (ADR Act), Public Law No. 101–552, 5 U.S.C. 581–583, enacted November 15, 1990, authorizes and encourages federal agencies to employ consensual methods of dispute resolution as alternatives to litigation. Under the ADR Act, a federal agency is required: (1) To designate a senior official as a dispute resolution specialist; (2) to establish training programs in the use of dispute resolution methods; (3) to adopt a policy on the use of ADR techniques; and (4) to review the standard language in agency contracts, grants or other agreements, to determine whether to include a provision on ADR. Federal agencies are also required to consult with the Administrative Conference of the United States (ACUS) and the Federal Mediation and Conciliation Service (FMCS) on the development of their ADR policies.

Additionally, section 3(a) of the ADA Act requires the Department to adopt a formal policy as to how it intends to implement the ADR Act in each of the following areas: (a) Formal and informal adjudications; (b) rulemakings; (c) enforcement actions; (d) issuing and revoking licenses or permits; (e) contract administration; (f) litigation brought by or against the Department; and (g) other departmental action.

Congress enacted the ADR Act to reduce the time, cost, inefficiencies and contentiousness that are too often associated with litigation and other adversarial dispute mechanisms. Moreover, experience at other federal agencies shows that ADR can help achieve mutually acceptable solutions to disputes more effectively than either litigation or administrative adjudication. In fact, Vice President Gore recommended in September 1993 that federal agencies "increase the use of alternative means of dispute resolution." National Performance Review, Recommendation REG06 (September 7, 1993).

While ADR techniques have proven to be useful in resolving serious conflicts, the day-to-day operations of the Department's bureaus should provide conflict avoidance methods, where possible. Moreover, the ADR Act, 5 U.S.C. 582(b), specifically cautions that:

An agency shall consider not using a dispute resolution proceeding if—

(1) a definitive or authoritative resolution of the matter is required for precedential value, and such a proceeding is not likely to be accepted generally as an authoritative precedent;

(2) the matter involves or may bear upon significant questions of Government policy that require additional procedures before a final resolution may be made, and such a proceeding would not likely serve to develop a recommended policy for the agency;

(3) maintaining established policies is of special importance, so that variations among individual decisions are not increased and such a proceeding would not likely reach consistent results among individual decisions;

(4) the matter significantly affects persons or organizations who are not parties to the proceeding;

(5) a full public record of the proceeding is important, and a dispute resolution proceeding cannot provide such a record; and

(6) the agency must maintain continuing jurisdiction over the matter with authority to alter the disposition of the matter in the light of changed circumstances, and a dispute resolution proceeding would interfere with the agency's fulfilling that requirement.

The decision whether to use ADR, however, remains within each federal agency's discretion, and participation in ADR processes is by mutual consent of the disputants.

The ADR Act fosters the use of ADR by ensuring appropriate protection of parties' and neutrals' communication. The ADR Act, however, is not a statute exempting disclosure under the Freedom of Information Act (FOIA). To establish a baseline of understanding, concerned parties should establish confidentiality guidelines consistent with FOIA requirements before entering into negotiations.

Within the limitations set forth in the ADR Act, and elsewhere, the Department plans to explore, over the next two years, whether and in which contexts the use of ADR facilitates fairer, faster, or more rational resolutions of disputes than present dispute resolution methods provide. Additionally, the Department will conduct an evaluation of the interim policy. On the basis of this evaluation, the Department will consider modifying any of its current procedures or rules, as

appropriate, to allow for greater use of ADR.

II. Negotiated Rulemaking Act

In enacting the Negotiated Rulemaking Act, Public Law No. 101–648, Congress indicated its concern that traditional notice and comment rulemaking procedures may discourage agreement among the potentially affected parties and the Federal Government. Congress addressed this concern by purposefully designing the Negotiated Rulemaking Act's procedures to facilitate the cooperative development of regulations by interested persons and agencies. Moreover, Vice President Gore's report recently recommended improving agencies' regulatory systems by "[e]ncourag[ing] agencies to use negotiated rulemaking more frequently in developing new rules." National Performance Review, Recommendation REG03.

Negotiated Rulemaking (Reg-Neg) does not replace the traditional notice and comment rulemaking. Rather, Reg-Neg supplements the more traditional process by developing consensus around the candidate proposed rule before an agency publishes it in the **Federal Register.** Combining early consensus-building and information-gathering with an opportunity for broad public consideration, the Reg-Neg process meets the prescription of the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*, and can facilitate more effective regulatory development and regulations. Moreover, on September 30, 1993, President Clinton issued a Memorandum in conjunction with the issuance of Executive Order 12866 on Regulatory Planning and Review. The Memorandum required each department to identify to the Office of Information and Regulatory Affairs at least one rulemaking within the upcoming year to be developed through negotiated rulemaking or to explain why negotiated rulemaking would not be feasible, 58 ER 52391 (Oct. 7, 1993).

Decisionmakers should view Reg-Neg as one of a variety of information-gathering and consensus-building or consultative processes used to achieve effective, efficient, rational, and fair agency policy. Although the Negotiated Rulemaking Act does not address less formal decisionmaking processes, including, among others, policy roundtables and public meetings, such nonadversarial processes may help gather information to assist the Department in policy development.

Participation in informal regulatory development processes can require significant commitment of resources on the part of all participants, including federal agencies. The Department's experience, however, has shown that consensus-building techniques can result in better policy, reduce the high rate of litigation, and lower the costs of program implementation for the Department's bureaus and the regulated community.

III. Interim Policy

A. Application of the Interim Policy

The Department encourages the effective use of ADR and Reg-Neg to the fullest extent compatible with existing law, and the Department's resources and missions. Based on almost one hundred and fifty years of experience, the Department recognizes that the use of consensus-building techniques and nonadversarial planning processes can increase the wisdom, efficiency, equity, and long-term stability of departmental decisions.

The interim policy is intended to govern both the programmatic side of the Department's broad responsibility, as well as many of the human resources aspects. With regard to human resources, this interim ADR policy embraces the ADR policy of the Department's Office for Equal Opportunity. The use of ADR is expected to be very useful in matters involving equal employment opportunity. Workplace dispute issues outside the jurisdiction of actions governed by regulations issued by the Merit Systems Protection Board will also be governed by this policy. Where the use of ADR would impede effective supervisory action in routine matters of employee discipline or performance appraisal, supervisors may elect not to use ADR.

B. Purpose of the Interim Policy

The Department has developed a two-year ADR interim policy in response to the requirements of the ADR Act. The policy encourages the Department's bureaus to identify disputes amenable to ADR and to use ADR, whenever practicable. After testing ADR methods in a variety of contexts, the Department, through the Interior Dispute Resolution Council, at the conclusion of the two-year interim phase, will assess the appropriateness of the use of ADR and determine which program areas could most benefit from the institutionalization of ADR processes. Existing bureau ADR efforts should continue as this final policy is developed.

The Department's interim ADR policy is also designed to disseminate knowledge about ADR both within the Department and to those whom the Department serves, as well as to introduce new ADR initiatives and to provide guidelines for bureaus to apply in the implementation of ADR pilot programs. These initiatives will produce a baseline of experience that will be used in developing the Department's final ADR policy. Without the full commitment and cooperation of all involved in the two-year interim phase, the Department will lose a valuable opportunity to learn what works, what does not, and how best to capture potential benefits from ADR use.

C. Implementation of Interim Policy

1. Role of the Department's Dispute Resolution Specialist

Pursuant to the ADR Act, the Secretary appointed the Director, Office of Hearings and Appeals (OHA) to serve as the Department's Dispute Resolution Specialist (DRS). This high level, Department official was appointed as the DRS in order: (1) To facilitate intra-departmental coordination and communication; (2) to ensure consistent, quality training; (3) to establish minimum qualifications for mediators, arbitrators, and certain departmental employees with ADR responsibilities; and (4) to reduce administrative redundancy. The DRS will maintain an "open door" policy, welcoming inquiries from and offering assistance to the bureaus and interested persons. During the period that the interim policy is being implemented, ongoing input from the public is encouraged. The DRS will also develop and make available a roster of neutrals who are trained in ADR and who would be available to participate in a dispute resolution proceeding. Despite this focal point for ADR activity, the Department's interim ADR policy is to encourage decentralized decisionmaking to the greatest extent possible.

2. Role of the Interior Department Resolution Council

In order to keep the Department's bureaus informed during the implementation of the interim phase, the DRS shall, 30 days after publication of the Department interim policy, convene the Interior Dispute Resolution Council (IDRC). Composed of the Department's Assistant Secretaries, Solicitor and the Director of the Office of Regulatory Affairs (ORA), or their respective designees, and chaired by the DRS, the IDRC shall monitor and evaluated the Department's use of ADR and Reg-Neg and assist in intradepartmental policy and process coordination. The IDRC shall act as an

information clearinghouse, recommend personnel training courses in ADR techniques and program design, and act as the liaison between the ACUS and FMCS.

Additionally, the IDRC will consider the benefits of appointing a departmental ombudsman and the benefits of appointing an ombudsman for selected departmental bureaus. An ombudsman could serve the following functions: (1) To address specific categories of workplace disputes through the investigation of the circumstances giving rise to the disputes and based on their findings to recommend corrective actions, if appropriate; or (2) to investigate and propose the resolution, if appropriate, of citizen complaints against the Department, including recommendations for changes in agency structure or organization to better address or avoid persistent problems. The IDRC will submit a written report at the end of the Interim period on the use of an ombudsman.

3. Training in ADR

The Department recognizes, consistent with the philosophy of the National Performance Review, that bureaus can best evaluate and develop specific ADR programs and initiatives to meet bureau needs. Therefore, each Bureau Head shall appoint a Bureau Dispute Resolution Specialist (BDRS). The BDRS shall receive training recommended by the DRS in ADR consensus-building techniques, conflict resolution, and program design.

The DRS shall recommend appropriate BDRS training, such training to be completed no later than 60 days following issuance of the interim policy. Additionally, the DRS shall provide ADR training opportunities for selected groups of senior managers of the Department, whose job responsibilities include determining or influencing how disputes will be managed. The DRS will also identify opportunities for advanced training in facilitation and mediation for judges and attorneys within OHA, as appropriate.

4. Development of Bureau Alternative Dispute Resolution Plans

The BDRS shall develop and submit the Bureau's Alternate Dispute Resolution Plan (ADRP) through the Bureau Head to the appropriate Assistant Secretary no later than 60 days following the completion of training. The ADRP shall include at least one category of disputes amenable to ADR methods, and a discussion of how the bureau will implement ADR to address such disputes. Additionally, to facilitate the monitoring and evaluation of the bureau's initiative(s), the ADRP should address, among other topics, the (1) Goals; (2) objectives; (3) timetable; (4) implementation strategy; (5) monitoring criteria; and (6) evaluation methodology. It is permissible if two or more bureaus adopt the same plan or parts of a plan.

In selecting appropriate ADR pilot initiatives, a bureau can focus, for example, on a particular category of dispute (e.g., contract cases), on a variety of disputes involving a particular organizational segment or region of the agency, or on a particular ADR process that would be applied in a variety of disputes across the bureau. In selecting a focus for an ADR pilot initiative, the Department encourages bureaus to consider using some of the disputes that are central to the Department's mission. While a bureau should not avoid identifying personnel and small contract disputes, for example, as candidates for a pilot initiative, a bureau should not focus exclusively on these areas so that the effectiveness of ADR for a bureau can be judged in a programmatic context.

Some offices of the Department, such as the Office of the Solicitor, assist bureaus in carrying out their programs rather than conducting programs of their own. For the purposes of this policy, such offices should assist their client bureaus in implementing ADR in a programmatic context. Nonetheless, such offices should develop an ADRP for internal, human resource management purposes.

Consistent with the many activities and functions of the Department and the Federal Acquisition Regulations' (FAR) recognition of the usefulness of ADR in government contracts, each BDRS, or appointed designees, should review categories of all proposed new and renewal contracts, agreements, permits, memoranda of understanding, and other documents, to determine whether to include ADR provisions. Moreover, the Department encourages the use of ADR in contract disputes prior to these disputes reaching the Interior Board of Contract Appeals. To avoid duplication of effort by bureau personnel, the Office of the Solicitor, working with the Department's Senior Procurement official, will develop standardized ADR-related clauses that bureaus can use in contracts and other documents.

The Department expects, as well, that those bureaus with comparatively more dispute resolution experience will, on a voluntary basis, assist bureaus less familiar with dispute resolution in the development of the ADRP. The Department expects, as well, that inter-bureau initiatives such as "one stop permitting," for example, be coordinated with the BDRSs. Each BDRS and others involved with the implementation of the interim policy are encouraged to consult with other federal agencies, and others in the dispute resolution field in the development of their ADR initiatives. The DRS is available to provide the names of contact persons within various federal agencies who have effectively utilized ADR methods in resolving disputes.

Judges within all boards and divisions of OHA will be encouraged to utilize, where appropriate, ADR methods, including, among others, the use of settlement judges, minitrials, and the referral of litigants to mediation or arbitration in advance of a judge's consideration of a case on the merits. OHA will develop an internal policy for the appointment of settlement judges and will refer litigants to a list of approved mediators and arbitrators.

The appropriate Assistant Secretary or designee shall, upon receipt of a bureau's ADRP, review and approve the ADRP in consultation with the IDRC. Within 30 days after approval of an ADRP, a bureau shall publish its ADRP in the **Federal Register** or otherwise make the ADRP accessible to interested persons.

D. Monitoring and Evaluation

Each BDRS shall monitor the implementation of his or her bureau's dispute resolution initiatives on an ongoing basis, using the criteria developed in their ADRP. Each BDRS shall submit to the IDRC, through the proper Bureau Head and Assistant Secretary, every 180 days, an evaluation of the bureau's progress toward meeting the goals, objectives, and timetables on the basis of the methodology outlined in the ADRP. The evaluation should also discuss any unanticipated issues that each bureau may have encountered and how those issues have been or are being resolved.

The BDRSs in conjunction with the IDRC shall, at the conclusion of the two-year interim phase, catalogue and evaluate the bureaus' respective initiatives and experiences under their ADRPs in a report to the Secretary. This evaluation, coordinated by the DRS, as chair of the IDRC, will focus on the categories of dispute and types ADR methods that were most helpful in achieving resolution of disputes.

Moreover, because the usefulness of ADR to the Department is dependent on the processes' ability to facilitate rational, fair, efficient, and stable

solutions among the Department's bureaus, the regulated community and the public, evaluation of the interim policy should receive the benefit of public public comment and participation.

A concluding section of the evaluation should explain how dispute resolution will be integrated on a permanent basis into each bureau's program offices. This process of review, evaluation, and modification will allow each bureau to systematically and regularly improve its ADR programs.

E. Development of Final ADR Policy

The IDRC in conjunction with the BDRSs, and with the benefit of public comment and participation, will develop a permanent Department ADR policy on the basis of the Department's two-year interim policy experience. The DRS will be responsible for the coordination of the development of the Department's final policy, and shall ensure issuance of that policy no later than 90 days after the conclusion of the interim policy. During the time between conclusion of the interim policy and issuance of the final policy, the interim policy shall remain in effect, as appropriate.

F. Negotiated Rulemaking

Pursuant to Executive Order 12866 and the Presidential Memorandum on Negotiated Rulemaking, issued September 30, 1993, the Department will use, where appropriate, negotiated rulemaking or other consensus-building techniques to develop rules that are fair, technically accurate, and clear. Each bureau will evaluate, prior to drafting or amending any regulation, whether negotiated rulemaking is appropriate for developing or amending that regulation and will explain, on the Regulatory Alert Form submitted to the ORA, the basis for determining whether or not the regulation will be developed or amended using negotiated rulemaking.

In explaining whether negotiated rulemaking should be used for a particular rulemaking, each bureau should address at least the following:

(1) Whether there exists a small and identifiable group of constituents (the "parties") with significant interests in the rulemaking, so that all reasonably foreseeable significant interests can be represented by individuals in the negotiation;

(2) Whether the parties believe it to be in their best interest to enter into a negotiated rulemaking;

(3) Whether the parties are willing and able to enter into negotiated rulemaking in good faith;

(4) Whether any single party has, or is perceived to have, the ability to dominate negotiations, thereby making a compromise solution unlikely;

(5) Whether there are clear and identifiable issues that are agreed to be ripe for a negotiated solution;

(6) Whether a negotiated solution would require one or more parties to compromise a fundamental value;

(7) Whether the use of negotiated rulemaking is reasonably likely to result in an agreement or course of action satisfactory to all parties; and

(8) Whether there are legal deadlines or other legal issues that either mitigate against negotiation or provide incentives to reach a negotiated solution.

If a bureau has decided to enter into a negotiated rulemaking, it will prepare a brief report describing the goals, objectives, anticipated parties, and projected timetables of the negotiation. Throughout the negotiation, the bureau will prepare brief periodic reports discussing the progress toward achieving the goals, objectives, and timetables of the negotiation, and highlighting any successes and unanticipated events or issues encountered during the negotiation. These reports shall be submitted to ORA and the IDRC.

At the end of the two-year interim policy, ORA, the DRS, and IDRC shall prepare a report to the Secretary evaluating the Department's experiences with negotiated rulemaking. This report will focus upon the types of policies, categories of rulemakings, and methods of negotiation that were most successful in achieving customer satisfaction and the cost-effective implementation of mutually agreeable rulemakings. This report will be based upon evaluations conducted by the bureaus and submitted to ORA, IDRC, and the DRS for review and assimilation into the report to the Secretary.

IV. Executive Order 12866

This interim policy was not subject to Office of Management and Budget review under Executive Order 12866.

Dated: June 2, 1994.

Bonnie R. Cohen,

Assistant Secretary, Policy, Management and Budgets.

Appendix I—Glossary of ADR Terms
Appendix II—Examples of ADR Initiatives

Appendix I—Glossary of ADR Terms

The following terms are commonly associated with ADR and negotiated rulemaking and contain many recognized forms of ADR. They are provided for the reader's convenience and have been adapted from the ADR Act, the Negotiated Rulemaking Act, and other sources.

Alternative means of dispute resolution—An inclusive term used to describe a variety of problem-solving processes that are used in lieu of litigation or administrative adjudication to resolve issues in controversy, including but not limited to, settlement negotiations, conciliation, facilitation, mediation, fact-finding, minitrials, and arbitration, or any combination thereof.

Arbitration—A process, quasi-judicial in nature, whereby a dispute is submitted to an impartial and neutral third party who considers the facts and merits of a case and decides the matter. To be revised consistent with 5 U.S.C. 588, et. seq.

Conciliation—Procedures intended to help establish trust and openness between the parties to a dispute.

Dispute—An issue which is material to a decision concerning an administrative or mission-related program of an agency and with which there is disagreement between the agency and a person or persons who would be substantially affected by the decision.

Dispute resolution communication—Any oral or written communication prepared for the purposes of a dispute resolution proceeding, including any memoranda, notes, or work product of the neutral, parties, or nonparty participants. A written agreement to enter into a dispute resolution proceeding, or a final written agreement or arbitration award reached as a result of a dispute resolution proceeding, is not a dispute resolution communication.

Dispute resolution proceeding—Any process in which an alternative means of dispute resolution is used to resolve an issue in controversy in which a neutral is appointed and specified parties participate.

Facilitation—Involves the assistance of a third party who is impartial toward the issues under discussion and who works with all participants in a whole group session providing procedural directions on how the group can effectively move through the problem-solving steps of the meeting and arrive at the jointly agreed upon goal.

Fact-finding—Involves the use of neutrals acceptable to all parties to determine disputed facts. This can be particularly useful where disagreements about the need for or the meaning of data are impeding resolution of a dispute, or where the disputed facts are highly technical and would be better resolved by experts. Fact-finding usually involves an informal

presentation of its case by each party. The neutral(s) then provide an advisory opinion on the disputed facts, which can be used by the parties as a basis for further negotiation.

Litigation—A dispute brought in a court of law to enforce a statute, right, or legally created cause of action that will be decided based upon legal principles or evidence presented.

Mediation—Involves the intervention into a dispute of an impartial and neutral third party, who has no decisionmaking authority but who will procedurally assist the parties to reach voluntarily an acceptable settlement of issues in dispute.

Minitrial—A structured settlement process in which the disputants agree on a procedure for presenting their cases in highly abbreviated versions (usually no more than a few hours or a few days) to senior officials for each side with authority to settle the dispute. This process allows those in senior positions to see firsthand the relative strengths and weaknesses of their cases and can serve as a basis for more fruitful negotiations. Often, a neutral presides over the hearing, and may, subsequently, mediate the dispute or help parties evaluate their cases.

Negotiated rulemaking—Rulemaking accomplished through the use of a negotiated rulemaking committee.

Negotiated rulemaking committee—An advisory committee established by an agency in accordance with the Negotiated Rulemaking Act and the Federal Advisory Committee Act to consider and discuss issues for the purpose of reaching a consensus in the development of a proposed rule.

Negotiation—Involves a bargaining relationship between two or more parties who have either perceived or actual conflicts of interest. The participants join voluntarily in a temporary relationship to educate each other about their needs and interests and exchange specific resources or promises that will resolve on or more issues. Almost all of the ADR procedures, in which the parties maintain control over the outcome of the conflict, are variations upon or elaborations of the negotiation process.

Neutral—An individual, who with respect to an issue in controversy, functions specifically to aid the parties in resolving the controversy. The individual may be a permanent or temporary officer or employee of the Federal Government, or any other individual who is acceptable to the parties to a dispute resolution proceeding. A neutral shall have no official, financial, or personal conflict of interest with respect to the dispute, unless such interest is fully disclosed in writing to all parties and all parties agree that the neutral may serve.

Ombudsman—A person designated to address selected categories of disputes by investigating the circumstances that gave rise to the matter; and based upon the investigative findings, recommending corrective action, as appropriate.

Roster—A list of persons qualified to provide services as neutrals that is maintained by the agency.

Appendix II—Examples of ADR Initiatives

Various bureaus and offices within the Department have been involved in implementing ADR processes. Some of the more prominent examples of ADR initiatives that reflect the Department's commitment to ADR include:

In 1990, the Department disseminated to each of the Department's bureaus and offices an ADR survey designed to identify program areas that could be amenable to ADR techniques. Among the questions asked were: (1) The categories of disputes in which the organization is typically involved; (2) the number of cases during the prior 2 fiscal years that were (a) docketed, (b) settled, and (c) litigated, and the approximate cost involved; and (3) the organization's experience to date in utilizing ADR techniques.

The Department conducted an orientation program on ADR. Included in the orientation program was Senator Charles Grassley, one of the sponsors of the ADR Act, together with representatives of the Administrative Conference of the United States (ACUS) and the Federal Mediation and Conciliation Service (FMCS).

The Department conducted a one day training program on ADR. The training focused on the various methods of ADR and included representatives from the U.S. Army Corps of Engineers, the Environmental Protection Agency, the Department of Health and Human Services, and the Department of Transportation, each of whom shared their experiences in developing successful ADR programs.

The Department's Office for Equal Opportunity (OEO) provided training in basic and advanced mediation skills for OEO and personnel program officials and Equal Employment Opportunity (EEO) counselors. OEO also issued a directive to bureaus and offices providing guidance on the development and implementation of ADR pilot programs consistent with 29 CFR part 1614. Under this directive each bureau and office is to submit an ADR pilot program plan delineating specific actions to be taken to incorporate ADR techniques into the EEO complaints process.

The Department recently made consideration of the use of ADR in the resolution of discrimination complaints mandatory and has designated a Departmental EEO/ADR Coordinator and directed each bureau to designate a Bureau EEO/ADR Coordinator.

The Department designated the Bureau of Reclamation as a pilot bureau in FY-93 for the purpose of testing the effectiveness of mediation in the resolution of EEO complaints and administrative grievances. The Bureau has relied exclusively on contract neutrals to serve as mediators for all dispute referred for ADR. Mediation has also been utilized by Reclamation in other program areas, including resource management and contract administration. Reclamation is assessing the results of its mediation program to determine whether to expand its usage to other program areas.

The Department's Office of Hearings and Appeals has implemented ADR as an alternative to administrative litigation. The Board of Indian Appeals and the administrative law judges vested with authority for adjudicating Indian probate cases have encouraged the use of settlement agreements to resolve these matters. Under 43 CFR 4.207, administrative law judges have been authorized to effect compromise settlements in probate actions where the parties concerned agree to compromise and where the judge establishes that all necessary conditions have been met. The Board of Contract Appeals has been effectively implementing ADR processes over the last 2 years in its cases. At the time a case is docketed, the Board issues an order notifying the parties to the dispute of the availability and benefits of ADR. Through actively promoting ADR as a viable alternative, the Board has settled a majority of its cases without the need to conduct a hearing.

The Bureau of Land Management (BLM) has recognized the benefits of ADR techniques, and a presentation on the topic was made at the Bureau's Solid Minerals Conference in Albuquerque, New Mexico, in April 1993. The BLM, in partnership with the Bowie State University's Center for Alternative Dispute Resolution, has provided basic Conflict Management ADR training to Personnelists and EEO practitioners, as well as to key management officials. The BLM will continue to work with the Center for ADR and other outside resources to provide training during Fiscal Year 1994.

The Minerals Management Service (MMS) has a rich history of ADR. The MMS's examples include (1) a process targeted at settling outstanding and contentious mineral royalty claims which has reduced appeals and litigation and increased royalty collections, and (2) more than a decade of conflict resolution training for offshore minerals management personnel and establishment and conduct of a joint review panel for constituent review of environmental documents.

The Bureau of Mines (USBM) has recognized the benefits of ADR techniques and has provided training to principal officials in the use of ADR techniques. Training was provided by a contractor for the Directorates of the Bureau on orientation to ADR techniques; Information and Analysis on September 28, 1993; Finance and Management, December 8, 1993; and Research on January 11, 1994. Training will also be provided to EEO Counselors by the EEO Staff and the Federal Mediation and Conciliation Service in June 1994. The Bureau plan to continue the use of ADR for EEO complaints and to expand it to other types of disputes. The EEO Office has used mediation and negotiation for EEO complaints in the precomplaint stage and also the formal complaint stage.

[FR Doc. 94-14288 Filed 6-10-94; 8:45 am]

BILLING CODE 4310-79-M

Bureau of Land Management

[NV-930-04-4210-04; N 57154]

Realty Action; Termination of Segregation and Opening Order, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates a segregation of public land which is no longer necessary. The land will be opened to operation of the public lands laws generally, including the mining laws.

EFFECTIVE DATE: The segregation will be terminated and the land opened upon publication of this notice in the **Federal Register**.

SUPPLEMENTARY INFORMATION: The following described public land in Douglas County, Nevada, was proposed for disposal by exchange under Section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716):

Mount Diablo Meridian, Nevada

T. 11 N., R. 21 E.
Sec. 4: SW¼NW¼SE¼, NW¼SW¼SE¼, N½SW¼SW¼SE¼, N½S½SW¼SE¼, S½SW¼SW¼SW¼SE¼, W½SW¼SE¼SW¼SW¼SE¼;
aggregating approximately 29.0625 acres;

as announced in the Notice of Realty Action published on page 18414 of the April 9, 1993, **Federal Register**. This land is no longer involved in the land exchange proposal. Therefore, the segregation of this land from appropriation under the public land laws, including the mining laws, is now terminated upon publication of this notice in the **Federal Register**. Simultaneously, the land is again open to the operation of the public land laws, including the mining laws.

FOR FURTHER INFORMATION CONTACT: More detailed information is available from the Area Manager or Steep Weiss, Bureau of Land Management, Walker Resource Area, 1535 Hot Springs Road, suite 300, Carson City, Nevada 89706; telephone (702) 885-6000.

Dated: June 1, 1994.

John Matthiessen,

Area Manager, Walker Resource Area.

[FR Doc. 92-14260 Filed 6-10-94; 8:45 am]

BILLING CODE 4310-HC-M

[NV-930-4210-05; N-48693]

Notice of Realty Action: Lease/Purchase for Recreation and Public Purposes

AGENCY: Bureau of Land Management.

ACTION: Recreation and public purpose lease/purchase.

SUMMARY: The following described public land in Henderson, Clark County, Nevada has been examined and found suitable for lease/purchase for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Clark County School District proposes to use the land for a junior high school.

Mount Diablo Meridian, Nevada

T. 22 S., R. 63 E.,
Section 16: E½SE¼SE¼
Containing 20 acres, more or less.

The land is not required for any federal purpose. The lease/purchase is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe and will be subject to:

1. Easements in favor of the City of Henderson for roads, public utilities and flood control purposes as follows: 30 feet in width along the north boundary, 50 feet in width along the east boundary, 40 feet in width along the south boundary, 30 feet in width along the west boundary, together with the following radius curves: NW corner having a 15 foot radius, NE corner having a 25 foot radius, SE corner having a 54 foot radius, and the SW corner having a 20 foot radius.

2. Those rights for power transmission line purposes which have been granted to Nevada Power Company by Permit No. N-33079 the under the Act of October 21, 1976 (43 U.S.C. 1761).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/purchase under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral disposal laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/purchase until after the classification becomes effective.

Dated: June 1, 1994.

Gary Ryan,

Acting District Manager, Las Vegas, NV.

[FR Doc. 94-14261 Filed 6-10-94; 8:45 am]

BILLING CODE 4310-HC-M

National Park Service

Delaware and Lehigh Navigation Canal National Heritage Corridor Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces an upcoming meeting of the Delaware and Lehigh Navigation Canal National Heritage Corridor Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

Meeting Date and Time: Thursday, June 23, 1994; 1:30 p.m. until 4:30 p.m.

Address: Kemerer Museum of Decorative Arts, 427 North New Street, Bethlehem, PA 18018.

The agenda for the meeting will focus on implementation of the Management Action Plan for the Delaware and Lehigh Canal National Heritage Corridor and State Heritage Park. The Commission was established to assist the Commonwealth of Pennsylvania and its political subdivisions in planning and implementing an integrated strategy, for protecting and promoting cultural, historic and natural resources. The Commission reports to the Secretary of the Interior and to Congress.

SUPPLEMENTARY INFORMATION: The Delaware and Lehigh Navigation Canal National Heritage Corridor Commission was established by Public Law 100–692, November 18, 1988.

FOR FURTHER INFORMATION CONTACT: Executive Director, Delaware and Lehigh Navigation Canal National Heritage Corridor Commission, 10 E. Church Street, room P–208, Bethlehem, PA 18018, (610) 861–9345.

Karen Wade,

Acting Regional Director, Mid-Atlantic Region.

[FR Doc. 94–14220 Filed 6–10–94; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–55 (Sub-No. 485]

CSX Transportation, Inc.—Abandonment—Between Lynchburg and Sumter in Lee and Sumter Counties, SC

AGENCY: Interstate Commerce Commission.

ACTION: Notice of findings.

SUMMARY: The Commission has issued a certificate authorizing CSX Transportation, Inc. (CSXT) to abandon 16.01 miles of rail line between milepost AK–313.43 at Lynchburg and milepost AK–329.44 at Sumter, which is located in Lee and Sumter Counties, SC. The abandonment certificate will become effective July 10, 1994, unless the Commission finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer and any requests for a public use condition must be filed with the Commission and CSXT no later than 10 days from the date of publication of this Notice. The following notation shall be typed in bold face in the lower left-hand corner of the envelope containing the offer: "Office of Proceedings, AB–OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Dated: June 7, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–14340 Filed 6–9–94; 12:48 pm]

BILLING CODE 7035–01–P

[Finance Docket No. 32517]

Pickens Railway Corporation, Inc.—Acquisition and Operation Exemption—Pickens Railroad Company

Pickens Railway Corporation, Inc., a noncarrier, has filed a notice of exemption to acquire and operate approximately 8 miles of rail line from Pickens Railroad Company. The line extends between milepost 0.0 at Pickens and milepost 8.0 at Easley, in Pickens County, SC. The transaction was expected to be consummated after May 30, 1994, the exemption's effective date.

Any comments must be filed with the Commission and served on: R. Murray Hughes, P. O. Box 1389, 208 Garvin Street, suite G, Pickens, SC 29671.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: June 7, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary

[FR Doc. 94–14284 Filed 6–10–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTEMENT OF LABOR

Office of the Secretary

Glass Ceiling Commission; Postponement of Open Meeting

SUMMARY: This notice postpones the June 23, 1994 open meeting of the Glass Ceiling Commission. The notice for this meeting was announced in the **Federal Register** on May 17, 1994 (59 FR 25669). A new date for the Open Meeting will be announced in the future.

FOR FURTHER INFORMATION CONTACT: Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue, NW., room C–2313, Washington, DC 20210, (202) 219–7342.

Signed at Washington, DC this 7th day of June, 1994.

Robert B. Reich,

Secretary of Labor

[FR Doc. 94–14245 Filed 6–10–94; 8:45 am]

BILLING CODE 4510–23–M

Glass Ceiling Commission; Postponement of Open Site Hearing

SUMMARY: This notice postpones the June 24, 1994 Open Site Hearing of the Glass Ceiling Commission. The notice for this Open Site Hearing was announced in the **Federal Register** on May 17, 1994 (59 FR 25670). A new date for the Open Site Hearing will be announced in the future.

FOR FURTHER INFORMATION CONTACT: Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue, NW., room C–2313, Washington, DC 20210, (202) 219–7342.

Dated: Signed at Washington, DC this 7th day of June, 1994.

Robert B. Reich,

Secretary of Labor

[FR Doc. 94–14246 Filed 6–10–94; 8:45 am]

BILLING CODE 4510–23–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 65th meeting on Wednesday and Thursday

June 29 and 30, 1994, in Room P-110, 7920 Norfolk Avenue, Bethesda, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, June 29, 1994—8:30 a.m. until 6 p.m.

Thursday, June 30, 1994—8:30 a.m. until 6 p.m.

During this meeting the Committee plans to consider the following:

A. *Proposed Amendments to 10 CFR part 60, on Disposal of High-Level Radioactive Wastes in Geologic Repositories—Design Basis Events for the Geologic Repository Operations Area*—Review the proposed amendments with emphasis on the definition of "important to safety" for certain structures, systems, and components.

B. *Problems in the Siting of the Proposed Low-Level Radioactive Waste Disposal Facility at Martinsville, IL*—Discuss the failed attempt to site a LLW Disposal facility at Martinsville, IL with participants in the process, with a focus on lessons learned from the experience.

C. *Substantially Complete Containment*—Hear a briefing by the NRC staff on this topic; interest lies in exploring current views on reliance placed on geologic versus engineered barriers in an HLW repository.

D. *Tectonics of the Proposed HLW Repository at Yucca Mountain*—Hear a briefing from representatives of the State of Nevada on its concerns related to and investigations of tectonic and magmatic processes at the proposed Yucca Mountain site.

E. *Update on the Systematic Regulatory Analysis*—Discuss with the NRC staff the current status of the systematic regulatory analysis and current products from this effort such as the License Application Review Plan and the Standard Format and Content Guide for an HLW Repository.

F. *Compatibility and Adequacy of Agreement States Programs*—Discuss among the ACNW issues associated with the disposal of LLW in Agreement States.

G. *Preparation of ACNW Reports*—Prepare ACNW reports on issues considered during this and previous meetings.

H. *Future Activities*—Discuss topics proposed for consideration by the full Committee and working groups.

I. *Miscellaneous*—Discuss miscellaneous matters related to the conduct of Committee activities and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACNW Executive Director, Dr. John T. Larkins, as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the ACNW executive Director prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACNW Executive Director if such rescheduling would result in major inconvenience.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the ACNW Executive Director, Dr. John T. Larkins (telephone 301-492-4516), between 7:30 a.m. and 4:15 p.m. e.s.t.

Dated: June 7, 1994.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 94-14257 Filed 6-10-94; 8:45 am]

BILLING CODE 7590-01-M

Organization of Agreement State Managers' Workshop and Public Meeting on Rulemakings

AGENCY: Nuclear Regulation Commission.

ACTION: Notice of meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) staff plans to hold a public workshop for managers of the Organization of Agreement States. The Commission has directed the staff to review and prepare for the Commission's consideration recommendations to improve NRC's Agreement States Program to assure adequate protection of the public health and safety. In this process, the Commission staff has solicited the opinions of those with historical backgrounds in the Agreement State program and representatives of the Agreement States. Topics for discussion at the upcoming workshop include: Open Discussion of Agreement State Issues; New Policy Statement of NRC Agreement States Program; Integrated Materials Performance Evaluation Program; Sealed Source and Device Review; Federal Advisory Committee Act Update; Medical Management Plan; Allegations Received Against Radiation Control Programs; National Data Base for Events Reporting; and OAS Task Force on National Event Data Base. A Session on NRC Rulemakings will be held on the afternoon of July 12, 1994.

DATES: The workshop will be held on July 12-14, 1994. The times are:

Tuesday, July 12, 1994—8:30 a.m.-5 p.m.

Wednesday, July 13, 1994—8:30 a.m.-5 p.m.

Thursday, July 14, 1994—8:30 a.m.-12 noon

ADDRESSES: The workshop will held at the Washington Dulles Marriott Suites, located at 13101 Worldgate Drive, Herndon, Virginia 22070 (703/709-0400).

FOR FURTHER INFORMATION CONTACT: Rosetta Virgilio, Office of State Programs, Mail Stop 3-D-23, U.S. Nuclear Regulatory Commission, Washington, DC 20555 Telephone 301/504-2307.

CONDUCT OF THE MEETING: The workshop will be conducted in a manner that will expedite the orderly conduct of business. A transcript of the workshop will be available for inspection, and copying for a fee, at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555 on or about September 15, 1994.

The following procedures apply to public attendance at the workshop:

1. Questions or statements will be entertained as time permits.
2. Seating will be on a first-come, first-served basis.

Dated at Rockville, Maryland this 7th day of June 1993.

For the Nuclear Regulatory Commission.

Richard L. Bangart,

Director, Office of State Programs.

[FR Doc. 94-14258 Filed 6-10-94; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. IA-94-011 and ASLBP No. 94-696-05-EA]

Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 F.R. 28710 (1972), and Sections 2.105, 2.700, 2.702, 2.714, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding.

In The Matter of Dr. James E. Bauer
Enforcement Action IA 94-011

This Board is being established pursuant to the request of James E. Bauer, M.D., in response to an immediately effective order. On May 10, 1994, the Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support issued IA 94-011 to Dr. Bauer, entitled "Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)." 59 Fed. Reg. 25673, May 17, 1994. The Order prohibits Dr. Bauer from being named on any NRC license in any capacity and from otherwise performing licensed activities for a period of five years from the date of this order. For an additional two years, Dr. Bauer is required to notify the NRC of any involvement in licensed activities.

Dr. Bauer has been listed as the Radiation Safety Officer and sole authorized user on NRC license No. 37-28179-01 (license) issued to the Indiana Regional Cancer Center (Licensee) located in Indiana, Pennsylvania. By an order Modifying and Suspending License (Effective Immediately), issued November 16, 1993, the license has been modified to prohibit Dr. Bauer from engaging in activities under the license and to suspend the Licensee'sauthority to receive and use licensed material.

An order designating the time and place of any hearing will be issued at a later date.

All correspondence, documents and other materials shall be filed in accordance with 10 CFR 2.701. The Board consists of the following Administrative Judges:

G. Paul Bollwerk, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Dr. Charles N. Kelber, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Dr. Peter S. Lam, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 6th day of June 1994.

B. Paul Cotter, Jr.,

Chief Administrative Judge Atomic Safety and Licensing Board Panel.

[FR Doc. 94-14259 Filed 6-10-94 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-34160; File No. SR-MSRB-94-5]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Rule G-37 on Political Contributions and Prohibitions on Municipal Securities Business, and Rule G-8 on Recordkeeping

June 3, 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 May 24, 1994, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The purpose of the proposed rule change is to provide procedures for dealers to seek exemptive relief from rule G-37, in limited circumstances, and to clarify certain definitions in rules G-37 and G-8. The Board has requested accelerated approval of the proposed rule change to facilitate compliance with rule G-37. The Commission is publishing this notice to solicit comments on the propose rule change from interested persons. As discussed below, the Commission finds good cause for granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing the proposed rule change to amend rule G-37 concerning political contributions and prohibitions on municipal securities business, and rule G-8 concerning recordkeeping. The proposed rule change: (i) Provides procedures for dealers to seek exemptive relief from rule G-37's prohibition on business, in limited circumstances; and (ii) clarifies certain definitions in rules G-37 and G-8. The Board has requested accelerated approval of the proposed rule change to facilitate compliance with the rule.

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 Board 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

In response to the Board's initial proposal on political contributions and prohibitions on municipal securities business and its rule G-37 filing with the Commission,[1] the Board received a number of comments recommending that the Board consider providing, in limited instances, a "good faith exemption" to the rule's prohibition on municipal securities business.[2] In light of these comments, the Board has determined to submit the proposed rule change.

A registered securities association or appropriate regulatory agency may exempt a dealer who is prohibited from engaging in municipal securities business with an issuer from such prohibition.

A number of commenters on rule G-37 have expressed concern that imposing a prohibition on municipal securities business may be unfair in certain limited situations when political contributions have been made.[3] For example, a disgruntled municipal finance professional may make a contribution purposely to injure the dealer, its management or employees. Also, a municipal finance professional eligible to vote for an issuer official may make a number of small contributions during an election cycle (*e.g.*, over four years) which, when consolidated, amount to slightly over the $250 *de minimis* exemption (*e.g.*, $255). In both examples, the contributions would trigger the prohibition on business under rule G-37(b), thereby prohibiting the dealer from engaging in municipal

[1] The Commission approved rule G-37 in Securities Exchange Act Release No. 33868 (April 7, 1994), 59 FR 17621. Rule G-37 became effective on April 25, 1994.

[2] The Board previously considered and rejected the inclusion of a good-faith exception to the rule. See Securities Exchange Act Release No. 33482 (January 14, 1994), 59 FR 3389.

[3] See rule G-37 approval order, *supra* note 1.

securities business with the issuer for two years.

The Board recognizes that in certain circumstances, such as those discussed above, the rule's prohibition on business may be too harsh a consequence for truly inadvertent contributions or the contributions of disgruntled employees. Thus, the Board has determined to add new paragraph (i) to rule G–37 to establish a procedure whereby the National Association of Securities Dealers ("NASD") and the federal bank regulatory agencies (*i.e.*, the Office of Comptroller of the Currency, Federal Reserve Board, and Federal Deposit Insurance Corporation), upon application by a dealer subject to such association's or agency's inspection and enforcement authority, may exempt, conditionally or unconditionally, a dealer who is prohibited from engaging in municipal securities business from such prohibition.[4] In determining whether to grant such an exemption, the proposed rule change would require that the NASD and bank regulatory agencies consider, among other factors, whether:

(i) such exemption is consistent with the public interest, the protection of investors and the purposes of this rule; and

(ii) such dealer (A) prior to the time the contribution(s) which resulted in such prohibition was made, had developed and instituted procedures reasonably designed to ensure compliance with this rule; (B) prior to or at the time the contribution(s) which resulted in such prohibition was made, had no actual knowledge of the contribution(s); (C) has taken all available steps to cause the person or persons involved in making the contribution(s) which resulted in such prohibition to obtain a return of the contribution(s); and (D) has taken such other remedial or preventive measures, as may be appropriate under the circumstances.

The Board believes that a dealer that is subject to the prohibition on business should have to make a substantial effort to be exempted from that prohibition. The proposed rule change would require the dealer to petition the NASD or appropriate bank regulatory agency to seek such an exemption and to provide sufficient evidence to justify an exemption. In making a determination concerning an exemption, the NASD or appropriate bank regulatory agency would then review the facts and circumstances presented by the dealer, as well as the factors set forth in the proposed rule change. The Board would expect that this prohibition exemption not be routinely requested by dealers and that exemptions would be granted by the NASD and the bank regulatory agencies only in limited circumstances. The Board believes that the proposed rule change will offer relief from the prohibition on business in appropriate circumstances without sacrificing the rule's purpose and intent, *i.e.*, to ensure that the high standards and integrity of the municipal securities industry are maintained, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to perfect a free and open market, and to protect investors and the public interest. The Board will seek information from the NASD and bank regulatory agencies regarding the granting of any exemptions in order to monitor the implementation of this provision, and to determine if any changes are necessary.

Definition of "Official of an Issuer"

An "official of an issuer" is defined in rule G–37(g)(vi) as any incumbent, candidate or successful candidate for elective office of the issuer, which office is directly or indirectly responsible for, or can influence the outcome of, the hiring of a dealer for municipal securities business. The definition is intended to include any state or local official or candidate (or successful candidate) who has influence over the awarding of municipal securities business, including certain state-wide executive or legislative officials.

The Board, however, was concerned that because the definition focuses on "an elective office of the issuer," it did not clearly include certain other officials. For example, a state may have certain issuing authorities whose boards of directors are appointed by the governor. Although the governor is an official with influence over the awarding of municipal securities business, the governor, in this illustration, is not an incumbent or candidate for "elective office of the issuer" (*i.e.*, the state authority). Thus, a contribution to the governor would not prohibit a dealer from engaging in business with the state authority. The Board intended to include the governor as an official of the issuer in such circumstances and, therefore, has determined to amend the definition to clarify its intent.

The amended definition of official of an issuer includes any incumbent or candidate "for any elective office of a state or of any political subdivision, which office has authority to appoint any official(s) of an issuer, as defined in [paragraph (g)(vii)(A) of rule G–37]."

Definition of "municipal securities business" does not include competitive financial advisory activities.

The definition of "municipal securities business" in rule G–37(g)(vii) includes certain dealer activities, such as acting as negotiated underwriters, financial advisors and consultants, placement agents, and negotiated remarketing agents. In its rule G–37 filing with the Commission, the Board noted that the rule would not prohibit dealers from acting as competitive underwriters or competitive remarketing agents.[5] The Board is amending this definition to clarify that the rule also would not prohibit dealers from engaging in competitive advisory activities.

Only associated persons come under definition of "municipal finance professional."

The Board determined to amend the definition of "municipal finance professional," as set forth in rule G–37(g)(iv), to clarify that only associated persons would fall within the rule's four categories of municipal finance professionals.[6]

Dealers shall send G–37 Reports to the Board by certified or registered mail or by some other means that provides a record of sending.

Rule G–37(e)(i) currently requires dealers to submit quarterly reports to the Board on Form G–37 concerning political contributions and municipal securities business. The Board is concerned, however, that some confusion could arise over whether particular reports were actually sent and/or lost in the mail. To obviate any such problem, the Board is amending this paragraph to require that dealers send such reports to the Board "by certified or registered mail, or some other equally prompt means that provides a record of sending." This will ensure that dealers have a record of all reports submitted to the Board.

The Board also is amending this paragraph to correct an erroneous cross-reference to rule G–8, which requires dealers to submit to the Board reports on contributions that are required to be recorded pursuant to rule G–8(a)(xvi).

The rule requires, among other things, that dealers disclose the name, company, role and compensation arrangement of any person, other than a municipal finance professional, employed by the dealer to obtain or retain business.

[4] The NASD and the bank regulatory agencies are statutorily authorized to inspect for compliance with, and to enforce Board rules. See Sections 15A(b)(7), 15B(c)(5), and 15B(c)(7) of the Act; [15 U.S.C. §§ 78o–3(b)(7), 78o–4(c)(5), 78o–4(c)(7)].

[5] *See supra* note 2.

[6] "Associated persons" is defined in Sections 3(a)(18) and 3(a)(32) of the Act; [15 U.S.C. 78c(a)(18), (32)].

Paragraph (e)(ii) of rule G–37 requires that the reports referred to in paragraph (e)(i) include, among other things, a list of issuers with which the dealer has engaged in municipal securities business, along with the type of municipal securities business and the name, company, role, and compensation arrangement of any person employed by the dealer to obtain or retain municipal securities business with such issuers. The Board intended that this provision apply to persons such as outside consultants that are not municipal finance professionals associated with the dealer. Thus, the amendment clarifies that this requirement does not require the dealer to disclose the name of such municipal finance professionals.

Dealers complying with Commission Rule 17a–3 must maintain the information and records required by Board rule G–37.

Board rule G–8(f) allows dealers, other than bank dealers, who are in compliance with Commission Rule 17a–3, on recordkeeping, to be deemed in compliance with Board rule G–8, on recordkeeping. However, the rule provides that specific information required by rule G–8 must be maintained, even though such information is not required by Rule 17a–3. The Board is amending rule G–8(f) to clarify that dealers complying with Rule 17a–3 are still required to maintain the information and records required by Board rule G–37.[7]

The Board believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which provides that the Board's rules shall be 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 municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, since it will apply equally to brokers, dealers, and municipal securities dealers.

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 Board has requested that the Commission find good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after publication of the notice of filing in the **Federal Register**. The Board believes that accelerated approval of the proposed rule change is necessary to facilitate dealer compliance with rules G–37 and G–8.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Board, and, in particular, with Sections 15B(b)(2) (C) and (G) of the Act.[8] Section 15B(b)(2)(C) authorizes the MSRB to adopt rules 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 transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities and, in general, to protect investors and the public interest. Section 15B(b)(2)(G) authorizes the MSRB to adopt rules that prescribe the records to be made and kept by municipal securities dealers and the periods for which such records shall be preserved.

The Commission received several comments to rule G–37 recommending that the rule provide an exemption process, based on the dealer's compliance procedures and supervision, for certain inadvertent violations.[9] The Commission approved the rule and recommended the MSRB separately address these concerns by filing a proposed rule change that provides an exemption process for inadvertent violations. The MSRB's proposal adequately addresses these concerns.[10] The proposal provides procedures for dealers to obtain exemptive relief from rule G–37's prohibition on business where, for example, covered persons inadvertently make contributions that slightly exceed the *de minimis* exemption provided by the rule. The proposal's exemptive relief is based on the dealers' supervision of covered persons, compliance procedures concerning rule G–37, and corrective and remedial action concerning inadvertent violations. The Commission expects that dealers will apply for exemptive relief only in certain, limited situations. Thus, the proposal provides an exemptive process to rule G–37 without providing dealers a "loop-hole" that would frustrate the rule's purpose to, among other things, ensure that high standards and integrity of the municipal securities industry are maintained.

The proposal also clarifies provisions of rules G–37 and G–8. Amendments to rule G–37's definitions of "official of an issuer," "municipal securities business," and "municipal finance professional," as well as amendments to rules G–37 and G–8 disclosure and recordkeeping requirements will facilitate compliance with the rules.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing in the **Federal Register**. Accelerated approval is necessary and appropriate to facilitate compliance with rules G–37 and G–8.

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 the filing will also be available for inspection and copying at the principal office of the Board. All submissions should refer to File No. SR–MSRB–94–5 and should be submitted by July 5, 1994.

[7] In addition, the board is amending rule G–8(f) to include appropriate cross-references to rules G–27 on supervision, and G–36 on delivery to the Board of officials statements and advance refunding documents. This amendment, like the proposed rule change, clarifies that dealers complying with Rule 17a–3 must still maintain the information and records required by rules G–27 and G–36. These cross-references were inadvertently omitted when the Board previously amended these rules.

[8] Sections 15B(b)(2)(C), (G); [15 U.S.C. 78o–4(b)(2)(C), (G)].

[9] See *Supra* note 1.

[10] Because an exemption to rule G–37 is appropriate in very limited circumstances,

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 U.S.C. 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

[FR Doc. 94–14226 Filed 6–10–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34161; File No. SR–MSRB–94–6]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Interpretation of Rule G–37 on Political Contributions and Prohibitions on Municipal Securities Business

June 6, 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 May 24, 1994, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission") a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The purpose of the proposed rule change is to provide interpretative guidance concerning rule G–37 on political contributions and prohibitions on municipal securities business. The Board, pursuant to Section 19(b)(3)(A) of the Act, filed the proposal as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Board. This renders the proposal effective upon filing with the Commission. 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 Board is filing the proposed rule change to provide interpretative guidance concerning rule G–37 on political contributions and prohibitions on municipal securities business.[1]

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 Board 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

On April 7, 1994, the Commission approved Board rule G–37, concerning political contributions and prohibitions on municipal securities business.[2] The Board has, and continues to receive, numerous inquiries concerning the application of the rule. In order to assist the municipal securities industry and, in particular, brokers, dealers and municipal securities dealers in understanding and complying with the provisions of the rule, the Board has determined to publish this notice of interpretation which provides, in question-and-answer format, general guidance on rule G–37. The Board will continue to monitor the application of rule G–37, and, from time to time, will publish additional notices of interpretations, as necessary.

The Board believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act, which provides that the Board's rules shall be 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 municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Because the proposed rule change would apply equally to all brokers, dealers and municipal securities dealers, the Board does not believe that the proposed rule change will impose any burden on competition 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

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 pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of rule 19b-4 thereunder because the rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Board. 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 in the commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the Board. All submissions should refer to File No. SR–MSRB–94–6 and should be submitted by July 5, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Jonathan G. Katz,

Secretary.

[FR Doc. 94–14227 Filed 6–10–94; 8:45 am]

BILLING CODE 8010–01–M

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[11] 15 U.S.C. 78s(b)(2).

[1] The Board plans to publish the interpretations in the June 1994, MSRB Reports. The interpretations also are available for inspection and copying at the Commission's public reference room, and at the MSRB.

[2] Securities Exchange Act Release No. 33868 (April 7, 1994); 59 FR 17621. The rule applies to contributions made on and after April 25, 1994.

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended June 3, 1994

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 49588.

Date Filed: June 1, 1994.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 29, 1994.

Description: Application of Air Transport International, Inc., pursuant to section 401(h) of the Act, requests a disclaimer of jurisdiction or, in the alternative, approval of the transfer of its certificates of public convenience and necessity to Air Transport International Limited Liability Company. The transfer of certificates from ATI to ATI LLC is part of a corporate restructuring intended to take advantage of tax and business-related benefits offered by the relatively new limited liability company organizational structure.

Docket Number: 49589.

Date Filed: June 2, 1994.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 30, 1994.

Description: Application of Aeroejecutivo, S.A. de C.V., pursuant to section 402 of the Act and subpart Q of the Regulations, applies to amend its foreign air carrier permit issued to engage in scheduled foreign air transportation of persons, property and mail between points in Mexico and points in the United States, and subject to applicable regulations of the Department, between points in the United States and other points worldwide.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94–14223 Filed 6–10–94; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

RTCA, Inc.; New Document Releases

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 release of the following new documents:

RCRA DO–221 *Guidance and Recommended Requirements For Airport Surface Movement Sensors,* provides recommended standards for both sensor and system characteristics. The primary purpose for these sensors is to operate stop bars located on taxiways which provide entrance to low visibility runways. The sensors may also be used for other low visibility functions such as taxiway light sequencing, runway exiting notification and presence detection. This document provides guidance to airport system designers, manufacturers, installers and user. The cost of DO–221 is US$50.00 for U.S./Canada/Mexico and US$65.00 for all other countries, plus applicable shipping and handling charges.

RTCA DO–222 *Guidelines on AMS(R)S Near-Term Voice Implementation and Utilization,* contains operational guidelines and recommendations for the implementation and utilization of Aeronautical Mobile Satellite (Route) Services, voice communication functions in the near-term (circa 1993–1996) air traffic environment. It presents a system-level view of how satellite voice services can be implemented and used in the Air Traffic Services (ATS) and Aeronautical Operational Control (AOC) environments inclusive of aircraft installation requirements, ground infrastructure requirements and available AMS(R)S services. This document defines the functions and performance needed to facilitate the development, implementation, certification and operational use of satellite voice in an environment where satellite voice communication is not yet a required capability for air navigation. It uses as its basis the existing standards for satellite avionics and ground equipment. It should be useful to designers, manufacturers, installers and operators of equipment used in AMSS voice service. The cost of DO–222 is US$60.00 for U.S./Canada/Mexico and US$75.00 for all other countries, plus applicable shipping and handling charges.

Dave Ford,

Designated Officer

[FR Doc. 94–14295 Filed 6–10–94; 8:45 am]

BILLING CODE 4910–13–M

Approval of Record of Decision (ROD) for a Mitigated Finding of No Significant Impact (FONSI); Greater Rockford Airport, Rockford, IL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability.

SUMMARY: The Federal Aviation Administration (FAA) announces that on June 3, 1994, it approved the Mitigated FONSI/ROD on the proposed development at Greater Rockford Airport, Rockford, Illinois. Major development items, proposed to be completed over the next 5 to 10 years, are depicted on the Airport Layout Plan (ALP).

EFFECTIVE DATE: The effective date of the FAA's approval of the Mitigated FONSI/ROD is June 3, 1994.

FOR FURTHER INFORMATION CONTACT: Melissa Wishy, Community Planner, Federal Aviation Administration, Chicago Airports District Office, 2300 East Devon Avenue; Des Plaines, Illinois, 60018, (708) 294–7524.

SUPPLEMENTARY INFORMATION: The FAA approved the Mitigated FONSI/ROD for proposed development at Greater Rockford Airport. Below is a listing of major, associated and indirect development projects. This listing includes United Parcel Service's (UPS) recent announcement to initiate a cargo hub facility at the airport.

1. Develop the midfield area for aviation-related industrial users.
2. Expand the existing cargo apron and buildings west of the existing terminal building to accommodate a minimum of 26 cargo aircraft.
3. Extend Runway 7/25 to a length of 10,000 feet by constructing a 3,500-foot southwesterly extension with parallel and connecting taxiways and associated lighting and navigation aids. This would include the installation of a CAT II Instrument Landing System (ILS) for Runway 7.
4. Relocate approximately 12,000 feet of Belt Line Road and 9,300 feet of Kishwaukee Road.
5. Expand the existing terminal building and auto parking lot and upgrade the existing airport entrance roadway.
6. Construct a general aviation apron and T-hangars.
7. Close Runway 13/31.
8. Remove miscellaneous support buildings.
9. Construct a new 4,000-foot general aviation visual approach runway, parallel to and 5,100 feet southeast of existing Runway 7/25, with associated taxiways and instrumentation.
10. Construct and realign various taxiways parallel to Runway 1/19. The majority of the realignment work proposed is adjacent to and west of the approach end of Runway 19.

11. Implement actions recommended in the 1993 Master Drainage/Stormwater Management Plan.

12. Implement actions recommended in the updated Noise Compatibility Plan.

13. Acquire approximately 1,100 acres of land for airfield development. In addition to this acquisition, is the relocation of up to 28 residential dwellings (for noise and floodway mitigation), of which only eleven are considered to be noise impacted and must be acquired and residents relocated prior to the start of any operation resulting from the Proposed Action Alternative. The remaining residential dwellings would be acquired for purposes of airfield development and floodway mitigation. Those dwellings identified as floodway mitigation can be acquired either in fee-simple or through restrictive covenant. (Updated)

14. Compensate for wetland impacts caused by the development of the Proposed Action Alternative through the creation of approximately 25 acres of new wetlands.

15. An additional 1,500 flights annually beyond those originally forecasted but with an greater number of stage three aircraft. This is based on UPS's proposal to initiate an air cargo operation at Greater Rockford Airport.

The FAA issued a **Federal Register** Notice on April 22, 1993 announcing its intent to prepare an Environmental Document (possible Environmental Impact Statement) and to hold a May 26, 1993 scoping meeting. At the scoping meeting no significant impacts were identified. Some concerns were expressed over possible noise, floodplain and wetland impacts. The airport sponsor indicated that any impacts would be mitigated below the level of significance as an integral part of the development.

The FAA issued a subsequent **Federal Register** Notice on February 17, 1994 announcing the availability of the Draft Environmental Document and provided additional opportunity for scoping comments for the refined listing of the major, associated and indirect development projects, incorporating items scoped originally and those newly identified as part of the UPS proposed development. Notice was also given for a March 22, 1994 public hearing with written comments being received until April 6, 1994. Based on the analysis found in the Final Environmental Assessment and the results of the public hearing, the FAA published a May 2, 1994 **Federal Register** Notice that it intended to issue a Mitigated FONSI/ROD for the proposed development depicted on the Airport Layout Plan. The FAA received a letter from the Illinois Department of Agriculture (IDOA) stating their concerns with respect to farmland impacts. The FAA addressed IDOA's concerns in a June 2, 1994 letter. On June 3, 1994, the FAA approved the Record of Decision (ROD).

A copy of the Mitigated FONSI/ROD is available for review at the FAA-Chicago Airports District Office (address identified above). Copies of these documents will also be available for review locally at locations which have not yet been determined. These locations will be specified in a Public Notice or upon request of the Chicago Airports District Office (telephone number identified above).

Questions may be directed to the individual named above under the heading, FOR FURTHER INFORMATION CONTACT.

Issued in Des Plaines, Illinois on June 6, 1994.

Louis H. Yates,

Manager, Chicago Airports District Office, FAA, Great Lakes Region.

[FR Doc. 94–14291 Filed 6–10–94; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting on Air Carrier Operations

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss air carrier operations issues.

DATES: The meeting will be held on June 30, 1994, at 9 a.m.

ADDRESSES: The meeting will be held in the Management Operations Center, 10th floor, Headquarters, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC, 20591.

FOR FURTHER INFORMATION CONTACT: Mrs. Marlene Vermillion, Flight Standards Service, Air Transportation Division (AFS–200), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8166.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be held on June 30, 1994, at the Federal Aviation Administration Building, Management Operations Center, 10th Floor, 800 Independence Ave., SW., Washington, DC, 20590. The agenda for this meeting will include a final report from the Flight Crewmember Flight/Duty/Rest Requirements Working Group and status reports on the recommendations of the Fuel Requirements Working Group, the Autopilot Working Group, and the Controlled Rest on the Flight Deck Working Group. The agenda will also include an open discussion of possible future tasks. Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. Arrangements may be made by contacting the person listed under the heading FOR FURTHER INFORMATION CONTACT.

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

Issued in Washington, DC, on June 7, 1994.

Quentin J. Smith, Jr.,

Assistant Executive Director for Air Carrier Operations, Aviation Rulemaking Advisory Committee.

[FR Doc. 94–14292 Filed 6–10–94; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc.; Special Committee 162, Twenty-Second Meeting; Aviation Systems Design Guidelines for Open Systems Interconnection (OSI)

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 162 meeting to be held August 16–18, starting at 9:30 a.m. The meeting will be held at the National Business Aircraft Association (NBAA) Conference Room, 1200 Eighteenth Street, NW., suite 200, Washington, DC 20036. Phone (202) 783–9000.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Approval of the summary of the twenty-first meeting held March 29–31, 1994. RTCA Paper No. 181–94/SC162–169 (enclosed); (3) Reports of related activities being conducted by other organizations; (4) Report on FAA data link certification planning and documentation; (5) Review and plan the activity of Working Group 1, "ATN MASPS and Router MOPS; (6) Plan the activity of Working Group 2, "Rewrite DO–205, Part 1"; (7) Other business; (8) Date and place of next meeting.

Attendance is open to the interested public but limited to space availabilfty. 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 June 2, 1994.

Dave Ford,

Designated Officer.

[FR Doc. 94–14293 Filed 6–10–94; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc.; Special Committee 181, Fourth Meeting; Aviation Systems Design Guidelines for Open Systems Interconnection (OSI)

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 181 meeting to be held June 20–24, starting at 9 a.m. The meeting will be held at the Red Lion Hotel, 300 112th Avenue, SE., Bellevue, Washington, DC; (P) 206–455–1300/Boeing Host: Dave Nakamura (P) 206–4552.

Specific Working Groups Sessions

June 20–21

Working Groups 1 and 3: Meeting space will be provided at the hotel for these sessions.

June 22–24 Plenary Agenda

Note: Committee officers working group chairman, and secretaries will meet at 0800 on June 22 prior to the plenary and again on June 24.

June 22 Morning

(1) Opening remarks/introductions;

(2) Review of the agenda;

(3) Approval of the summary of the third meeting, RTCA Paper No. 219–94/SC181–28 (previously mailed).

Note: Paper number was inadvertently left off of the mailed copy and has been added for filing and reference purposes.

(4) Committee reports: (a) P–RNAV AMJ Editorial Group—Geoff Burtenshaw (b) RTCA Technical Management Committee Briefing—Frank Alexander;

(5) Working Group Reports: (a) Working Group 2—Jim Terpstra (b) Containment Surface Sub-group—Frank Alexander.

Afternoon of June 22 and June 23

Working Group Meetings.

June 24 Morning

(6) Working Group Reports (Working Groups 1 and 3);

(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 June 2, 1994.

Dave Ford,

Designated Officer.

[FR Doc. 94–14294 Filed 6–10–94; 8:45 am]

BILLING CODE 4910–13–M

Federal Interagency Committee on Aircraft Noise Meeting Agenda

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public forum.

SUMMARY: The FAA is issuing this notice to advise the public of a forum sponsored by the Federal Interagency Committee on Aircraft Noise (FICAN) to discuss aircraft noise issues.

DATES: The forum will be held on July 27, 1994, at the Richard B. Russel Building.

ADDRESSES: The forum will be held at 75 Spring Street, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Connor, Manager, Technology Division (AEE–100), Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, fax (202) 267–5594.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a public forum sponsored by the Federal Interagency Committee on Aircraft Noise (FICAN) to be held on July 27, 1994.

On March 16, 1993, representatives of the agencies that participated on the Federal Interagency Committee on Noise (FICON) met and agreed to establish a standing committee to be known as FICAN. The standing interagency committee will provide a permanent aviation noise research and development (R&D) forum, which will assist agencies in providing adequate forums for discussion of public and private proposals, identify needed research, and encouraging R&D efforts in these areas.

The agenda for the meeting will include:

- Presentation of current and future aircraft noise research projects that are funded by the Federal members of FICAN.
- Public concern/discussion and comment period.

Attendance is open to the public, but will be limited to the space available. The public must make arrangements by July 15, 1994, to present oral statements at the forum. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.** Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the forum. Written comments should be addressed to the person listed under the heading **FOR FURTHER INFORMATION CONTACT.** Comments must be received on or before August 12, 1994.

Thomas Connor,

Manager Technology Division, Office of Environment and Energy.

[FR Doc. 94–13918 Filed 6–10–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review.

June 2, 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.

Office of Thrift Supervision (OTS)

OMB Number: 1550–0025.

Form Number: OTS Form 1314 (Canceled) and OTS Forms 1584 (New), 1585 (New) and 1589 (Replaces OTS Form 1314).

Type of Review: Revision.

Title: Purchase of Branch Office(s)/Transfer of Assets and/or Liabilities.

Description: Information provided to OTS is evaluated to determine whether the proposed assumption of liabilities and/or transfer of assets transactions complies with applicable laws, regulations and policy, and will not have an adverse effect on the risk exposure to the insurance fund.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 135.

Estimated Burden Hours Per Respondent: 4 hours, 2 minutes.

Frequency of Response: Other (Information is submitted each time a transfer of assets and/or liabilities are proposed.)

Estimated Total Reporting Burden: 545 hours.

OMB Number: 1550–0037.
Form Number: OTS Form No. 1240.
Type of Review: Extension.
Title: Trust Powers Application.
Description: 12 CFR 550.2 requires a Federal savings association proposing to exercise fiduciary powers to file an application indicating which trust services it wishes to offer and providing sufficient information for the OTS to approve or deny the application.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 9.
Estimated Burden Hours Per Respondent: 9 hours.
Frequency of Response: Other (Submission is required when Federal association proposes to offer fiduciary services.)
Estimated Total Reporting Burden: 81 hours.

OMB Number: 1550–0060.
Form Number: H-(b)11 Report.
Type of Review: Extension.
Title: Savings and Loan Holding Company Report H-(b)11.
Description: The H-(b)11 Report is used to determine a savings and loan holding company's adherence to the statutes, regulations and conditions of approval to acquire an insured institution and whether any of the company's activities would be injurious to the operation of any subsidiary savings association.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents: 587.
Estimated Burden Hours Per Respondent: 15 hours, 30 minutes.
Frequency of Response: Quarterly.
Estimated Total Reporting Burden: 36,394 hours.

Clearance Officer: Colleen Devine (202) 906–6025, Office of Thrift Supervision, 2nd Floor, 1700 G. Street, NW., Washington, DC 20552.
OMB Reviewer: Gary Waxman (202) 395–7340, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 94–14297 Filed 6–10–94; 8:45 am]
BILLING CODE 4810–25–P

Customs Service

Public Meetings on Customs Automated Export System

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

SUMMARY: This notice announces the first of a series of public meetings on the development of the Automated Export System (AES) and advises the public of other locations where additional meetings on this subject will be scheduled at a later date. The purpose of these meetings is: (1) To give Customs managers an opportunity to provide the public with information related to the development of AES and (2) to give attendees an opportunity to ask questions, make suggestions, and provide Customs with informal ideas related to AES design and functionality. The first meeting will be held in Washington, DC on Friday, July 8, 1994, commencing at 9 a.m. in Hearing Room B of the Interstate Commerce Commission Building. Those planning to attend the meeting are requested to so notify Customs in advance. Notice of additional meetings to be held at other locations around the country will be published at a later date.

DATES: July 8, 1994, commencing at 9 a.m.

ADDRESSES: Interstate Commerce Commission Building, Hearing Room B, 12th Street and Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lorna Finley, AES Development Team, U.S. Customs Service, 1301 Constitution Avenue, NW., room 7331, Washington, DC 20229. Phone: 202–927–0280; FAX: 202–927–0742.

SUPPLEMENTARY INFORMATION:

Background

On February 24, 1994, the Commissioner of Customs directed that Customs develop an Automated Export System (AES). This system is being developed as a cooperative team effort involving Customs and the Bureau of the Census.

Since AES is in the very early design stage, the AES Development Team intends to hold a series of public meetings for the purpose of: (1) Giving Customs managers an opportunity to provide the public with information related to the development of AES and (2) giving attendees an opportunity to ask questions, make suggestions, and provide Customs with informal ideas related to AES design and functionality. Each meeting will open with a short presentation on AES, past, present and future, and after this presentation the floor will be open to all attendees for general informal discussion of the AES program.

The first meeting will be held in Washington, D.C. on Friday, July 8, 1994, commencing at 9:00 a.m. in Hearing Room B of the Interstate Commerce Commission Building. In order to ensure that overcrowding does not result, persons planning to attend the meeting are requested to preregister by contacting Lorna Finley, AES Development Team, preferably by FAX (202–927–0742) or, for those without access to FAX equipment, by telephone (202–927–0280).

Additional public meetings on AES are planned for the following locations: Boston, Massachusetts; New York, New York; Houston, Texas; New Orleans, Louisiana; Seattle, Washington; Los Angeles, California; and Portland, Oregon. Appropriate notice will be published in the **Federal Register** when the dates, times and specific locations for these meetings have been established.

Dated: June 8, 1994.

Harvey B. Fox,
Director, Office of Regulations and Rulings.
[FR Doc. 94–14254 Filed 6–10–94; 8:45 am]
BILLING CODE 4820–02–P

Fiscal Service

[Dept. Circ. 570, 1993—Rev., Supp. No. 24]

Surety Companies Acceptable on Federal Bonds Termination of Authority: Omaha Property and Casualty Insurance Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Omaha Property and Casualty Insurance Company, of Omaha, Nebraska, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 58, CFR 35809, July 1, 1993.

With respect to any bonds currently in force with Omaha Property and Casualty Insurance Company, bond-approving officers may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from Company. In addition, bonds that are continuous in nature should not be renewed.

Copies of the Circular may be obtained from the Department of the Treasury, Financial Management Service, Funds Management Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 874–7116.

Dated: May 25, 1994.

Charles F. Schwan III,
Director, Funds Management Division, Financial Management Service.
[FR Doc. 94–14279 Filed 6–10–94; 8:45 am]
BILLING CODE 4810–35–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 112
Monday, June 13, 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).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Thursday, June 16, 1994, 10:00 a.m.

LOCATION: Room 410, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTER TO BE CONSIDERED: The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: June 8, 1994.

Sadye E. Dunn,

Secretary.

[FR Doc. 94–14452 Filed 6–9–94; 1:08 pm]

BILLING CODE 6355–01–M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Wednesday, June 15, 1994, 10:00 a.m.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED:

1. Baby Bath Rings and Seats

The Commission will consider options for Commission action to address risks of injury and death associated with baby bath rings and seats.

2. Fireworks

The staff will brief the Commission on options for Commission action to address the risk associated with multiple tube mine and shell fireworks devices.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: June 8, 1994.

Sadye E. Dunn,

Secretary.

[FR Doc. 94–14453 Filed 6–9–94; 1:08 pm]

BILLING CODE 6355–01–M

FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

DATE AND TIME: June 15, 1994, 10:00 a.m.

PLACE: 825 North Capitol Street N.E., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 611th Meeting—June 15, 1994, Regular Meeting (10:00 a.m.)

CAH–1.
Project No. 2471–003, Wisconsin Electric Power Company

CAH–2.
Project No. 11465–001, Androscoggin Hydroelectric Company, Inc.

CAH–3.
Omitted

CAH–4.
Project No. 9759–011, Centreville Hydro, Inc.

Consent Agenda—Electric

CAE–1.
Docket No. ER94–235–000, Northeast Utilities Service Company

CAE–2.
Docket Nos. EF93–2011–001, EF93–2021–001, EF93–2041–001, EF94–2081–001 and EF94–2091–001, Bonneville Power Administration

CAE–3.
Docket No. ER94–1174–000, Florida Power Corporation

CAE–4.
Docket No. ER94–996–000, Elkem Metals Company

CAE–5.
Docket No. QF91–40–003, Medina Power Company

CAE–6.
Project No. 432–009, Carolina Power & Light Company
Project No. 2748–002, North Carolina Electric Membership Corporation

CAE–7.
Docket No. ER94–773–001, Long Island Lighting Company

CAE–8.
Docket Nos. ER94–504–001 and ER94–505–001, Public Service Company of Colorado

CAE–9.
Docket No. ER93–777–001, Commonwealth Edison Company

CAE–10.
Docket No. EG94–29–001, Desarrollo Petacalco, S. De R.L. De C.V.

CAE–11.
Docket No. ER90–283–008, Cambridge Electric Light Company

CAE–12.
Docket No. ER93–465–001, Florida Power & Light Company

CAE–13.
Docket No. EG94–56–000, Entergy Power Asia Ltd.

CAE–14.
Docket No. EG94–57–000, Entergy Power Development Corporation

CAE–15.
Docket No. EG94–52–000, SEI Iversora S.A.

CAE–16.
Docket No. EG94–53–000, Cardinal Power of Canada, L.P.

CAE–17.
Docket No. EG94–59–000, Energia De Duevo Leon, S.A. de C.V.

CAE–18.
Docket No. EG94–58–000, SEI Holdings VIII, Inc.

CAE–19.
Docket No. EG94–60–000, SEI Beteiligungs Gmbh

CAE–20.
Docket No. EG94–54–000, Les Developpements Hydroelectrique CHI International, Inc.

CAE–21.
Docket No. EG94–55–000, Consolidated Hydro, Inc.

CAE–22.
Docket No. EL94–2–000, American Municipal Power—Ohio, Inc. v. Dayton Power & Light Company

CAE–23.
Docket No. EL94–14–000, Public Service Company of Oklahoma

CAE–24.
Docket Nos. EL94–26–000 and QF89–126–005, Cedar Bay Generating Company, Limited Partnership

CAE–25.
Docket No. EL94–57–000, Louisiana Public Service Commission, Attorney General of the State of Mississippi, and the Mississipi Public Service Commission v. Entergy Services, Inc.,
Docket No. EL94–13–000, Entergy Services Inc. and Gulf States Utilities Company

Consent Agenda—Miscellaneous

CAM–1.
Docket No. RM94–16–000, Delegations to the Chief Accountant and the Chief Administrative Law Judge

Consent Agenda—Oil and Gas

CAG–1.
Docket No. RP94–80–003, National Fuel Gas Supply Corporation
CAG–2.
Docket No. RP94–213–000, CNG Transmission Corporation
CAG–3.
Docket No. RP94–251–000, National Fuel Gas Supply Corporation
CAG–4.
Omitted
CAG–5.
Docket No. TM94–5–34–000, Florida Gas Transmission Company
CAG–6.
Docket No. RP94–152–001, Northern Border Pipeline Company
CAG–7.
Docket Nos. RP94–249–000, RP94–87–000, RP94–122–000, RP94–169–000 and RP94–195–000, Natural Gas Pipeline Company of America
CAG–8.
Docket No. RP94–252–000, Natural Gas Pipeline Company of America
CAG–9.
Docket Nos. GT93–48–000, GT94–7–000 and GT94–12–000, Transcontinental Gas Pipe Line Corporation
CAG–10.
Docket No. RP90–137–015, Williston Basin Interstate Pipeline Company
CAG–11.
Docket No. TM90–3–42–009, Transwestern Pipeline Company
CAG–12.
Docket No. PR93–11–000, Northern Illinois Gas Company
CAG–13.
Omitted
CAG–14.
Docket Nos. RP90–81–000, RP88–194–000, RP89–132–000, RP91–26–000, RP91–162–000 and RP92–18–000, El Paso Natural Gas Company
CAG–15.
Docket Nos. RP91–161–012, RP92–3–006, RP90–108–019, RP91–82–010 and RS92–5–003, Columbia Gas Transmission Corporation
Docket Nos. RP91–160–009, RP92–2–006, RP90–107–016 and RS92–6–003, Columbia Gulf Transmission Company
CAG–16.
Docket No. RP94–125–004, Texas Gas Transmission Corporation
CAG–17.
Docket Nos. RP94–182–001, RP94–182–002 and TM94–3–31–001, Arkla Energy Resources Company
CAG–18.
Docket No. GP94–9–001, Oklahoma Corporation Commission, Oil & Gas Conservation Division, Sonat Exploration Company
CAG–19.
Docket No. MG91–1–005, National Fuel Gas Supply Corporation
CAG–20.
Docket Nos. OR92–8–004, OR93–5–002, OR94–3–001 and OR94–4–001, SFPP, L.P.
CAG–21.
Docket No. AC92–143–001, ARCO Pipe Line Company
CAG–22.
Docket Nos. RP91–26–007, RP91–162–002, RP92–18–004, RP88–184–013, RP89–132–014 and RP90–81–006, El Paso Natural Gas Company
CAG–23.
Docket No. RP91–203–038, Tennessee Gas Pipeline Company
CAG–24.
Docket No. RP94–158–001, Columbia Gas Transmission Corporation
CAG–25.
Docket Nos. TA93–1–21–004 and TM93–9–21–002, Columbia Gas Transmission Corporation
CAG–26.
Docket No. RP94–161–001, U–T Offshore System
CAG–27.
Docket No. IS92–25–002, Amoco Pipeline Company
CAG–28.
Docket No. RP93–99–001, Colorado Interstate Gas Company
CAG–29.
Omitted
CAG–30.
Omitted
CAG–31.
Omitted
CAG–32.
Docket No. MG94–3–000, Midwest Gas Storage Company
CAG–33.
Docket No. MG91–7–000, Ozark Gas Transmission System
CAG–34.
Docket No. OR94–5–000, Gaviota Terminal Company
CAG–35.
Docket No. OR94–8–000, All American Pipeline Company
CAG–36.
Docket No. GP94–2–000, Columbia Gas Transmission Corporation
CAG–37.
Omitted
CAG–38.
Omitted
CAG–39.
Docket No. RS92–24–018, Texas Gas Transmission Corporation
CAG–40.
Docket No. CP92–606–002, Great Lakes Gas Transmission Limited Partnership
CAG–41.
Docket No. CP93–501–001, Tennessee Gas Pipeline Company
CAG–42.
Docket Nos. CP93–541–001 and 000, Young Gas Storage Company, Ltd.
CAG–43.
Docket Nos. CP91–780–004 and RP92–112–002, Northwest Pipeline Corporation
CAG–44.
Docket No. CP92–259–003, Sumas International Pipeline, Inc.
Docket Nos. CP92–336–003 and CP92–383–003, Northwest Pipeline Corporation
Docket Nos. CP92–247–002 and 003, Northwest Pipeline Corporation and Washington Water Power Corporation
CAG–45.
Docket No. CP94–166–001, Viosca Knoll Gathering System
CAG–46.
Docket No. CP93–565–000, Texas Eastern Transmission Corporation
CAG–47.
Docket No. CP93–607–000, CNG Transmission Corporation
CAG–48.
Omitted
CAG–49.
Docket No. CP94–161–001, Avoca Natural Gas Storage
CAG–50.
Docket No. CP94–75–000, Koch Gateway Pipeline Company
CAG–51.
Docket No. CP93–716–000, HNG Sulphur Mines Company
CAG–52.
Docket No. CP94–87–000, Great Lakes Gas Transmission Limited Partnership
CAG–53.
Docket No. CP93–198–000, Big Sandy Gas Company
Docket No. CP93–200–000, CNG Transmission Corporation
CAG–54.
Docket No. CP94–146–000, CNG Producing Company
Docket Nos. CP93–340–000 and CP93–596–000, CNG Transmission Corporation
Docket No. CP94–148–000, CNG Transmission Corporation, CNG Producing Company and Otis Petroleum Corporation
Docket No. RP94–96–000, CNG Transmission Corporation
Docket No. RP94–120–000, Koch Gateway Pipeline Company
Docket No. RP94–164–000, Trunkline Gas Company
CAG–55.
Omitted
CAG–56.
Docket No. CP89–460–010, Pacific Gas Transmission Company
CAG–57.
Docket No. CP94–158–000, Pacific Gas and Electric Company
CAG–58.
Docket No. CP93–260–000, Suncor Inc., PanCanadian Petroleum Company and Petro-Canada Hydrocarbons, Inc. v. Pacific Ga Transmission Company and Pacific Gas and Electric Company
CAG–59.
Docket Nos. CP93–261–000 and 001, Algonquin Gas Transmission Company

Hydro Agenda

H–1.
Omitted
H–2.
Docket No. RM93–7–000, Charges and Fees for Hydroelectric Project. Final Rule
H–3.
Omitted

Electric Agenda

E–1.
Omitted
E–2.

Omitted

E–3.

Docket No. ER92–592–000, Yankee Atomic Electric Company. Order on initial decision concerning unamortized investment, expenses, and decommissioning costs

E–4.

Omitted

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.

Docket Nos. RM94–6–000 and RM87–5–016, Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions. Final Rule

II. Restructuring Matters

RS–1.

Reserved

III. Pipeline Certificate Matters

PC–1.

Reserved

Dated: June 8, 1994.

Lois D. Cashell,

Secretary.

[FR Doc. 94–14379 Filed 6–9–94; 11:56 am]

BILLING CODE 6717–01–P

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Audit and Appropriations Committee Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors Audit and Appropriations Committee will meet on June 18, 1994. The meeting will commence at 9 a.m.

PLACE: Washington Court Hotel, 525 New Jersey Avenue, NW., Hermitage Room, Washington, DC 20001, (202) 628–2100.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.
2. Approval of Minutes of May 13, 1994 Meeting.
3. Consideration and Review of Budget and Expenses for Period Ending April 30, 1994.

CONTACT PERSON FOR INFORMATION: Patricia Batie (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: June 9, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–14372 Filed 6–9–94; 11:23 am]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Presidential Search Committee Meeting

TIME AND DATE: A meeting of the Legal Services Corporation Board of Directors Presidential Search Committee will be held on June 16–17, 1994. The meeting will commence at 9:00 a.m. on June 16, 1994, and at 8:30 a.m. on June 17, 1994.

PLACE: Washington Court Hotel, June 16th: Board Room Lounges, 750 First Street, N.W., Washington, D.C. 20001 June 17th: Montpelier Room, (202) 628–2100.

STATUS OF MEETING: *Open*, except that part of the meeting may be closed on both days pursuant to a vote, to be solicited prior to the meeting, of a majority of the Board of Directors. Should the aforementioned majority vote to close all or a portion of the meeting be obtained, the Committee will, with its Advisory Committee, interview and consider applicants for the position of President of the Corporation. The Committee, with its Advisory Committee, will also consider the qualifications of the applicants interviewed for the position of President of the Corporation, after which the Committee will, alone, consider the recommendations of its Advisory Committee and the qualifications of the applicants interviewed for the position of President of the Corporation and will settle on a recommendation to make to the Board of Directors as to selection of a candidate for the position. In addition, the Committee will consider for approval the minutes of the executive session(s) held on March 12, 1994, April 14, 1994, and May 14, 1994.[1] The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Sections 552b(c)(2) and (6)], and the corresponding regulation of the Legal Services Corporation [45 C.F.R. Section 1622.5(a) and (e)]. The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street, N.E., Washington, D.C., 20002, in its eleventh floor reception area, and will otherwise be available upon request.

June 16, 1994 Agenda

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.
2. Approval of Minutes of May 14, 1994 Meeting.

CLOSED SESSION:

3. Approval of Minutes of March 12, 1994 Executive Session.
4. Approval of Minutes of April 14, 1994 Executive Session.
5. Approval of Minutes of May 14, 1994 Executive Session.
6. Interview and Consider, With Advisory Committee, Applicants for the Position of President of the Corporation.

OPEN SESSION:

8. Consider and Act on Motion to Recess the Executive Session Until June 17, 1994, at 8:30 a.m.

June 17, 1994 Agenda

MATTERS TO BE CONSIDERED:

CLOSED SESSION:

1. Interview and Consider, With Advisory Committee, Applicants for the Position of President of the Corporation.
2. Consider, With Advisory Committee, Qualifications of Applicants Interviewed for the Position of President of the Corporation.
3. Presidential Search Committee's Consideration of the Relative Merits of Applicants Interviewed for the Position of President of the Corporation and Selection of Candidate(s) to Recommend to the Board of Directors for the Position.

OPEN SESSION: (Resumed)

4. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Executive Office, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: June 9, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–14374 Filed 6–9–94; 11:23 am]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Provision for the Delivery of Legal Services Committee Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors Provision for the Delivery of Legal Services Committee will meet on June 18, 1994. The meeting will commence at 9:00 a.m.

PLACE: Washington Court Hotel, 525 New Jersey Avenue, NW., Ballroom West, Washington, DC 20001, (202) 628–2100.

STATUS OF MEETING: Open.

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[1] As to the Committee's consideration and approval of the draft minutes of the executive session(s) held on the above-noted date(s), the closing is authorized as noted in the **Federal Register** notice(s) corresponding to that/those Committee meeting(s).

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.
2. Approval of Minutes of May 13, 1994 Meeting.
3. Report and Recommendation to the Committee Regarding Monitoring, Evaluation, and Support Functions.
4. Report on Various Activities, Including the Application to the Corporation for National and Community Service and the Law School Clinical Civil Legal Services Grants.
5. Discussion of Issues Related to Program Improvement: Technical Assistance, Training, and Support.
6. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION: Patricia Batie (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: June 9, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–14373 Filed 6–9–94; 11:22 am]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Operations and Regulations Committee Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors Operations and Regulations Committee will meet on June 19–20, 1994. The meeting will commence at 9:00 a.m. on both days. On June 19, 1994, it is anticipated the substantive portion of the open session (i.e., deliberation of agenda item number 5) will commence at approximately 10:00 a.m.

PLACE: Legal Services Corporation, 750 First Street, NE., Board Room, Washington, DC 20002, (202) 336–8800.

STATUS OF MEETING: *Open*, except that portion of the meeting may be closed pursuant to a vote to be solicited prior to the meeting, of a majority of the Board of Directors. Should the aforementioned majority vote to close all or a portion of the meeting be obtained, the Committee will hear the report of the General Counsel on litigation to which the Corporation is or may become a party. In addition, the Committee will consider and act on internal personnel and operational matters related to the Executive Office, the Office of the General Counsel, the Office of Administration, and the Office of Human Resources/Equal Opportunity, the four offices of the Corporation under the Committee's purview. Finally, the Committee will consider for approval the minutes of the executive session(s) held on May 13, 1994. The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Sections 552b(c) (2), (6), and (10], and the corresponding regulation of the Legal Services Corporation [45 C.F.R. Section 1622.5 (a), (e), and (h)].[1] The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posed for public inspection at the Corporation's headquarters, located at 750 First Street, NE., Washington, DC 20002, in its eleventh floor reception area, and will otherwise be available upon request.

June 19, 1994 Agenda

MATTERS TO BE CONSIDERED

OPEN SESSION:

1. Approval of Agenda.

CLOSED SESSION:

2. Approval of Minutes of May 13, 1994 Executive Session.
3. Consider and Act on General Counsel's Report on Litigation to Which the Corporation is or May Become a Party.
4. Consider and Act on Internal Personnel and Operational Matters.

OPEN SESSION: (Resumed)

5. Approval of Minutes of May 13, 1994 Meeting.
6. Consideration of Update on the Reauthorization Legislative process.
7. Possible Consideration of and Action on Publication of Proposed Revisions to Part 1607 of the Corporation's Regulations in the **Federal Register** for Public Comment.
8. Consider and Act on Proposed Changes to Part 1608 of the Corporation's Regulations.

OPEN SESSION: (Continued)

9. Consider and Act on Proposed Changes to Part 1621 of the Corporation's Regulations.
10. Public Comment.

June 20, 1994 Agenda

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Consider and Act on Proposed Changes to Part 1611 of the Corporation's Regulations.
2. Public comment.
3. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION: Patricia Batie (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: June 9, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–14375 Filed 6–9–94; 11:22 am]

BILLING CODE 7050–01–M

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

TIME AND DATE: The Legal Services Corporation Board of Directors will meet on June 18, 1994. The meeting will commence at 8:00 a.m.[2]

PLACE: Washington Court Hotel, 525 New Jersey Avenue, NW., Ballroom West, Washington, DC 20001, (202) 628–2100.

STATUS OF MEETING: *Open*, except that a portion of the meeting may be closed pursuant to a vote of a majority of the Board of Directors to hold an executive session. At the closed session, in accordance with the aforementioned vote, the Board will receive the recommendation of its Presidential Search Committee regarding selection of an applicant for the position of President of the Corporation, and may settle on an applicant to fill that position. The Board will also consider and vote to approve draft minutes of executive sessions held on November 8, 1993; December 6, 1993; April 15, 1994; and May 13, 1994. Further, the Board will consult with the Inspector General on internal personnel, operational and investigative matters. The Board will also consult with the President on internal personnel and operational matters. Finally, the Board will deliberate regarding internal personnel and operational matters. The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Sections 552b(c) (2) (5), (6) and (7)], and the corresponding regulation of the Legal Services Corporation [45 CFR Section 1622.5 (a), (d), (e), and (f)]. The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at

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[1] As to the Committee's consideration and approval of the draft minutes of the executive session(s) held on the above-noted date(s), the closing is authorized as noted in the **Federal Register** notice(s) corresponding to that/those Committee meeting(s).

[2] Note that the Board will convene at 8:30 a.m., briefly in open session, but primarily in closed session until approximately 9:00 a.m., at which time the Board will recess the meeting until approximately 11:00 a.m. the same morning. The brief recess will be taken to permit two of the Board's standing committees to meet.

750 First Street, NE., Washington, DC 20002, in its eleventh floor reception area, and will otherwise be available upon request.

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.

CLOSED SESSION:

2. Receive and Consider the Report of the Presidential Search Committee.

OPEN SESSION: (Resumed)

3. Receive the Report of the Presidential Search Committee.
4. Consideration of Motion to Select a President of the Corporation.
5. Consideration of Motion to Recess Meeting Until 11:00 a.m.
6. Approval of Minutes of May 13, 1994 Meeting.
7. Chairman's and Members' Reports.
8. President's Report.
9. Ratification of Vote Taken on May 30–31, 1994, Approving the Management Response to the Inspector General's Semiannual Report to Congress for the Period Ending March 31, 1994.
10. Consideration of Issues Related to the Allocation and Distribution of the Corporation's Fiscal Year 1995 Appropriation.
11. Consider and Act on Proposed Changes to the Corporation's Bylaws.
12. Consider and Act on Operations and Regulations Committee Report.
13. Consider and Act on Provision for the Delivery of Legal Services Committee Report.
14. Consider and Act on Audit and Appropriations Committee Report.
15. Inspector General's Report.

CLOSED SESSION:

16. Consider and Act on Draft Minutes of the November 8, 1993 Executive Session.
17. Consider and Act on Draft Minutes of the December 6, 1993 Executive Session.
18. Consider and Act on Draft Minutes of the April 16, 1994 Executive Session.
19. Consider and Act on Draft Minutes of the May 13, 1994 Executive Session.
20. Consultation by Board with the President on Internal Personnel and Operational Matters.
    a. Consideration of the Inspector General's Access to Corporation Documents.
21. Consider and Act on Internal Personnel and Operational Matters.
22. Consultation by Board with the Inspector General on Internal Personnel, Operational and Investigative Matters.
    a. Briefing on the Status of the Internal Investigation Requested by the Board.

OPEN SESSION: (Resumed)

23. Public Comment.
24. Consider and Act on Other Business.

CONTACT PERSON FOR INFORMATION: Patricia Batie, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: June 9, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–14376 Filed 6–9–94; 11:22 am]

BILLING CODE 7050–01–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Board of Directors Meeting

TIME AND DATE: Tuesday, June 21, 1994, 1:00 P.M. (Open Portion), 1:30 p.m. (Closed Portion).

PLACE: Office of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, N.W., Washington, D.C.

STATUS: Meeting Open to the Public from 1:00 p.m. to 1:30 p.m. Closed portion will commence at 1:30 p.m., (approx.)

MATTERS TO BE CONSIDERED:

1. President's Report.
2. Approval of 3/22/94 Minutes (Open Portion).
3. Meeting schedule through December 1994.

FURTHER MATTERS TO BE CONSIDERED: (Closed to the Public 1:30 p.m.)

1. Finance Project in Russia.
2. Insurance Project in Russia.
3. Insurance Project in Russia.
4. Insurance Project in Russia.
5. Finance and Insurance Joint Project in India.
6. Insurance Project in Indonesia.
7. Insurance Project in Philippines.
8. Finance Project in Argentina.
9. Insurance Project in Argentina.
10. Insurance Project in Venezuela.
11. Pending Major Projects.
12. Approval of the 3/22/94 Minutes (Closed Portion).

CONTACT PERSON FOR INFORMATION: Information on the meeting may be obtained from the Corporate Secretary at (202) 336–8403.

Dated: June 9, 1994.

Anne H. Smart,

OPIC Corporate Secretary.

[FR Doc. 94–14460 Filed 6–9–94; 3:29 p.m.]

BILLING CODE 3210–01–M

Corrections

Federal Register
Vol. 59, No. 112
Monday, June 13, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

[Docket No. 940-536-4136; I.D. 041994B]

Reef Fish Fishery of the Gulf of Mexico

Correction

In proposed rule document 94-12832 beginning on page 27258 in the issue of Thursday, May 26, 1994, make the following correction:

On page 27258, in the second column, under **DATES**, in the second line, "July 11, 1994" should read "July 7, 1994".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 412

[BPD-769-FC]
RIN 0938-AG34

Medicare Program; Changes to the Requirement for Annual Physician Acknowledgement of Physician Attestation Responsibilities

Correction

In rule document 94-5315 beginning on page 11000 in the issue of Wednesday, March 9, 1994, make the following corrections:

(1) On page 11000, in the first column, under **DATES**, in the second line "April 18, 1994" should read "April 8, 1994".

(2) On the same page, in the second column, under **ADDRESSES**, in the first line "Room 309-," should read "Room 309-G,".

(3) On page 11001, in the first column, in the second full paragraph, in the penultimate line insert "denial" between "issue" and "determinations".

(4) On page 11002, in the first column, in the penultimate bulleted paragraph, in the fifth line "a" should read "at".

(5) On the same page, in the third column:

(a) In the first paragraph, five lines from the bottom "review of" should read "review to".

(b) In the third paragraph, six lines from the bottom "FRA" should read "RFA".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulation No. 4}
RIN 0960-AA99

Revised Medical Criteria for Determination of Disability, Cardiovascular System

Correction

In rule document 94-2844 beginning on page 6468 in the issue of Thursday, February 10, 1994, make the following correction:

Appendix 1 to subpart P [Corrected]

On page 6497, in the second column, in Appendix 1 to subpart P, item 5, in the last line, "February 10, 1994" should read "February 10, 1998".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910, 1917, and 1918

[Docket No. S-025]

Longshoring and Marine Terminals

Correction

In proposed rule document 94-13058 beginning on page 28594 in the issue of Thursday, June 2, 1994 make the following corrections:

1. On page 28642, in the second column, in the third full paragraph:

a. In the fifth line, "September 30, 1994" should read "September 20, 1994".

b. Beginning in the sixth line, "October 31, 1994" should read "October 19, 1994".

c. Beginning in the seventh line, "November 29, 1994" should read "July 11, 1994".

2. On the same page, in the same column, in the fourth full paragraph, beginning in the third line, "August 31, 1994" should read "August 24, 1994".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09-94-005]

Safety and Security Zone; Lake Michigan - Chicago Harbor - Burnham Park Harbor

Correction

In proposed rule document 94-13090 beginning on page 27516 in the issue of Friday, May 27, 1994, the docket number should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Jacksonville 93-115]]

Security Zone Regulations; Naval Air Station, Jacksonville, FL

Correction

In proposed rule document 94-11977, beginning on page 26155 in the issue of Thursday, May 19, 1994, in the third column in **DATES:**, insert "Comments must be received on or before " after the colon.

BILLING CODE 1505-01-D

federal register

Monday
June 13, 1994

Part II

Department of Transportation

Federal Highway Administration

23 CFR Parts 657 and 658

Truck Size and Weight; Restrictions on Longer Combination Vehicles and Vehicles With Two or More Cargo-Carrying Units; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 657 and 658

[FHWA Docket Nos. 90-9 and 92-15]

RIN 2125-AC86

Truck Size and Weight; Restrictions on Longer Combination Vehicles and Vehicles With Two or More Cargo-Carrying Units

AGENCY: Federal Highway Administration (FHWA), DOT

ACTION: Final rule.

SUMMARY: The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) restricts the operation of longer combination vehicles (LCV's) on the Interstate Highway System and commercial motor vehicle (CMV) combinations with two or more cargo-carrying units on the National Network (NN) to the types of vehicles in use on or before June 1, 1991, subject to whatever State restrictions were in effect on that date. The ISTEA also includes special variances from the June 1 date for Alaska, Ohio, and Wyoming. As required by the ISTEA and based on information provided by the States, industry, and the public, the final rule lists applicable limitations by specific vehicle combination, by State, in effect on June 1, 1991, and does not further restrict the operation of any vehicle in lawful operation on or before June 1, 1991. This rule also establishes criteria for States to make minor adjustments to the list of limitations; defines certain terms, such as "nondivisible load," "beverage container," and "maxi-cube" vehicle; makes technical amendments to the list of federally-designated routes on the NN; and makes other minor changes to conform existing regulations to the ISTEA.

EFFECTIVE DATE: July 13, 1994

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Klimek, Office of Motor Carrier Information Management, at (202) 366-2212 or Mr. Charles Medalen, Office of the Chief Counsel, at (202) 366-1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION: Section 1023 of the ISTEA (Pub. L. 102-240, 105 Stat. 1914, 1951, codified at 23 U.S.C. 127(d)) required States, within 60 days of the date of enactment, to submit to the Secretary of Transportation for publication in the **Federal Register** 30 days thereafter a complete list of (1) all operations of LCV's being conducted as of June 1, 1991; (2) State laws, regulations, and any other limitations and conditions, including routing-specific and configuration-specific designations governing the operation of LCV's; and (3) a copy of such laws, regulations, limitations, and conditions. An LCV is defined in the ISTEA as any combination of a truck tractor and two or more trailers or semitrailers which operates on the Interstate System at a gross vehicle weight greater than 80,000 pounds.

Similarly, section 4006 of the ISTEA (49 U.S.C. app. 2311(j)) required the States to submit a complete list of State length limitations applicable to CMV combinations with two or more cargo-carrying units in effect on or before June 1, 1991. This section prohibits States from allowing the operation (by statute, regulation, permit, or other means) of CMV's with cargo-carrying unit lengths that exceed the length, by specific configuration, allowed and in actual, lawful operation on a regular or periodic basis (including continuing seasonal operation) on the NN in that State on or before June 1, 1991. The NN is defined in 23 CFR 658.5, and includes the Interstate System, with minor exceptions, and selected non-Interstate routes. The non-Interstate NN highways are listed in appendix A to part 658.

Sections 1023 and 4006 provide that no statute or regulation shall be included on the list submitted by a State or published by the Secretary merely on the grounds that it authorized, or could have authorized, by permit or otherwise, the operation of LCV or CMV combinations not in actual operation on a regular or periodic basis on or before June 1, 1991.

States may continue to issue special permits, in accordance with applicable State laws, for those vehicles and loads which cannot be easily dismantled or divided. A definition of such nondivisible loads is included in this final rule.

The ISTEA included three narrow exceptions to the June 1, 1991, freeze date. Wyoming would have been able to allow the operation of additional vehicle configurations not in actual operation on June 1, 1991, provided they were authorized by State law not later than November 3, 1992. No additional vehicles were authorized, however, and accordingly no additional vehicles are included in appendix C over those listed in the previous two rulemakings on this issue.

Ohio may allow LCV's with three cargo-carrying units of 28.5 feet each (not including the truck tractor) not in actual operation on June 1, 1991, to be operated within its boundaries on the 1-mile segment of Ohio State Route 7 which begins at, and extends south of, Exit 16 on the Ohio Turnpike. Alaska may continue to allow the operation of CMV's which were not in actual operation on June 1, 1991, but which were in actual operation prior to July 6, 1991.

A preliminary list of the information provided by the States in response to sections 1023 and 4006 was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 20, 1992 (57 FR 9900). A second proposed list of vehicles and restrictions, including corrections, clarifications, and additional material submitted to the docket in response to the NPRM was published as a supplemental notice of proposed rulemaking (SNPRM) on February 25, 1993 (58 FR 11450). In the NPRM the information provided by the States was organized into appendices C and D to part 658; in the SNPRM that information was combined into a single list of vehicles and restrictions and presented as a new appendix C. The format of the SNPRM has been retained for the final rule.

In response to publication of the SNPRM, 154 sets of comments were received from 136 separate entities. The vast majority of those comments deal with specifics on the information published in the SNPRM, and they will be discussed under individual topical headings. Four of the commenters, however, the American Trucking Associations, Inc. (ATA), the Wyoming Trucking Association, Inc. (WTA), the Alaska Department of Transportation and Public Facilities, and the Citizens for Reliable And Safe Highways (CRASH), provided comments concerning the rulemaking in general, and the philosophy used by the FHWA in presenting the information. These particular comments provide an opportunity for the FHWA to explain its approach.

The ISTEA stipulates that the "final list" of LCV operational requirements for each State be published in the **Federal Register** not later than 180 days after the date of enactment. That date was June 15, 1992. The lead comment by the CRASH in its docket submission was that publication of the final list by the FHWA was "long overdue." The CRASH contends that since the freeze does not take effect until the Secretary publishes the final list, the FHWA's delay in publication has prevented the law from taking effect. This in turn means that LCV's may today be operating on highways from which

Congress intended they be barred. It concludes this comment by stating that the review and correction process included with the final rule can be used to make corrections after publication of the rule.

As the FHWA stated in the Supplementary Information section of the SNPRM, the content of the States' original responses to the ISTEA request for LCV operational information covered the full range of what could be supplied, both in terms of items covered and volume of material. The diversity of the contents of the responses was so great that the FHWA determined that before any list could be finalized, increased uniformity both in terms of items covered and the type of information would be necessary. Thus, despite the likelihood that the statutory due date for a final rule might be missed, the FHWA determined that it was in the public's interest to publish a SNPRM soliciting further public comment on revisions to the initial list. The FHWA considered publishing a "final list" without this additional public procedure, but believed that the list published at that stage would have required numerous subsequent changes. We believe that the intent of Congress in including a correction process was to take care of relatively minor single-issue situations which may be discovered after publication of this final rule, not to make wholesale changes in a State's submission without good cause.

The WTA expressed concern that the interpretations used by the FHWA in developing this rule have involved many combination vehicles that, until passage of the ISTEA, were not considered by anyone to be LCV's. In a similar vein, Alaska commented that the SNPRM "seeks to significantly expand the ISTEA legislation and, we believe, severely constrains the states' abilities to legitimately regulate commercial traffic within each state."

This final rule implements two similar, yet separate provisions of the ISTEA. Section 1023, as discussed earlier, involves LCV's and includes an LCV definition. The scope of vehicle combinations covered by this section is narrow. The definition requires that an LCV combination include a truck tractor, which by previous congressional action (section 411(f), Surface Transportation Assistance Act (STAA) of 1982) is defined as a noncargo-carrying power unit and two or more trailers or semitrailers. The combination must operate on the Interstate System, and its gross vehicle weight must be in excess of 80,000 pounds. The vehicles listed in appendix C as a result of this statutory definition include only what might best be described as the "traditional" LCV's, that is, the "Rocky Mountain" and "Turnpike" Doubles and the "Triple." Under the definition of LCV provided by the ISTEA, it is true that the State of Alaska has no LCV's because it has no Interstate System mileage in the sense used in the ISTEA; that is, Alaska does not have Interstate System mileage designated under 23 U.S.C. 103(e), 139(a), or 139(b). Accordingly, all references to LCV's for Alaska have been deleted from this final rule.

Alaska does, however, have mileage that is part of the NN. Section 4006 of the ISTEA requires the FHWA to include in the final list "any commercial motor vehicle combination * * * with 2 or more cargo carrying units." A "cargo-carrying unit" is defined as "any portion of a commercial motor vehicle combination * * * used for carrying cargo, including a trailer, semitrailer, or the cargo carrying section of a single unit truck." While section 1023 is relatively narrow in scope, section 4006 has very widespread applicability. If, as the WTA contends, vehicles not previously considered to be LCV's are covered by this final rule, it is because of section 4006. This section is also the reason that vehicles are listed in appendix C for Alaska. Thus, vehicles not previously considered LCV's are included in this final rule, because the statute applies to more than just LCV's.

The ATA expressed concern that the FHWA's attempt to organize the vehicles subject to the freeze into four basic categories requires the FHWA to go beyond the role established for it in the ISTEA. The ATA contends that the ISTEA limits the role of the Secretary to reviewing for accuracy and publishing State information and that the categorization made by the FHWA involves the interpretation of State laws and regulations. Similarly, Alaska commented that the nomenclature used in designating the four basic categories "is not universally acceptable." The categories used in appendix C, as included in the SNPRM, were (1) Rocky Mountain Doubles, (2) Turnpike Doubles, (3) Triples, and (4) Other. These names were chosen in an attempt to describe the vehicles covered by the freeze in terms commonly used in the trucking industry. Since there is no industry-wide or statutory definition for categories 1, 2, or 3, a degree of confusion remained as to just what vehicle combinations were covered, especially by categories 1 and 2.

The ISTEA required the FHWA to list vehicles by "configuration type" (section 1023) or "specific configuration" (section 4006). In creating the basic configuration categories used in the NPRM and SNPRM, the FHWA believed it had to go beyond just publishing State-submitted information. For example, many States do not differentiate between a "Rocky Mountain" and "Turnpike" Double in the statutes or regulations which authorize their operation. Typically, these States allow a truck tractor-semitrailer-trailer, or a truck tractor and two trailing units where each trailing unit can be up to some maximum length. Interpretations were required to develop the maximum parameters that would apply if the State did differentiate by vehicle type.

The FHWA has re-examined the meaning of "configuration," however, and determined that there is no statutory requirement to classify vehicle combinations according to industry usage.

In order to reduce confusion and simplify the description of vehicles covered by the freeze, the vehicles described in appendix C of this final rule have therefore been regrouped into three categories: (1) Truck tractor and two trailing units, (2) Truck tractor and three trailing units, and (3) Other. This preserves the freeze required by the ISTEA without limiting the discretion allowed by some States before June 1, 1991.

Vehicles Submitted by States but Excepted From or Not Subject to Section 4006 of the ISTEA

In preparing the March 20, 1992, NPRM and the February 25, 1993, SNPRM, the FHWA decided not to include certain vehicle combinations submitted by the States, which it determined Congress did not intend to include in the ISTEA freeze. No additional information regarding conditions, routes, or authority to operate these vehicles was required. In addition to describing the categories of vehicles proposed for exemption, a detailed listing by State of the vehicles submitted but exempted was contained in the SNPRM.

In its comments, the ATA urged the FHWA to include in the regulatory language of the final rule the list of exempted vehicles included in the preamble to the SNPRM. The basis for the ATA's suggestion was "to ensure that only the vehicles intended by Congress are restricted and to help clarify the intent of the restriction for enforcement and judicial purposes." The ATA's proposal was to include the list of excepted vehicles in an expanded definition of LCV in the final rule.

The categories of multiple cargo unit vehicles exempted from coverage by the

freeze include: (1) Truck tractor-semitrailer-trailer and truck tractor-semitrailer-semitrailer combinations with a maximum length of the individual cargo units of 28.5 feet or less, (2) conventional automobile and boat transporters with an overall length of 65 feet or less, (3) stinger-steered automobile and boat transporters with an overall length of 75 feet or less, (4) truck-trailer and truck-semitrailer combinations with an overall length of 65 feet or less, (5) maxi-cubes, (6) most tow trucks with vehicles in tow, and (7) combination vehicles which include a truck tractor containing a dromedary box, deck, or plate, and one semitrailer or trailer. With respect to the dromedary equipped vehicle exclusion, strict interpretation of ISTEA section 4006 would include this equipment under the freeze. By its function, a dromedary box, deck, or plate is a cargo-carrying unit. When combined with a semitrailer, the result is technically a combination with two cargo-carrying units, thus subjecting the combination to the freeze. However, dromedary equipped truck tractors in actual operation on December 1, 1982, are grandfathered under § 658.13(f), causing a combination consisting of one of these units and a semitrailer to be considered as simply a truck tractor-semitrailer under the provisions of part 658. Dromedary equipped semitrailer combinations are a minor segment of the industry which probably escaped the notice of Congress, and which would require a good deal of additional time and effort to list. Should States or carriers try to evade the ISTEA freeze mandate by expanding the size of these unlisted combinations, the FHWA may have to initiate rulemaking to close this loophole.

The exclusion information is codified by this final rule at § 658.23(b)(1) through (b)(5). The list of exempted vehicles by State included in the SNPRM has not been codified, however, because of the likelihood that it is not a complete list. The original instruction to the States about these vehicles was to submit anything they thought might be covered by the freeze. Since the effect of ATA's comment would be to exempt only those vehicle combinations listed, some States could be penalized in terms of allowing certain vehicles simply because they reviewed the guidelines and made a decision that certain vehicles were not involved in the freeze coverage.

The definition of LCV used throughout this proceeding is that established in the ISTEA. In the interest of avoiding confusion with respect to terminology, the FHWA will not amend the LCV definition at this time.

Documentation of Actual Operation

Under the terms of ISTEA section 1023, an LCV may continue to operate only if on or before June 1, 1991, the specific configuration was (1) legally allowed in the State and (2) was in actual lawful operation on a regular or periodic basis. Under section 4006, the overall length of two or more cargo-carrying units used in a specific configuration may not exceed the length allowed by State law, and in actual lawful operation on a regular or periodic basis, on or before June 1, 1991. If a specific multi-trailer configuration was authorized by State statute or regulation, but *not* in actual lawful operation on a regular basis on or before June 1, 1991, it may *not* now be put into service.

All of the vehicles listed in appendix C meet the requirements for continued operation set forth in ISTEA sections 1023 and 4006.

The information on these vehicles which the States supplied in response to the ISTEA, the March 20, 1992, NPRM and the February 25, 1993, SNPRM, satisfies the legal requirement for operation, i.e., authorized by State law. In a similar manner, various commenters, responding to a request contained in the SNPRM, have documented the actual operation on a regular or periodic basis of the vehicle combinations listed.

The SNPRM requested information, from any source, to show the actual operation of vehicles described in appendix C. While a copy of the special permit under which operations occurred was listed as the preferred means of satisfying the documentation requirement, any item which could support operation of these vehicles would be considered as acceptable.

In an early response to the docket, the ATA expressed concern that the FHWA was placing a "tremendous burden on State DOT's and the trucking industry to satisfy a totally new requirement in a very short time period." The SNPRM allowed for a 45-day comment period with April 12, 1993, as the docket closing date. The ATA also stated that "(i)t is unlikely that two year old copies of the actual permit will be available," and that working with the permit issuing offices in each State to locate these records would "no doubt be a very time consuming and cumbersome process." As an alternative, the ATA suggested that the FHWA allow the submission of an affidavit from a carrier and/or State agency to satisfy the documentation requirement, and further that a time extension be granted to allow appropriate review and certification of these documents, if allowed. A request for a time extension for the docket was also received from the WTA and Coastal Chem Sales Company of Cheyenne, Wyoming. The need to accurately comply with the actual operation documentation requirement was given as the reason for the request.

In its comments, the CRASH stated that the proof requirement contained in the SNPRM was "far too broad, and (could) easily lead to mistake or fraud." That organization argued that anything less than "verifiable documentary evidence created and dated on or before June 1, 1991, specifically detailing the vehicle length, weight, configuration and routes traveled" would fail to comply with ISTEA requirements.

In reviewing the time extension requests, the FHWA agreed that more time was needed to help assure that accurate and complete documentation information, including affidavits, was submitted to the docket. On April 14, 1993, a 45-day extension of the comment period, to May 27, 1993, was published in the **Federal Register** at 58 FR 19367. The type of information the CRASH argued the FHWA should require appears to exceed the documentation most States demand of LCV operators. It would distort the purpose of the ISTEA freeze to ban certain vehicles or routes simply because the States lacked the foresight to issue permits that met the maximum possible data requirements of a Federal law not yet enacted.

An affidavit made by an individual familiar with the issue at hand is both reasonable and within the documentation parameters established by the SNPRM. The authenticity of any document proposed as evidence to support activity occurring over 2½ years ago could be challenged by any party. Of the possible items of documentation which could be submitted, a notarized affidavit may be the least susceptible to alteration. It represents an individual's witnessed, sworn statement.

An affidavit could, of course, be fraudulent, and the FHWA would be reluctant to take regulatory action based solely on an affidavit without other support. In fact, however, affidavits are merely one kind of information which the FHWA has combined with other types of documentation to demonstrate the operation of vehicles that State law and/or regulation allows. In addition, section 1023(c) of the ISTEA amended 23 U.S.C. 141(b) by adding at the end the following sentence: "Each State shall also certify that it is enforcing and *complying with* the provisions of section 127(d) of this title and section 411(j) of the Surface Transportation Assistance

Act of 1982 (49 U.S.C. App. 2311(j))" (emphasis added). Additional discussion of the certification change is contained elsewhere in this document. However, for this discussion the statement means that if a State is found not to be complying with the ISTEA LCV requirements, it will be subject to Federal-aid highway funding sanctions involving millions of dollars annually.

Documentation of operation of the vehicles listed in appendix C for each State was provided to the docket by the following sources. All original submissions are filed in docket number 92–15.

Alaska: Five carriers, State Department of Commerce and Economic Development
Arizona: Seven carriers, one shipper, State Department of Transportation (DOT)
Colorado: Seven carriers, State DOT
Florida: Three carriers, three private fleets
Hawaii: One private fleet, State DOT
Idaho: Fifteen carriers, six private fleets, one agricultural cooperative, one owner-operator, State DOT
Indiana: Five carriers, State DOT
Kansas: Five carriers, one private fleet, State DOT, State Turnpike Authority
Massachusetts: Two carriers, State Turnpike Authority
Michigan: State DOT
Mississippi: State DOT
Missouri: Three carriers, State Highway & Transportation Department
Montana: Ten carriers, one shipper, five private fleets, one owner-operator, State DOT
Nebraska: State Department of Roads
Nevada: Thirteen carriers, one shipper, one private fleet, one agricultural cooperative, one owner-operator
New Mexico: One carrier, State Taxation and Revenue Department
New York: Two carriers, State Motor Truck Association, State DOT, State Thruway Authority
North Dakota: Four carriers, four private fleets, State DOT
Ohio: Four carriers, State Turnpike Commission
Oklahoma: Nine carriers, four private fleets
Oregon: Fourteen carriers, three private fleets, one agricultural cooperative, State DOT
South Dakota: Four carriers, one shipper, three private fleets, State Trucking Association, State Highway Patrol, State DOT
Utah: Sixteen carriers, one shipper, three private fleets, one agricultural cooperative, one owner-operator, State Motor Truck Association, State DOT
Washington: Five carriers, one shipper, two private fleets, one agricultural cooperative, one owner-operator, State DOT
Wyoming: Six carriers, two shippers, four private fleets, one owner-operator, three individuals, State DOT

The following vehicle combinations included in the SNPRM, or comments thereto, have *not* been included in appendix C for the reasons given.

California: "Triple," including a 28-foot semitrailer, two 28-foot trailers, an overall length of 107.4 feet, and a maximum gross vehicle weight of 111,000 pounds. "Rocky Mountain Double," including a 48-foot semitrailer, a 28-foot trailer, an overall length of 93.2 feet, and a maximum gross vehicle weight of 106,850 pounds. "Turnpike Double," including a 48-foot semitrailer, a 48-foot trailer, an overall length of 116.7 feet, and a maximum gross vehicle weight of 122,650 pounds.

Two permits were issued by the California Department of Transportation (Caltrans) for "Triples" at the request of the California legislature in 1971 in order to conduct a test to evaluate the possible allowance of "Triples" in California. In 1983, permits were issued to allow the operation of the above described vehicle combinations in order to conduct an over the road test of these vehicles. The State, in its comments, points out that the 1983 tests were conducted, in part, to assist the FHWA in its study of the costs and benefits of a national intercity LCV route network.

Based on these two occurrences, California claims the right to issue permits for good cause for the future operation of these vehicles up to the limits stated.

The FHWA has rejected California's claim because it fails to meet the standard for "regular or periodic" use established by Congress in writing the ISTEA. According to the Conference Report on the ISTEA (H.R. Conf. Rep. No. 404, 102d Cong., 1st Sess. 314 (1991)), "Use of an LCV on only one or two occasions pursuant to a special permit would not provide a basis for satisfactorily certifying grandfather rights or operations under this subsection." Clearly the California situation falls within the scope of the congressional guidance. "Triples" were allowed twice, for very brief periods 12 years apart, the last being more than 10 years ago. "Turnpike Doubles" and "Rocky Mountain Doubles" were authorized only once, over 10 years ago, during a single 5-day period. These occurrences do not constitute "regular or periodic" use.

Connecticut: Vehicle and trailer for carrying poles, lumber, piling, or structural units.

No documentation was received in the docket to support the actual operation of this vehicle on or before June 1, 1991. This vehicle was originally included because it appeared to meet the LCV or extra-length multi-unit commercial vehicle requirements. This vehicle is made up of a truck tractor and a dolly unit. Since the weight of a cargo, for example utility poles, is carried partially by the truck tractor and partially by the dolly unit, the argument might be made that this vehicle has two cargo-carrying units.

In fact, the load and rear dolly combine to create a *de facto* semitrailer. Truck tractor-semitrailers are not subject to the freeze.

Delaware: Truck tractor-semitrailer-trailer, with a cargo-carrying length of 62 feet.

No documentation was received in the docket to support the actual operation of this vehicle on or before June 1, 1991. The initial submission by Delaware, to satisfy the LCV freeze requirements, indicated that the listed combination was allowed by State law wherein each trailing unit could be up to 29 feet long. The 62-foot length was derived by adding 4 feet for interunit spacing to the twin 29-foot dimension. Due to the de-listing of a vehicle combination with twin 29-foot units, the maximum length of any one unit in a multi-unit combination vehicle reverts to 28.5 feet, that allowed by the STAA of 1982.

Louisiana: "Rocky Mountain Double-LCV," with a cargo- carrying length of 75 feet.

No documentation was received in the docket to support the actual operation of this vehicle on or before June 1, 1991. The initial submission by Louisiana, to satisfy the LCV freeze requirements, indicated the listed combination was allowed by State law wherein each trailing unit could be up to 30 feet long. The 75-foot length was derived by adding the maximum interunit spacing allowed by State regulation of 15 feet to the twin 30-foot dimension. Due to the de-listing of a vehicle combination with twin 30-foot units, the maximum length of any one unit in a multi-unit combination vehicle reverts to 28.5 feet, that allowed by the STAA of 1982.

New Hampshire: Truck-trailer combination with a cargo-carrying length of 85 feet.

No documentation was received in the docket to support the actual operation of this vehicle on or before June 1, 1991. The initial submission by New Hampshire, to satisfy the LCV freeze requirements, indicated the listed combination was allowed because State law does not prohibit a straight truck of up to 40 feet long from pulling a trailer that may be up to 48 feet long. Due to the de-listing of the described vehicle combination, the maximum cargo-carrying length of any truck-trailer combination on NN highways reverts to 58 feet. This length is derived by subtracting 7 feet for the cab from the 65-foot overall length for this combination allowed by this rule.

without a requirement to document actual operations. Off the NN, the maximum lengths allowed by State law continue to apply.

List of ISTEA Vehicle Operations and Conditions

In addition to the lists of vehicle configurations, the ISTEA also required each State to submit a copy of all its statutes, regulations, limitations, and conditions which apply to the operation of each of the LCV's or extra-length vehicles reported as in use on or before June 1, 1991.

The content of the States' original responses to this request covered the full range of what could be supplied, both in terms of items covered and volume of material. The diversity of the contents of the responses was so great that the FHWA determined that before any list could be finalized, increased uniformity would be necessary. One of the subheadings for each LCV or extra-length vehicle described in the NPRM was "Operational Conditions." The information in the NPRM was taken directly from the initial State responses to the LCV information request contained in the ISTEA, regardless of content. In those cases where another document was referenced, the FHWA attempted to summarize that document. Because of the differences in State-provided responses, there was little consistency as to coverage or depth. Therefore, in addition to asking for comments, the NPRM also asked the States and all other sources, including industry trade groups, either to reformat existing information, or to provide new information following a suggested format. Those States which allow LCV's or extra-length vehicles were requested to provide the operational condition information in the following subheadings: *WEIGHT, DRIVER, VEHICLE, PERMIT,* and *ACCESS.*

The information included in the SNPRM reflected the States' and other responses to the NPRM request.

The SNPRM included specific vehicle descriptions for 30 States. Comments were received concerning those descriptions for 23 States. The vehicle descriptions included in appendix C to part 658 by this final rule have been modified, where appropriate, by comments received and by the change in categories described earlier. Comments, changes, and corrections made to appendix C information will be discussed by State, by subheadings, in the same order that they appear in appendix C:

STATE NAME
COMBINATION:
LENGTH OF THE CARGO-CARRYING UNITS:
MAXIMUM ALLOWABLE GROSS WEIGHT:
OPERATIONAL CONDITIONS:
WEIGHT:
DRIVER:
VEHICLE:
PERMIT:
ACCESS:
ROUTES:
LEGAL CITATIONS:
OTHER COMMENTS:

Other comments considered, that did not result in a change, will be discussed at the end. Any heading not included in the discussion means that the information included in the SNPRM was accurate, and the same information has been included in appendix C as published by this final rule.

Alaska

OPERATIONAL CONDITIONS:

WEIGHT: The State DOT commented that the weight restriction discussion in the SNPRM for Alaska should not apply because the section 1023 freeze applies only to the Interstate System, and Alaska does not have Interstate System mileage designated under 23 U.S.C. 103, 139(a), or 139(b). The FHWA agrees with this comment. Accordingly, the weight condition for each vehicle described has been revised to indicate that a carrier has to be in compliance with State laws and regulations and does not list maximum weight limit values. In addition, because LCV's, as defined in the ISTEA, do not operate in Alaska due to the lack of Interstate System mileage, the "LCV" notation previously included by the combination description has been removed.

VEHICLE: The State indicated that the hours of operation for three trailing unit combinations are established by permit and not by regulation. Accordingly, this has been removed from the "VEHICLE" discussion.

PERMIT: The SNPRM noted that permits were required for divisible loads. The State commented that this was incorrect. Permits are only required for nondivisible loads.

OTHER COMMENTS:

The CRASH stated that Alaska Administrative Permit Manual Section 11.6 provides that "all oversize or overweight vehicles not in convoy shall maintain a minimum distance of 800 to 1,500 feet from any other oversize vehicle or vehicle with load and pilot car traveling in the same direction on the same highway in rural areas." Since Alaska is not contiguous to any other State this type of information would be of little use to any out-of-State trucker. Any vehicle requiring a permit would be subject to the Alaska permit rules which would be given to the driver when the permit was obtained. Therefore, in view of its limited usefulness in terms of general information, we will not add this provision to appendix C.

Section 4006(a) of the ISTEA provides that Alaska "may allow operation of commercial motor vehicle combinations which were not in actual operation on June 1, 1991, but which were in actual operation prior to July 6, 1991." Verification has been furnished that "Triples" with trailers not over 45 feet in length were in actual operation under permit prior to July 6, 1991. The CRASH believes that the operation of "Triples" after June 1, 1991, was authorized only on an experimental basis as provided in 17 AAC 25.106(b)(4). However, the ISTEA allows the continued operation of any combinations put into service between June 2 and July 5, 1991, without further condition. Therefore, "Triples" may continue to operate, as indicated in appendix C.

The State advised that under Alaska regulations, a truck tractor equipped with a dromedary box is defined as not being cargo carrying. Dromedary boxes do in fact carry cargo. However, for the reasons given above, the FHWA has decided for the time being not to list the cargo-carrying length of dromedary tractor-semitrailer combinations.

The State indicated that an additional route, AK–1 from Palmer-Wasilla Highway Junction to Wishbone Hill Coal Access Road, must be added to Alaska's routes chart under the caption for "Rocky Mountain Double-LCV" (58 FR 11467) of the SNPRM. However, this is incorrect because the freeze on vehicle length is applicable only on the NN, and this is not an NN route. The State is free to regulate the size and weight of vehicles off the NN as it sees fit.

ARIZONA

LEGAL CITATIONS:

The CRASH stated that Arizona statute ARS 28–1011.N should not be shown as authority for permitting overweight vehicles on the NN since it only covers the issuance of permits on other than NN routes. We agree, since the provisions of Section 4006 of the ISTEA apply only to vehicles on the NN. Therefore, ARS 28–1011.N has been deleted from the "Legal Citations" for Arizona in appendix C.

OTHER COMMENTS:

The CRASH stated that the legal size for "Rocky Mountain Doubles" is 90 feet, and not 92 feet as shown in proposed appendix C contained in the SNPRM. Arizona statute ARS 28–1011.A provides that the Arizona DOT may issue oversize permits for vehicles exceeding otherwise applicable length limits on the State highway system. Further, the change in categories from those listed in the SNPRM makes this a moot point insofar as the final appendix C is concerned.

The CRASH stated that the State may not issue "verbal policy directives" authorizing overlength vehicles. It adds that the State appears to be violating its own statutes. The question cannot be resolved in this proceeding but the FHWA will investigate the issue in connection with Arizona's certification of compliance with 49 U.S.C. app. 2311(j).

The CRASH also stated that weight limits for LCV's on US 89A and I–15 cannot be determined under ARS 28–1011.N. The FHWA agrees. Since the ISTEA freezes the weight of LCV's only on the Interstate System, we will not further consider weight limits on US 89A. The State indicated that the maximum allowable weight limits for all LCV's on the Interstate System is 111,000 pounds, except for "Triples," which it said are subject to a maximum allowable weight of 123,500 pounds. The 111,000-pound maximum weight limits are specifically authorized under ARS 28–1011.M, and higher maximum weights may be authorized under ARS 28–1011.A on the State highway system. Since the State indicated that the highest weight authorized for "Triples" on or before June 1, 1991, was 123,500 pounds, that value is retained in appendix C.

COLORADO

LENGTH OF THE CARGO-CARRYING UNITS:

Appendix C in the SNPRM showed the cargo-carrying length for "Rocky Mountain Doubles" in Colorado as 85 feet, for "Turnpike Doubles" 95 feet, for "Triples" 95 feet, and for truck-trailer combinations as 78 feet. However, on June 1, 1991, the State actually allowed one of the trailing units in "Rocky Mountain Doubles" to be up to 48 feet long and the other up to 28 feet 6 inches long, with not over 15 feet of hitch between the two units, or a total cargo-carrying length of 91.5 feet. The State also allowed "Turnpike Doubles" to have two trailers of approximately equal length, not to exceed 48 feet each, with a hitch not to exceed 15 feet in length. The resulting cargo-carrying length becomes 111 feet. Revised appendix C has been changed to reflect these values.

The State allowed "Triples" to have three trailing units, not to exceed 28.5 feet, with a 15-foot hitch between the trailing units. Appendix C has been changed to a cargo-carrying length of 115.5 feet to reflect this.

OPERATIONAL CONDITIONS:

PERMIT: The State requested that a new sentence be added after the first sentence under the "Permit" provisions for "Rocky Mountain Doubles" in appendix C as follows: "Also, the vehicle must purchase an overweight permit pursuant to C.R.S. 42–4–409(11)(a)(II)(A), (B), or (C), and comply with Rule 4–15 in the rules pertaining to Extra-Legal Vehicles or Loads." The State also commented that the time restrictions on the operation of "Rocky Mountain Doubles" in the next sentence should be changed from 7 a.m. to 6 a.m. and from 4 p.m. to 3 p.m. and that the sentence in parentheses should read as follows: "('Rocky Mountain' doubles not operating at greater than the legal maximum weight of 80,000 pounds are subject to different hours of operation restrictions. Refer to rules pertaining to the Operation of Longer Vehicle Combinations on Designated State Highway Segments)." The CRASH said motor carriers that operate ISTEA vehicles must have an established safety program as provided in Chapter 9 of the Colorado Department of Highways Rules and Regulations for Operation of Longer Vehicle Combinations on Designated State Highway Segments. Elements of the program include compliance with minimum safety standards at 8 CCR 1507–1; hazardous materials regulations at 8 CCR 1507–7, 8, and 9; Colorado Uniform Motor Vehicle Law, Articles 1 through 4 of Title 42, C.R.S., as amended; and Public Utility Commission's regulations at 4 CCR 723–6, 8, 15, 22, and 23. Revised appendix C includes these changes.

ROUTES:

Appendix C in the SNPRM indicated routes on which "Rocky Mountain Doubles" could travel as "National Network routes except that LCV's may not operate on I–70 from Exit 90 to Exit 259." However, the State indicated that they essentially may operate only on the Interstate System. Appendix C has been amended accordingly.

LEGAL CITATIONS:

The State said that in the "Legal Citations" for "Rocky Mountain Doubles," 42–4–407(1)(C)(III)(A), should be corrected by changing the capital "C" to a small "c." It also said that provisions following this citation should be deleted and the following added: "LVC's must comply with Longer Vehicle Combination Rules and the Extra-Legal Vehicles or Load Rules. However, when the rules address the same subject, the LVC, since it is operating at greater than 80,000 pounds, must comply with the Extra-Legal Vehicles or Loads Rules. Such rules are: 4–1–2 and 4–1–3 concerning holiday travel restrictions, 4–1–5 concerning hours of operation restrictions, 4–8 concerning minimum distance between vehicles and 4–15 concerning maximum allowable gross weight." These changes have been made.

OTHER COMMENTS:

The State pointed out that no maximum gross weight is shown in connection with the truck-trailer combination listed in appendix C. This is correct because a truck-trailer combination is not an LCV as defined in the ISTEA since it is not a combination of a truck tractor and two or more trailers or semitrailers. Therefore, its maximum weight on the Interstates is not frozen as of June 1, 1991, but remains as provided in 23 U.S.C. 127(a). The listing for this combination has been changed in appendix C by adding "WEIGHT" as a separate category under "Operational Conditions" and indicating that the vehicle must be in compliance with State laws and regulations.

The State also noted that "Rocky Mountain Doubles" could operate from milepoint 8.9 to milepoint 9.7 on State Highway 133 in Delta. However, as this is not on the Interstate System or the NN, the ISTEA freeze provisions do not apply. Accordingly, the route is not listed in the vehicle descriptions. The CRASH said that prior to June 1, 1991, "Rocky Mountain Doubles" could operate on I–70 from the Utah State Line only to State Highway 65 (Exit 49). In fact, the route was extended from State Highway 65 to State Highway 13 (Exit 90) on April 5, 1990. Since this was prior to June 1, 1991, "Rocky Mountain Doubles" may continue to operate from the Utah State Line to State Highway 13 (Exit 90) after that date.

The State also commented that the freeze on the operation of LCV's on the Interstate System and the freeze on the operation of CMV's with two or more cargo-carrying units on the NN may create administrative and enforcement problems. However, it also recognized that this arises from the ISTEA and cannot be changed in this proceeding.

FLORIDA

COMBINATION:

The State commented that Florida law and rules contain no references to "Rocky Mountain Doubles" and that all references to them in appendix C should be deleted. The revision of the categories used in appendix C, as presented by this final rule, addresses the State's concern over nomenclature.

OTHER COMMENTS:

Florida commented that the 106-foot length previously given for "Turnpike Doubles," now shown for a truck tractor and two trailing unit combination, is incorrect. The maximum length should be 116 feet. The 116-foot dimension is the maximum overall vehicle length established by State regulation. Appendix C is a listing which includes maximum cargo-carrying length. The convention used throughout this rulemaking is that, in the absence of any information to the contrary, cargo-carrying length for a truck tractor combination is the maximum overall length minus 10 feet. Thus, 106 feet remains the cargo-carrying length value for Florida's truck tractor and two trailing unit combination.

The State also expressed concern over the fact that the vehicles listed for Florida are not considered LCV's as provided in the ISTEA definition, because the route on which they operate, Florida's Turnpike, is not part of the Interstate System. The State made the point that the twin-trailer combinations which operate on the Florida Turnpike match the configuration and weight criteria for LCV's, and only an administrative action, whether or not the Turnpike is part of the Interstate System, keeps them from being designated as such.

Until the ISTEA was enacted, the meaning of the term LCV differed from one region to another, and sometimes depended on the commodity being transported. By providing a definition of LCV, Congress has provided a basis for describing these combinations on a national basis. Any combination which does not meet all of the criteria, including operation on the Interstate System, is not to be considered an LCV.

IDAHO

OTHER COMMENTS:

The CRASH stated that the SNPRM omitted the provisions for time-of-travel restrictions for overlegal loads published in Idaho Transportation Department Rule 39.C.11.5, and the requirement that an applicant for a permit certify that the load is indivisible. These restrictions apply only to nondivisible loads as indicated in Rule 39.C.11.4.c. There are no time-of-day restrictions for Extra-Length Vehicle Combinations operating under permits issued pursuant to Rule 39.C.22. The CRASH also indicated that time-of-travel restrictions applied to overweight loads under Rule 39.C.11.5. Although the rule is entitled "Time of Travel Restrictions for Overlegal Loads," the text deals only with "oversize" loads. The CRASH said that the SNPRM omitted seasonal weight limits in Rule 39.C.14. The Rule simply provides that such limits will be posted. Therefore, they are in the same category as speed limits or other general restrictions that all vehicles must observe.

The "Dromedary tractor semitrailer" combination listed in the SNPRM has been removed from appendix C due to the exclusion of such combinations from the list as discussed earlier. The "Dromedary tractor semitrailer trailer" combination has also been removed from appendix C due to the dromedary equipment exclusion. This vehicle is covered by the listing for the truck tractor and two trailing unit LCV's.

INDIANA

OPERATIONAL CONDITIONS:

VEHICLE: The CRASH commented that the SNPRM omitted several equipment requirements for all LCV combinations including those for emergency equipment, safety chains, lights, reflectors, and for three trailing unit combinations, spray-suppressant mud flaps. All of these items have been added to appendix C.

PERMIT: The CRASH indicated that maximum speed and the State wind operational restrictions were omitted from the permit discussion. These have been added.

OTHER COMMENTS:

The CRASH also commented that the State 3-inch sway limitation was not included in the SNPRM. The requirement was, in fact, included in the SNPRM and has been retained in this final rule.

KANSAS

MAXIMUM ALLOWABLE GROSS WEIGHT:

The State commented that the maximum allowable gross weight listed for "Triples" in the SNPRM was incorrectly listed as 110,000 pounds and that the value should instead be 120,000 pounds. The 110,000-pound limit applies only to three trailing unit operations on I–70 between the Colorado State Line and Goodland. The Kansas Turnpike allows these combinations to operate at 120,000 pounds. This change has been made in appendix C.

OPERATIONAL CONDITIONS:

Under the Operational Conditions described for "Triple—LCV" in the SNPRM, the phrase at the beginning of the section "called special vehicle combinations (SVC's) in Kansas," has been deleted in appendix C at the request of the State. The term "SVC" applies only to operations on I–70 between the Colorado State Line and Goodland. It does not apply on the Turnpike.

DRIVER: At the request of the State, the wording has been corrected to accurately differentiate between SVC operations and operations on the Turnpike.

VEHICLE: The CRASH commented that vehicle equipment requirements concerning lateral movement in the travel lane and anti-spray devices were not included in the SNPRM for SVC operations. Both items are now included in appendix C.

PERMIT: The CRASH commented that the permit discussion for SVC operations did not include the requirement to have insurance coverage of certain amounts. Appendix C has been changed to reflect the requirement to have insurance coverage, however, the amounts are not included in appendix C. The amount of insurance coverage is not an item that is directly related to the size and weight of LCV's.

ACCESS: SVC access was not included in the SNPRM because SVC operations were not included. Appendix C now includes SVC access provisions according to comments provided by the State.

ROUTES:

I–70 in Western Kansas: Kansas allows SVC's on the short segment of I–70 from Goodland to the Colorado State line. Kansas submitted this information and it was published in the NPRM. The FHWA subsequently learned that SVC operations began on that route only on May 31, 1991, the day before the June 1 freeze date.

The ISTEA provides that LCV's (including SVC's) must have operated "on a regular or periodic basis" on or before June 1, 1991 (23 U.S.C. 127(d)(1)(A)). According to the ISTEA conference report:

To be considered "regular or periodic" use, operations must have occurred at recurring intervals over a period of time. Moreover, periodic operations must have occurred on an intermittent but consistent basis. Use of an LCV on only one or two occasions pursuant

to a special permit would not provide a basis for satisfactorily certifying grandfather rights or operations * * *. (H.R. Rep. No. 404, 102d Cong., 1st Sess., at 314 (1991))

Because SVC operations on I–70 did not appear to be "regular or periodic" by this standard, the FHWA revised the SNPRM to remove the Goodland segment from the list of authorized Kansas LCV routes.

Thirty-seven commenters discussed this subject, and all of them favored restoration of the I–70 route. Yellow Corporation, the parent company of Yellow Freight, explained in detail how the problem arose. Yellow Freight uses a hub and spoke system. The company commented that "(w)here distances between hubs do not allow for the journey to be made within the ten-hour federal drivers hours of service limit, Yellow Freight has established driver relay facilities (where) * * * drivers * * * are changed, with the equipment moving on to meet customer service demands." Yellow Freight has for 25 years maintained a driver relay facility at Goodland which serves vehicles moving between its Kansas City and Denver hubs. "Linehaul drivers leave Kansas City westbound to Goodland, layover and return eastbound the next day. Goodland-domiciled linehaul drivers operate a turn between Goodland and the Denver hub."

Colorado authorized triple-trailer and other large combinations in 1989. Unlike competitors with facilities in eastern Colorado, Yellow Freight was unable to use these vehicles between Goodland and Denver because Kansas did not allow them on I–70. Rather than move its relay facility into Colorado or forgo the economic advantages of "Triples," Yellow Freight asked Kansas in September 1989, to allow SVC's on I–70 between Goodland and the Colorado line. The Kansas Department of Transportation (KDOT) announced a rulemaking proposal in January 1990, that would have allowed "Triples" on all Kansas Interstates. The Kansas Railroad Association (KRA) responded by having a bill to ban "Triples" introduced in the legislature; the KDOT withdrew its proposal. Yellow Freight and the KRA negotiated a compromise which, among other things, allowed triple-trailer combinations on the Goodland segment of I–70. The bill was approved on April 12, 1990, and SVC regulations to implement it were promulgated on March 4, 1991. Yellow Freight ran one "Triple" on May 31, 1991, and a second on June 1.

Both Yellow Freight and the KDOT place much of the blame for delays in issuing the permits required to start I–70 operations on the FHWA's failure to clarify its position on the State's grandfather rights in a timely fashion. The FHWA and a number of States—not including Kansas—had long disagreed on the question of whether LCV operations were legitimately grandfathered. One of the purposes of the LCV freeze was to resolve these disputes by ratifying actual operations allowed by State law on June 1, 1991. The KDOT's announced intention to allow SVC's on I–70 was one more indication of the rapid spread of LCV's in States west of the Mississippi. Because of the desirability of a uniform policy toward all States that allowed LCV operations, the FHWA did not immediately address the question of Kansas' grandfather rights. However, on April 8, 1991, just over a month after the KDOT's regulations authorizing SVC permits became effective, the FHWA asked for an opinion by the Kansas Attorney General (AG). The KDOT requested the opinion on April 26, 1991, and the AG replied on May 30, 1991, that the State's grandfather rights were broad enough to encompass SVC operations on I–70. Since the issue here is "regular or periodic" operations, it would serve no purpose to discuss the AG's grandfather claims. The KDOT quickly issued an annual SVC permit to Yellow Freight and operations began the following day.

The State's regulatory process was not completed until March 4, 1991, and the Kansas AG required more than a month to respond to the KDOT's request for an opinion. The FHWA had no part in these delays. It is true, however, that the KDOT made a good faith effort to satisfy the FHWA's legal concerns and postponed the start of SVC operations on I–70 until the deadline included in the draft ISTEA legislation had nearly passed. We do not wish to penalize Kansas simply for cooperating with the FHWA.

Yellow Freight asserted that "(a)s originally drafted, the Federal LCV freeze date would have been April 1, 1991. Senator Dole's office intervened to move that federal freeze date to June 1, 1991, specifically to accommodate the Goodland triples route."

In its comments in response to the SNPRM, the ATA said:

ATA was deeply involved in the Congressional deliberations leading to the LCV freeze. It is our understanding that the language in the Conference report was designed to preclude establishing LCV operations based on single trip permits for infrequent truck movements. Therefore one or two movements of heavy machinery by a specialized carrier would not create "grandfathered rights."

ATA understands that for Kansas, a single trip permit would normally be issued for "occasional use" purposes. It is clear that the intent of the (SVC) permit was for multiple trip purposes and not occasional "one or two trips." The permit had been applied for long before the freeze language was proposed. It was only a matter of timing that so few trips were made.

There is nothing in the ISTEA legislative history that clarifies the meaning of "regular or periodic basis," but the ATA's interpretation is plausible, especially in view of the Caltrans' response to the SNPRM. The Caltrans stated that it

[I]ssued two permits, at the request of the California Legislature, allowing two vehicle combinations with three 26.5-foot trailers to operate from October 27 to November 5, 1971. These vehicle combinations had an overall length of 94.25 feet with gross vehicle weights of 76,800 pounds and 90,000 pounds. The 1971 permits were issued to gather information on truck tractor and triple trailer combination operations. The information was used to consider whether triple combination operations should be allowed in California.

In 1983, the Caltrans issued permits for operational tests of (1) a 111,000-pound "Triple" (28-foot trailers) between October 24–28; (2) a 106,850-pound "Rocky Mountain Double" (48-foot semitrailer, 28-foot pup) between November 7–10; and (3) a 122,650-pound "Turnpike Double" (two 48-foot trailers) between November 14–18. The Caltrans argued that

California retains the right to issue an extralegal permit for good cause to operate a divisible combination of vehicles exceeding the maximum size or weight limits with specific guidance provided by the California Legislature.

The brief tests performed by California one and two decades ago, which never resulted in the authorization of LCV's, are certainly among the minimal operations that the requirement for "regular or periodic" use was intended to exclude. The FHWA has therefore declined to list these vehicles in appendix C.

Kansas and Yellow Freight, on the other hand, clearly expected LCV's to use I–70 routinely and for years to come, and made elaborate preparations on that basis. In addition, the KDOT's efforts to cooperate with the FHWA delayed the issuance of the first permits, which would otherwise have been available in March 1991. On balance, the FHWA believes that the SVC operations on I–70 satisfy the statutory standard. The Goodland route has therefore been restored to appendix C.

The CRASH commented on the accuracy of the lists of routes available

to the different vehicle combinations. Appendix C now reflects the proper route listings. Due to the SVC and Turnpike operations, the truck tractor and three trailing unit combination does have more route mileage available to it than do two trailing unit combinations. The new route lists show that I–70 between the Colorado State Line and Goodland is available only to SVC's with three trailing units and not to LCV combinations with two trailing units.

LEGAL CITATIONS:

One change has been made at the request of the State. KSA–8–1915 has been moved from the list of applicable statutes for two trailing unit combinations to the list for three trailing unit combinations.

MASSACHUSETTS

LENGTH OF THE CARGO-CARRYING UNITS:

The CRASH commented that the cargo-carrying length listed in the SNPRM for the "Turnpike Double—LCV" was incorrectly listed as 114 feet. This figure is the overall length previously allowed for this configuration. Applying the convention for determining cargo-carrying length used throughout this rulemaking, 10 feet will be deducted for the tractor. The cargo-carrying length now shown in appendix C for the truck tractor and two trailing unit combination is 104 feet.

OPERATIONAL CONDITIONS:

VEHICLE: The CRASH pointed out two vehicle requirements missing from the SNPRM, one concerning emergency equipment and the other concerning passing requirements. Both provisions have been added to appendix C.

PERMIT: The CRASH commented that the SNPRM did not include the requirement to have insurance coverage of certain amounts. Appendix C has been changed to reflect the requirement to have insurance coverage, however, the amounts are not included in appendix C. The amount of insurance coverage is not an item that is directly related to the size and weight of LCV's.

MICHIGAN

COMBINATION:

The State commented that the vehicle in question is a truck tractor-semitrailer-trailer where one of the cargo units exceeds 28.5 feet in length. Michigan statutes allow an overall length for the two trailers, as measured from the front of the first trailer to the rear of the second trailer, of 58 feet, including the load. This vehicle configuration was excluded from the original listing of LCV's in the NPRM. The exclusion was based on a definition of excepted combination used in the NPRM (57 FR 9901, March 20, 1992) as follows:

Truck tractor-semitrailer-semitrailer and truck tractor-semitrailer-trailer configurations with a maximum length of cargo-carrying units of 62 feet or less are subject to the provisions of 23 CFR part 658. These are the twin 28-foot units authorized by the STAA, and the 28-foot B-train doubles authorized as specialized equipment by the FHWA.

Michigan contends that the vehicle was correctly excepted in the NPRM since the Michigan vehicle clearly fell within the length parameters of non-LCV vehicles.

The exclusion by the FHWA in the NPRM was erroneous. The vehicle was included in the SNPRM and is now in the final rule since it can consist of a truck tractor and two trailing units and can carry more than 80,000 pounds on the Interstate System.

The State also commented that the "Rocky Mountain Double—LCV" description in the SNPRM was inappropriate for the vehicle in operation in Michigan. The revised combination categories now used in appendix C has alleviated this concern.

MAXIMUM ALLOWABLE GROSS WEIGHT:

The State commented that the table listing vehicle combinations subject to the ISTEA, illustrating a Michigan vehicle listed under "Rocky Mountain Doubles" with a 128,000-pound maximum gross weight, was inappropriate. Michigan, the State argued, is an axle weight State with a grandfather provision and maximum gross weights are determined based on axle and axle group weight limits. Therefore, it would be inappropriate to specify a single maximum gross weight for Michigan. The FHWA does not agree. The table and text have been revised to show a maximum allowable gross weight of 154,000 pounds. The 154,000-pound figure was determined from the maximum axle weight limits for an 11-axle vehicle (the maximum number of axles allowed under State law) with optimum axle spacing and with a combined cargo-carrying box length of 58 feet. Vehicles with fewer axles or less than optimum axle spacing will have a lower allowable gross weight based on State requirements.

OPERATIONAL CONDITIONS:

VEHICLE: Michigan commented that certain statements included in the SNPRM did not apply to the vehicle in question. These statements concerned (1) the overall length of a truck and trailer or semitrailer combination and (2) operational hours for certain vehicles hauling hazardous materials. The appropriate sentences have been removed from the text.

ACCESS: The State commented that "Access" should read "all designated State highways." This change has been made.

ROUTES:

In response to a comment by the State, the "ROUTES" description has been changed to indicate that all Interstate and designated State highways are open to these vehicles.

MISSISSIPPI

COMBINATION:

The State commented that a CMV with two cargo units, subject to the freeze requirements of section 4006 of the ISTEA, originally submitted by the State and included in the NPRM, was inadvertently left out of the SNPRM. The vehicle, which is subject to the freeze because the trailing units may each be up to 30 feet long, has been included in appendix C with the operational information listed as supplied by the State.

MISSOURI

OTHER COMMENTS:

The CRASH claimed that an error in available routes had been made in the SNPRM, and that the SNPRM did not include several items that pertain to permitted loads. The CRASH not only questioned the availability of several Interstate routes in the Kansas City metropolitan area, but also the availability of I–44 in southwest Missouri. It stated that "the only National Network route from which LCV's can enter Missouri is I–70 in Kansas." Several NN routes in Kansas and Oklahoma come up to the Missouri State Line. LCV's are allowed to operate on I–44 in Oklahoma, thus making I–44 available to enter Missouri. In Kansas, LCV's have access to the northeastern end of the Kansas Turnpike, over any route within a 20-mile radius. Within that 20-mile radius in Kansas, several Interstate and other highways, which prior to passage of the ISTEA were designated as Federal-aid Primary highways, come up to the Missouri State Line. LCV's may use any of these routes to reach terminals in Missouri which fall within a 20-mile band of the Kansas State Line.

The CRASH indicated that the State indivisible load requirement had been omitted from the SNPRM. In addition, the CRASH contends that several operational requirements were also

omitted, including those involving time-of-day restrictions, weather requirements, oversize load signs, speed, tractor unit power, and the need for insurance. The State responded that routine overdimension and overweight special permit issuance in Missouri is made in accordance with State Rule 7 CSR 10–2.010 (based on Section 304.200, Revised Statutes of Missouri 1992), which provides for a uniform administration of large and heavy loads.

Although the rule (7 CSR 10–2.010) as originally promulgated by the Missouri Highway and Transportation Commission disallows routing reducible loads (except for farm products) under permit, in July 1986 the State's chief engineer, exercising other authority within the rule, authorized travel for multi-unit LCV's carrying reducible loads. To quote Rule 7 CSR 10–2.010:

[T]he chief engineer of the State Department of Highways and Transportation, for good cause shown and when the public safety or public interest so justifies, shall issue special permits for vehicles or equipment exceeding the limitations on width, length, height, and weight herein specified * * *.

It was determined to be in the public interest to allow LCV operation to relieve economic stress and give motor carriers the incentive to retain terminals in Missouri. Missouri would then be more competitive with adjacent western States which allow LCV operations. The operation of LCV's has gone without reported incident, according to annual documented safety assessments made by the Missouri Highway and Transportation Department, the Missouri State Highway Patrol, the Kansas City Public Works Department, and the Kansas City Police Department.

In response to other items listed, the State made the point that Missouri Revised Statute § 304.200 (1992) gives the chief engineer significant latitude in allowing the operation of LCV's, and that several items including speed and weather restrictions are conditions of the permit issued for the operation of LCV's.

MONTANA

OPERATIONAL CONDITIONS:

PERMIT: The CRASH said that a provision requiring carriers operating vehicles subject to the ISTEA freeze to have "public liability and property damage insurance for the protection of the traveling public as a whole" was omitted from appendix C. Appendix C has been changed to reflect the requirement to have insurance coverage; however, the amounts are not included. The amount of insurance coverage is not an item that is directly related to the size and weight of LCV's.

OTHER COMMENTS:

The CRASH said that Chapter 672 of the Montana Session Laws of 1991, which amended Montana Code Annotated (MCA) section 61–10–124, increased the length of Turnpike Doubles from 95 to 100 feet in length effective January 1, 1992, and, therefore, the cargo-carrying length in appendix C should be based on the shorter length. This is incorrect. Before the change, section 61–10–124 read as follows:

A term permit may be issued for any combination of vehicles that exceeds 95 feet in length but does not exceed 100 feet in length, * * *.

After the 1992 change, it read as follows, with the additional word underlined.

A term permit may be issued for any combination of vehicles that exceeds 95 feet in length but does not exceed 100 feet in *combination* length, * * *.

The amendment clarified but did not substantially change the law; term permits could be issued for "Turnpike Doubles" not more than 100 feet long on June 1, 1991.

NEVADA

OPERATIONAL CONDITIONS:

VEHICLE: The CRASH said that the Nevada Department of Transportation Rules and Regulations in Sections 484.400, 484.405(4), 484.425, 484.430, 408.100–4, and 408.100–6(a), primarily dealing with emergency and safety equipment, should be added to the Nevada provisions in appendix C. We concur, and this has been done.

OTHER COMMENTS:

While appendix C has been changed to reflect the requirement to have insurance coverage, the amounts are not included in appendix C. The amount of insurance coverage is not an item that is directly related to the size and weight of LCV's.

NEW MEXICO

LENGTH OF THE CARGO-CARRYING UNITS:

The cargo-carrying length restriction does not apply to two trailing unit combinations. The length of each trailing unit is limited to 28.5 feet. This describes a two trailing unit vehicle whose operation is guaranteed by the STAA regardless of inter-unit spacing. As long as each trailing unit is 28.5 feet long or less, cargo-carrying length is not restricted. This combination is listed as an LCV because it can exceed the 80,000-pound threshold established in the congressional definition. New Mexico has a grandfathered gross weight limit of 86,400 pounds.

NEW YORK

COMBINATION:

The State submitted an additional vehicle for inclusion in appendix C. It is an STAA Double (twin 28.5-foot units) hauling up to 100,000 pounds under a State DOT permit. As this combination may operate on NN highways in New York, appendix C has been amended to account for its operation. This combination was inadvertently omitted by the State DOT in its previous LCV submissions and docket comments.

OPERATIONAL CONDITIONS:

VEHICLE: The CRASH commented that several items were omitted from the "VEHICLE" discussion in the SNPRM, including the need to carry emergency equipment, mud flaps, safety chains, and a tractor certification identification number. All of these items are now included in appendix C.

The discussion under *DRIVER*, *VEHICLE*, and *PERMIT* has been revised to note the fact that the New York State Thruway Authority, in addition to its responsibility for the tolled sections of Interstate routes 87, 87/287, 90, 95, and 190 (the original Thruway mainline between New York City and Pennsylvania along with the Berkshire, New England, and Niagara sections), now also has jurisdiction over the full length of I–84, and that portion of I–287 between Thruway exit 8 and I–95. These latter two sections remain toll-free, and the operating rules that apply are the same as those in effect on all other highways in the State that are under the jurisdiction of the New York State DOT.

OTHER COMMENTS:

The CRASH also sought to include the insurance requirements and the amounts. While appendix C has been changed to reflect the requirement to have insurance coverage, the amounts are not included in appendix C. The amount of insurance coverage is not an item that is directly related to the size and weight of LCV's.

In addition to the added combination discussed earlier, the State submitted a second vehicle for inclusion in appendix C. It is a combination which uses twin 28.5-foot units to carry nondivisible loads. This vehicle has not been included as nondivisible loads moving under permit are not subject to the freeze.

OKLAHOMA

LENGTH OF THE CARGO-CARRYING UNITS:

The cargo-carrying unit length for the two trailing unit combination has been listed in this final rule at 110 feet. This length was determined after further review of docket comments submitted by the CRASH, actual operation documentation submitted by various carriers, and the appropriate State statutes and regulations. The composite of the information available leads the FHWA to conclude that on or before June 1, 1991, the longest legally allowed multi-unit combination vehicle in regular or periodic use in the State consisted of a truck tractor-semitrailer-trailer, wherein each of the trailing units was 53 feet long. Combining twin 53-foot units with a 4-foot drawbar results in the 110-foot cargo-carrying length. In the NPRM the cargo-carrying length listed for both the "Rocky Mountain" and "Turnpike" Doubles was 123 feet. In the SNPRM, 123 feet was again listed for the "Turnpike" Double. The 123-foot distance was the result of combining a 4-foot drawbar with twin 59-foot 6-inch units.

For purposes of establishing a cargo-carrying length subject to the freeze provisions of the ISTEA, the State incorrectly interpreted relevant provisions of the STAA of 1982. It appears the State reasoned that since the STAA required (1) that all States allow truck tractor-semitrailer-trailer "Doubles" combinations, and (2) that Oklahoma must allow a 59-foot 6-inch semitrailer to meet the grandfather provisions of the STAA (53 FR 2599, Jan. 29, 1988), it follows that Oklahoma must therefore allow twin 59-foot 6-inch units to operate as part of a multi-unit combination vehicle.

While the STAA does require all States to allow "Doubles," the only applicable length requirement is that each State must allow at least 28.5-foot trailing units. The allowance of any longer unit is at a State's discretion within the parameters established by this final rule. The grandfathered semitrailer length applies only for truck tractor-semitrailer combinations. The STAA requires that each State continue to allow trailers or semitrailers of such dimensions as those that were in actual and lawful use in the State on December 1, 1982. The January 1988 rulemaking referred to earlier established that length as 59 feet 6 inches for Oklahoma.

For purposes of establishing a cargo-carrying length subject to the freeze provisions of the ISTEA, a determination must be made as to the unit lengths comprising combination vehicles authorized by State statute or regulation and in actual operation on a regular or periodic basis on or before June 1, 1991. Re-examination of all submitted material and docket comments resulted in the 110-foot length.

OREGON

LENGTH OF THE CARGO-CARRYING UNITS:

The Oregon Department of Transportation (ODOT) commented that overall length requirements for three trailing unit combinations have a significant impact on public safety and must be retained. The ODOT also said that the length of tractors in combination with three trailing units is not a uniform 10 feet long but can range from 9 to 14 feet.

The freeze does not affect the authority of the ODOT to enforce an overall length limit on triple-trailer combinations. However, it does limit the overall length of the cargo-carrying units to what was authorized and in use on or before June 1, 1991. Although the comment does not specifically indicate that 9-foot-long tractors were in use with "Triples" on or before June 1, 1991, we assume that was the intent. Therefore, appendix C has been changed to correct the cargo-carrying length of three trailing unit combinations from 95 to 96 feet.

OPERATIONAL CONDITIONS:

VEHICLE: The CRASH commented that ORS 818.150(5) provides that any towed vehicles in a combination must be equipped with safety chains or cables to prevent the towbar from dropping to the ground in the event the coupling fails. The chains or cables must have sufficient strength to control the towed vehicle in the event the coupling device fails and must be attached with no more slack than necessary to permit proper turning. However, this requirement does not apply to a fifth-wheel coupling if the upper and lower halves of the fifth wheel must be manually released before they can be separated. Appendix C has been amended accordingly.

ROUTES:

The ODOT indicated that there is no direct relationship between approved routes for three trailing unit combinations and the NN highways. The connection is that the freeze applies only on NN highways. Consequently, truck tractor and three trailing unit combinations may not operate with more than 96 feet of cargo-carrying length on routes shown in appendix C. The State is free to regulate the use of triple-trailer combinations as it sees fit on other highways.

OTHER COMMENTS:

The CRASH also indicated that officials who issue permits may require the applicant to furnish public liability and property damage insurance and establish that the permit vehicle will stay on the right side of the centerline at all times. We do not regard these conditions to be the type which must be published in appendix C since the State has discretion whether or not to apply them.

The ODOT asked for a definition of terms and vehicles used in FHWA rulemakings but did not cite any specific items that should be defined. We are unaware of any items that should be defined or that could be defined without affording interested persons the opportunity to comment on the proposed definitions.

SOUTH DAKOTA

OPERATIONAL CONDITIONS:

VEHICLE: The CRASH said that provisions relating to public liability insurance, the amount of offtracking allowed and the entering of the dimensions used to calculate the offtracking on the permit form should be included in appendix C. We concur, and appendix C has been modified accordingly.

OTHER COMMENTS:

The State said that the maximum weight limit for "Rocky Mountain Doubles" is not "129K" as shown on the table at 58 FR 11465–11466 of the SNPRM but is the "Uncapped Federal Bridge Formula." For LCV's the maximum allowable weight is capped at what was allowed and in actual operation on June 1, 1991. Based on the information submitted by the State, a "Turnpike Double," which must also comply with the Federal Bridge formula, is limited to a maximum of 129,000 pounds. The recategorization of the vehicles subject to the LCV freeze has adopted the 129,000-pound value for the "Turnpike Double" as the maximum for a truck tractor and two trailing units.

The State showed the length of the road tractor-trailer-trailer combination as 80 feet. However, this is the overall length. When the length determination in the SNPRM is used, the cargo-carrying length is the overall length minus 10 feet for the length of the tractor. Therefore, the cargo-carrying length of this combination is shown in appendix C as 70 feet.

The State asked for certain additions and deletions to appendix C. The

recategorization of the vehicles subject to the LCV freeze accounted for most of the changes suggested by the State. The descriptions for South Dakota, which now appear in appendix C, take into account the comments made by the State.

UTAH

OPERATIONAL CONDITIONS:

VEHICLE: The CRASH said that Utah Regulations for Legal and Permitted Vehicles, sections 400.2(8), (12), and (14) pertaining to sway of multiple-trailer vehicles, following distance, and insurance requirements, respectively, should be reflected in appendix C. We concur, and appendix C has been amended accordingly.

ROUTES:

The State clarified the basis for delineating vehicles allowed to operate on divided or nondivided highways from overall length to length of cargo-carrying units. This reformatting did not change the lengths allowed, but simply re-stated the lengths to match the language of the ISTEA.

LEGAL CITATIONS:

The State also corrected the legal citation for truck tractor and two trailing unit combinations and indicated that those for "Triples" should be the same. These changes have been made.

WASHINGTON

COMBINATION:

The State indicated that the listing in the SNPRM for "Dump truck with pup trailers" should be changed to "Truck and trailer." We agree, and this change has been made in appendix C.

OTHER COMMENTS:

The State indicated that the listing in the SNPRM of "truck tractor with dromedary box-semitrailer-trailer" should be changed to read "truck tractor carrying a freight compartment no longer than eight feet-semitrailer-semitrailer or full trailer." As indicated previously, we have decided for the time being not to list dromedary equipment separately. This vehicle is therefore covered by the listing for the truck tractor and two trailing unit LCV which also has a cargo-carrying length of 68 feet.

The State also commented that the length of the cargo-carrying units for "Rocky Mountain Doubles" should indicate that the 68-foot length includes the load. We disagree. The ISTEA limited the length of cargo-carrying units, not loads. If the State wants to prohibit, or allow, cargo overhangs over that length, it is free to do so since it retains all the authority it possessed prior to the ISTEA to regulate cargo overhangs.

WYOMING

Many of the comments made by the WTA and the State DOT involved allowable lengths and weights for what previously had been differentiated as "Rocky Mountain" and "Turnpike" Doubles. The recategorization into truck tractor and two trailing units now used in appendix C, has accommodated many of these comments.

COMBINATION:

On or before June 1, 1991, Wyoming only allowed combination vehicles consisting of not more than three single vehicles. This precluded the operation of triple-trailer combinations which consist of four single vehicles—a truck tractor, a semitrailer, and two trailers. A provision of the ISTEA, in effect, gave the State until the next general election day following enactment (November 3, 1992) to decide whether to allow "Triples." A Statewide referendum to allow their use was defeated in the November 3, 1992, election and, as a result, the ISTEA bars the use of "Triples" in Wyoming.

LENGTH OF THE CARGO-CARRYING UNITS:

Provisions relating to the length of a semitrailer in a truck tractor-semitrailer combination will not be added to appendix C since this vehicle is not subject to the ISTEA freeze. The State DOT argued that its 60-foot semitrailer length limit would apply to automobile and boat transporters with no overall length limit. This is not consistent with the Federal requirement that States must allow standard automobile and boat transporters to have a minimum overall length of 65 feet (75 feet if stinger-steered), with no specific limit on the length of the semitrailer. However, application of the State rule does not conflict with the Federal requirement since, as a practical matter, it only applies to vehicles longer than 65 or 75 feet. Such longer combinations would be subject to the ISTEA freeze. As a result, appendix C has been changed to list the overall length of auto and boat transporters, since cargo is typically carried on a headrack the same length as the tractor, in addition to the cargo on the trailer.

OTHER COMMENTS:

The WTA said that a truck-trailer combination falls under the definition of "any other combination of vehicles" in Wyoming law and, therefore, is limited to a total overall length of 85 feet with no single unit exceeding 60 feet. While the combination is limited to 85 feet, the 60-foot limit applies only to semitrailers in a truck tractor-semitrailer combination. The showing of 78 feet for the length of the cargo-carrying units was based on allowing 7 feet for cab length.

The WTA said that it could not understand why the cargo-carrying length of saddlemount combinations was shown in the SNPRM as 75 feet. Under Wyoming law it would be considered as "any other combination" subject to an overall length of 85 feet. We agree. Since the tractor in a saddlemount combination is part of the cargo being transported, we have changed the length of the cargo-carrying units for this combination to 85 feet.

TOW TRUCK OPERATIONS

The nature of the service provided by wreckers or tow trucks is such that these vehicles need to have immediate access to all roads in a State to remove disabled or abandoned, as well as accident-damaged, vehicles. They are, to that extent, emergency vehicles. There is no evidence that Congress intended to include these operations under the freeze restrictions. Therefore, the FHWA proposed in the SNPRM to exclude emergency towing operations from any of the freeze provisions proposed in appendix C. Comments on this issue were received from the California and Washington DOT's and the California Highway Patrol.

Both of the California agencies recommended that proposed 23 CFR 658.23(b)(5), which would allow tow trucks and vehicles in tow to operate on the NN without regard to the freeze on length, be amended to require a State permit to operate overlength. This is unnecessary since 23 CFR 658.23(b)(5) merely means that they are not limited to whatever length was allowed and in use on June 1, 1991. Since they also are not STAA vehicles, the State may regulate their length in any manner it sees fit, including the requirement for a permit, if it wishes.

The Washington DOT asked if tow truck operations are restricted to the length and weight in effect on June 1, 1991. As stated in the SNPRM, emergency towing operations are excluded from any of the freeze provisions in appendix C. However, the proposed provisions in paragraph (b) of 23 CFR 658.23 only excluded tow trucks from the length provisions of appendix C. In order to fully exclude emergency towing operations from any of the provisions contained in new 23 CFR

658.23, the underlined phrase in paragraph (a)(1) has been added:

(a)(1) Except as otherwise provided in this section and *except for tow trucks with vehicles in tow*, * * *.

Also, in paragraph (b)(5) "with" has been substituted for "and."

Pole Trailers

In the SNPRM the FHWA proposed to list, as the authorized length for expandable trailers used for carrying poles, logs or pipe, etc. (pole trailers), the lengths allowed by State law, even if these limits refer to the cargo rather than the vehicle itself.

Only five sets of comments were received which specifically addressed the issue of pole trailers. The South Dakota DOT supported the position that the State-allowed length of the cargo should be considered the cargo-carrying length of the unit. The State added that the FHWA should establish a national cargo overhang policy similar to that in effect for automobile and boat transporters; that is, 3 feet in front and 4 feet to the rear of the vehicle. The Pennsylvania DOT commented that its special length limitation (70 feet) for any combination transporting nondivisible articles has been in place for over 20 years, and that it should be listed as Pennsylvania's length for these vehicles. The California Highway Patrol provided that State's applicable length limits for pole or log trailers. Taking a different tack, both the ATA and the WTA stated in their comments that pole trailers should not be considered or regulated as LCV's. The ATA stated that the "FHWA is incorrect in believing that establishing length limits for pole trailers is consistent with the purpose of section 4006 of ISTEA." In addition to echoing the ATA's comment, the WTA went on to state that the FHWA's proposal with regard to regulating pole trailers as an LCV, "does not recognize that timber harvesters do not cut logs in the same lengths all the time. Utility poles transported by telephone and power companies are not the same length and neither are the joints of pipe used in oil well drilling, pipe line construction and water and sewer line repair and construction."

The FHWA has re-examined this issue. In the SNPRM, the FHWA admitted that the statutory language concerning the freeze is not readily applicable to such vehicles. The discussion of pole trailers and the inclusion of these vehicles in the SNPRM was based on an interpretation that the two cross-members on which the cargo rests constitute individual cargo-carrying units for purposes of section 4006 of the ISTEA. That argument is difficult to maintain. In fact, the hitch, the load, and rear dolly combine to create a *de facto* semitrailer. The FHWA has decided not to include these vehicles in appendix C, as truck tractor-semitrailers are not subject to the requirements of the freeze. Two separate pole trailers pulled by a tractor, however, must comply with section 4006.

Further Restrictions on ISTEA Vehicles

The ISTEA provides that States may further restrict, or even prohibit, the operation of LCV's or CMV's with two or more cargo-carrying units after June 1, 1991. Such restrictions, however, must be consistent with sections 411, 412, and 416(a) of the STAA. This means that States may not prohibit twin trailer combinations with trailers not over 28 feet long (28.5 feet if grandfathered) from operating on the NN or reasonable access routes. States may not restrict the width of vehicles on the NN or reasonable access routes to less than 102 inches or the metric equivalent, 102.36 inches.

A State must notify the Secretary within 30 days after the imposition of further restrictions or prohibitions on the operation of LCV's or CMV's with two or more cargo-carrying units. The FHWA does not have approval authority over any additional restrictions a State may impose, but is required to publish such restrictions in the **Federal Register**. The FHWA may require further information or clarification before publishing the restrictions in the **Federal Register**.

No additional comments were received on this issue in response to the SNPRM. The proposed regulatory language in the SNPRM directly reflected congressional intent as expressed in the ISTEA. That language has been adopted unchanged by this final rule in § 658.23(e).

Minor Adjustments to Listed Information

Sections 1023 and 4006 of the ISTEA allow States to make minor adjustments of a temporary and emergency nature which will relax route designations and vehicle operating restrictions in effect on June 1, 1991. They also direct the Secretary to issue regulations establishing criteria for the States to follow in making such adjustments.

Minor adjustments must be both temporary and caused by an emergency. According to the Conference Report on the ISTEA (H.R. Conf. Rep. No. 404, 102d Cong., 1st Sess. 314 (1991)), such adjustments are intended to be temporary and limited, e.g., a bridge failure that would require the rerouting of ISTEA vehicles to highways where they would otherwise be prohibited. Since it is impossible to foresee all types of emergencies that might necessitate a minor adjustment, and it is not the intent of the FHWA to establish a burdensome reporting requirement, the proposed regulation would require a State to report the details of an adjustment only if the duration was expected to exceed 30 days. Emergency adjustments with a duration of 30 days or less would not be reported to the FHWA.

The NPRM proposed to cap the duration of minor adjustments at 1 year. Adjustments lasting more than 1 year would not be considered to be of a temporary or emergency nature. Minor adjustments for the same emergency would not be permitted to be broken into periods of less than 1 year to extend the emergency for a period longer than that. Similarly, an emergency would not be permitted to be broken into 30-day or shorter periods to avoid reporting. The FHWA re-examined the issue in light of the comments received to the NPRM docket. Subsequently, the SNPRM removed the NPRM's 1-year maximum duration for a minor adjustment, but clearly spelled out that the FHWA must approve any minor adjustments which exceed 30 days. The SNPRM proposal also clearly spelled out that rejection of a State's request would cause the immediate reimposition of freeze restrictions, with failure to do so putting a State at risk of a funding penalty pursuant to 23 U.S.C. 141.

Two sets of comments to the SNPRM addressed the issue, those of the CRASH and those of the Advocates For Highway and Auto Safety (Advocates). Both organizations objected to the removal of the original 1-year time limit. They feared that under the SNPRM States would be allowed to detour LCV's onto highways less capable of safely accommodating these vehicles for unspecified, indefinite lengths of time. The Advocates also objected to the SNPRM proposal because

It fails to provide any criteria for the states to use in choosing alternate routes. The agency (FHWA) simply asserts that it will exercise its discretion to review and approve or disapprove any state's request for an LCV routing adjustment.

It argues that the FHWA is reserving for itself a power to make decisions on an important issue without publicly available guidelines which have been developed through a rulemaking process.

The criteria represented in the final rule by § 658.23(c) are necessarily

general and rely on the review-and-approval nature of the Federal-State relationship.

It is not practical to develop specific criteria to evaluate requests which might originate for any number of reasons. However, to allay the concerns of both the CRASH and Advocates—that minor adjustments, insofar as alternate routes are concerned, will result in LCV's temporarily operating on highways perceived to be less safe—this final rule includes additional guidance in selecting alternate routes. Section 658.23(c) now provides that in selecting alternate routes, States should, to the extent possible, select routes with geometric and pavement design features equivalent to those of the highway segment which is temporarily unavailable. In addition, each request involving an alternate route should include a discussion of what steps the State will take to mitigate any operational and/or safety problems that may develop.

The operating philosophy of the FHWA with respect to State issues has always been that of individual office autonomy within broad national guidelines. The Division Office of Motor Carriers within each State is in the best position to evaluate requests involving truck issues in the State. However, in order to assure that a degree of uniformity is applied to such requests, the Regional Office of Motor Carriers must be consulted before a decision is made on a State's request. On issues which involve alternate routes for LCV's, the final rule directs the Division Office of Motor Carriers to coordinate with the Division Administrator before consulting with the Regional Office.

Definition of Nondivisible Loads

Background

The definition of a nondivisible vehicle or load included in the NPRM was criticized by many commenters, and the following revised definition was therefore proposed in the SNPRM:

> *Nondivisible vehicle or load.* As used in this part, "nondivisible" means any vehicle or load exceeding applicable length or weight limits which cannot readily be separated into smaller vehicles or loads that comply with such limits without:
>
> (1) Compromising the intended use of the vehicle,
>
> (2) Destroying the value of the load, or
>
> (3) Using expert knowledge or specially designed tools. The intended use of a vehicle would be compromised if separating it into smaller units would make it unable to perform the function for which it was designed. The value of a load would be destroyed if separating it into smaller units would make the load unusable for its intended purpose. Expert knowledge means familiarity with procedures required to dismantle and reassemble a load which are beyond the job requirements typically associated with positions in the motor carrier industry. Specially designed tools means equipment designed and manufactured only for use with the load in question. A State may treat a sealed containerized load moving in international commerce as a nondivisible load.

Many of those who responded to the SNPRM discussed nondivisible loads, but a number of comments suggested that the scope of the definition requires clarification. The definition adopted here (and the others already codified in 23 CFR 658.5) apply, like the ISTEA freeze itself, to the same highways and vehicle characteristics as the underlying Federal law. The following paragraphs explain that principle in more detail.

Weight: As a condition of receiving Federal-aid funds, States are required to enforce Federal weight limits (23 U.S.C. 127) on the Interstate System and on routes providing reasonable access to and from the Interstate. The penalty for failure to do so is the withholding of a State's National Highway System (NHS) apportionment. A State may set any weight limit it wishes on other highways, though many have voluntarily adopted Interstate limits for all roads. States are therefore required to use the FHWA's definition only when considering whether to issue a nondivisible load permit allowing an overweight vehicle to operate on the Interstate System and roads providing reasonable access to and from the Interstate.

Length: Federal laws relating to vehicle length (49 U.S.C. app. 2311 and 23 CFR 658.13, 658.23) apply to the NN of highways—see appendix A to part 658—and routes providing reasonable access to and from the NN (49 U.S.C. app. 2312 and 23 CFR 658.19). The Interstate is part of the larger NN, and reasonable access rights extend the reach of Federal size laws beyond the NN itself. In contrast to Federal weight law, these provisions and the implementing regulations preempt conflicting State laws or regulations.

As a practical matter, the FHWA definition of a nondivisible load will rarely be applied to cargo length because it does not cover straight trucks or single-trailer combinations. It covers only loads on vehicles (1) operating on the NN, and routes providing reasonable access to and from the NN, (2) which have two or more cargo-carrying units, and (3) when the overall length from the front of the first to the rear of the last cargo-carrying unit exceeds the longest such length in actual legal operation for a specific configuration on or before June 1, 1991. There are very few single loads that rest simultaneously on the bed of a straight truck and on a trailer, or on two or more trailers. And even in those cases, the definition would not apply unless the total cargo box length were greater than that allowed by the State in 1991. The definition will apply more often to loads, like entire buildings, that are moved on a series of dollies, each of which is a single cargo-carrying unit. There has been virtually no controversy about these loads, and we expect little in the future.

Width: Federal width law (49 U.S.C. app. 2316 and 23 CFR 658.15), like the length requirements, applies on the NN and reasonable access routes, and it preempts conflicting State laws or regulations. However, the definition of a nondivisible load adopted by this rule does not apply to an overwidth vehicle because Federal law provides that States may issue permits to motor vehicles more than 102 inches wide without regard to divisibility or nondivisibility (49 U.S.C. app. 2316(c)).

Height: The FHWA has no authority to regulate vehicle height; there is no Federal law on this subject.

Comments to the Docket

Containers: The SNPRM proposed to allow States to treat containers moving in international commerce as nondivisible loads. Responses were about equally divided. Three State transportation departments favored the proposal, while two States, the ATA, and the Advocates opposed it.

Missouri said that "(u)niformity among States to issue overweight permits for containerized loads in excess of 80,000 pounds gross weight would be a giant accomplishment."

Connecticut suggested that States be required to treat sealed containerized loads moving in international commerce as nondivisible, subject to maximum dimensions and weights it did not specify. Florida went even further, pointing out that

> no justification is presented in the SNPRM for not affording identical containerized loads in domestic commerce a benefit being afforded such containers in international commerce. Therefore, it is proposed that the final rule make no reference to either international or domestic commerce and the statement in question should be revised to read: A State may treat a sealed containerized load as a nondivisible load.

On the other hand, the Washington State Patrol strongly disagreed with the proposal.

> If that were allowed, the industry could load any container to whatever weight, claim its (sic) moving in international commerce and obtain an overweight permit, without

regard to axle, gross weight or bridge formula requirements * * *.

During a recent "Container Weight" study, conducted by the Washington State Patrol, it was shown that of the 3,100 vehicles transporting containers, which exceeded the legal weight limits, all but one could be transported legally by using vehicles with the proper number of axles and axle spacings.

The Washington State Patrol concluded that "(t)he proposal * * * appears to be in conflict with the 'Intermodal Safe Container Transportation Act of 1992' * * *."

Similarly, the Washington DOT argued that "(r)ather than stating a policy that the FHWA is ambivalent about whether the states allow containerized cargo to be treated as non-divisible, it would seem better to encourage a national policy that they are not. This would alleviate competition on this point among ports to make their services more amenable to haulers and shippers." South Dakota contended that "(j)ust because the container is 'sealed' or is 'moving in international commerce' should not preclude a loaded container from meeting the same size and weight requirements which exists for a load which is loaded in a container, such as a truck box, not 'sealed' and not 'moving in international commerce.'"

The ATA recommended that the proposal to allow containers to be treated as nondivisible loads be dropped and that the issue be addressed in the rulemaking to implement the Intermodal Safe Container Transportation Act.

The Advocates argued that the FHWA had "openly contravened Congressional intent" expressed in section 4006 of the ISTEA "by explicitly endorsing the prospective regular issuance of such permits for any 'sealed containerized cargo in international commerce.'"

FHWA Response: The FHWA agrees that there is a serious question whether the proposal to allow States to treat containers in international commerce as nondivisible loads is consistent with the Intermodal Safe Container Transportation Act of 1992 (Safe Container Act) (Pub. L. 102–548, 106 Stat. 3646, partly codified at 49 U.S.C. 508).

Briefly, the Safe Container Act requires the party tendering a loaded intermodal container or trailer with a cargo weight in excess of 10,000 pounds to provide the initial carrier a written certification of the cargo weight and a reasonable description of the contents. Each carrier in the intermodal chain is required to transmit the certification to the next carrier. Motor carriers are prohibited from hauling loaded intermodal containers or trailers subject to the Safe Container Act without receiving a certification. It is also illegal to coerce a motor carrier to haul such a container or trailer (1) without a certification or (2) when the certified weight would make the combination vehicle exceed applicable State weight limits. There are two statutory options if State enforcement personnel discover an overweight tractor-chassis-intermodal container (or tractor-intermodal semitrailer) combination which is on the highway because the motor carrier relied on a false or erroneous certified weight. First, the State is authorized to assess the overweight fine against the initial tenderer and to impound the container or trailer until that party or the beneficial owner of the cargo has paid the fine. Second, if the State fines the motor carrier instead of trying to collect from the shipper or beneficial owner, the motor carrier has a lien on the contents of the container or trailer equal to the amount of the fine imposed and any additional costs incurred in the incident until it receives payment from the tenderer or beneficial owner. If payment is not made within a reasonable time, the carrier may sell the contents to satisfy the lien. The FHWA's proposed regulations to implement the Safe Container Act were published on July 14, 1993, at 58 FR 37895.

The Safe Container Act imposes administrative requirements and costs on tens of thousands of intermodal shippers around the world, and on the international transportation system, in part to reduce the number of overweight containers operating on the Nation's highways. The Safe Container Act is designed to give U.S. motor carriers enough information about the weight and cargo characteristics of intermodal containers and trailers to enable them to decide whether a particular vehicle can be transported without violating State weight limits. If States were allowed to continue routinely to issue nondivisible load permits for overweight containers, some of the essential purposes of the Safe Container Act would appear to be compromised. There would be little incentive for shippers to load intermodal containers or trailers with U.S. weight limits in mind, little if any reduction in the number of overweight vehicles (even though a permit makes them legal), and little reduction in pavement and bridge damage. Many of the expected benefits of the Safe Container Act would be lost, and the regulatory burdens it entails for shippers and carriers would be pointless, if the FHWA adopted the rule on containers proposed in the SNPRM. The FHWA has therefore decided not to promulgate a final rule dealing with containers, but to treat this subject in a separate notice of proposed rulemaking where the issue can be examined more explicitly and in greater detail. In the meantime, the FHWA's previous policy will remain in effect: the States may continue to issue nondivisible load permits to containers moving in international commerce.

Expert Knowledge or Specially Designed Tools: Many of the comments focused on the third test for nondivisibility proposed in the SNPRM. If "expert knowledge or specially designed tools" were required to dismantle a load, it would be considered nondivisible. Most of the comments were critical.

The Pennsylvania Department of Transportation found the test to be

(1) Vague,

(2) Impractical to measure or verify,

(3) Subject to manipulation by industry,

(4) Subject to subjective factors other than the vehicle or load itself, such as driver knowledge of cargo,

(5) Subject to varying interpretation, and

(6) In reality, a restatement of the initial economic criterion that was deleted from this latest rulemaking * * *.

The members of the Specialized Carriers & Rigging Association (SCRA) often move loads that would qualify as nondivisible by any definition. The SCRA noted that the definition proposed by the SNPRM explained expert knowledge as familiarity with procedures required to dismantle and reassemble a load which are "beyond the job requirements typically associated with positions in the motor carrier industry." The Association argued that because highly specialized skills are typically associated with positions in its segment of the motor carrier industry, the definition would make it impossible for special carriers and riggers to obtain nondivisible load permits.

The Alaska Department of Transportation and Public Facilities also commented that "expert knowledge" means very different things in different parts of the industry. It concluded that "(s)ome further work needs to be done on this definition."

The Caltrans commented that, "(w)hatever definition is finally promulgated, Caltrans is totally opposed to the provisions concerning expert knowledge and specially designed tools."

FHWA Response: The FHWA agrees that a test based on "expert knowledge or specially designed tools" is too complicated and ambiguous to be effective. It has therefore been replaced with a test based on the time required to divide a load. This general approach was suggested by the Oregon DOT in response to the NPRM. The full definition adopted by this rule is as follows:

Nondivisible load or vehicle.

(1) As used in this part, "nondivisible" means any load or vehicle exceeding applicable length or weight limits which, if separated into smaller loads or vehicles, would:

(i) Compromise the intended use of the vehicle, i.e., make it unable to perform the function for which it was intended;

(ii) Destroy the value of the load or vehicle, i.e., make it unusable for its intended purpose; or

(iii) Require more than 8 workhours to dismantle using appropriate equipment. The applicant for a nondivisible load permit has the burden of proof as to the number of workhours required to dismantle the load.

(2) A State may treat emergency response vehicles and casks designed and used for the transport of spent nuclear materials as nondivisible vehicles or loads.

The first two tests proposed in the SNPRM, and adopted here as paragraphs (1)(i) and (1)(ii), have elicited little comment and no controversy. These standards are appropriate but very stringent. The FHWA believes there are loads that could be divided without literally destroying their value, but only after unreasonable delay and expense to the shipper and motor carrier; the States should be allowed to issue nondivisible load permits in those cases. As the Pennsylvania DOT recognized, this is essentially an "economic criterion." Our earlier proposals to codify this idea would have allowed nondivisible load permits if dismantling the load imposed "significant additional costs on the shipper or motor carrier" (NPRM) or required "expert knowledge or specially designed tools" (SNPRM). The final rule uses 8 workhours, i.e., a full working day, as a proxy for nondivisibility. The number of workhours required by the rule is the same no matter how many people are involved; for example, if one person working 8 hours, 2 people working 4 hours each, or 4 people working 2 hours apiece, could not dismantle the load, it would be nondivisible. Most loads that require more than one full workday to dismantle, using appropriate equipment, probably were not designed to be taken apart after leaving the factory. We believe Congress intended to allow the use of nondivisible load permits for cargoes which are theoretically divisible, but so tightly integrated that they cannot be dismantled without excessive cost and delay. On the other hand, the definition sets a standard high enough to keep easily divided overweight machinery and equipment off the highway.

The definition adopted today as paragraph (1)(iii) is more objective than that proposed in the NPRM and less confusing than the amended version included in the SNPRM. It remains complex, however, and disagreements between enforcement officers, motor carriers, and shippers are likely. The rule does not specify how State officials are to determine the length of time required to break down a given load. Manufacturers may sometimes provide the necessary information. The motor carrier itself may have reliable data if it has previously dismantled such cargoes. The rule does not require a carrier or shipper to demonstrate that a given load cannot be broken down in less than 8 workhours, but it would not prohibit a State from requiring such a demonstration either. Enforcement officials may be able to work out other reliable methods in cooperation with motor carriers. Paragraph (1)(iii) requires that "appropriate equipment" be used in an effort to dismantle a cargo. The number of workers involved and the type of equipment used will depend on the load to be moved. A State is not required to grant a permit in any case, and it would certainly be reasonable to deny a permit to a carrier or shipper which makes a perfunctory or deliberately inadequate effort to dismantle a load within 8 workhours.

The FHWA intends to allow the States some latitude in implementing the definition, unless indications of nonenforcement or abuse appear.

Overweight and Overwidth Vehicles: In many cases, nondivisible load permits are likely to be requested for loads which are both overweight and overwidth. The South Dakota DOT favored the definition of a nondivisible load adopted by the Western Association of State Highway Officials (WASHTO), which includes the following:

> Portions of a load can be detached and reloaded on the same hauling unit provided that the separate pieces are necessary to the operation of the machine or equipment which is being hauled, if the arrangement does not exceed permittable limits.

The State explained how this definition would work in case of an overweight, overwidth load.

> For example, suppose that a ten foot wide crawler tractor with a fourteen foot wide dozer is to be moved. This load can be moved two ways, overweight and fourteen feet wide with the dozer and ten feet wide without the dozer. Clearly the safest way to move the load would be legal weight and ten feet wide but separating the dozer from the crawler tractor destroys the unit for its intended use and it requires expert knowledge to take the dozer off.

FHWA Response: The State has misread the FHWA's proposed definition. Although a bulldozer might be temporarily "unusable for its intended purpose" without a blade, that phrase merely clarifies the term "destroy the value of the load." Removing the blade certainly would not destroy the value of the bulldozer. The "expert knowledge" test has been eliminated, but it is unclear whether a blade would require more than 8 workhours to remove.

The flaw in the WASHTO definition is that it allows the separate pieces of an allegedly nondivisible load to be reloaded onto the same vehicle. That defeats the purpose of such a provision, which is to hold down vehicle weights in order to protect the public investment in roads and bridges. The WASHTO definition simply allows a divisible load permit to masquerade as a nondivisible load permit. That is unacceptable.

Overwidth Vehicles: The WTA described a related, but different situation:

> FHWA seems to assume that all overlength (and over-width) loads are also overweight. Much of the equipment used in agriculture is oversize, but not overweight. Allowing the removal of a portion of this type of machinery such as tires and allowing it to be carried on the same trailer is clearly in the public interest, especially when in all respects, the machinery is otherwise eligible for a nondivisible load permit. Requiring a second vehicle to haul the removed part(s) is not smart economics.

FHWA Response: If a piece of farm machinery is overwidth but not overweight, the State may either issue an overwidth permit, make the permit conditional upon the removal of tires but allow them to be carried on the same trailer, or deny a permit. These options are entirely within the discretion of the State. If farm machinery is neither overwidth nor overweight, the question of divisibility would not arise unless two or more cargo-carrying units were needed to transport it, certainly a rare occurrence.

California Policy: The California Highway Patrol also argued that "there

are incidents involving the transportation of some nondivisible loads, when more than one unit is loaded, (and) can be transported safely. To qualify, loads would have to be oversize, rather than overweight in nature. California permit policy allows the transportation of multiple nondivisible pieces together, provided sufficient supporting justification is given." The Caltrans asked for a definition that allows this kind of flexibility.

FHWA Response: States may allow several nondivisible overwidth loads on the same vehicle, as long as the normal weight limits are observed. That appears to be what California authorizes. As mentioned above, Federal law gives the States great discretion in issuing permits for overwidth loads. There would also be no conflict with Federal regulations if a State allowed more than one overlength nondivisible load to be carried on a single trailer vehicle—assuming the vehicle was not overweight—because the FHWA's definition of a nondivisible load applies only to overlength nondivisible loads carried on two or more cargo-carrying units.

Safety: The Wyoming DOT, the WTA, and Black Hills Trucking, Inc., referred to *Rocky Mountain Prestress, Inc.*, v. *Leno Menghini et al.*, No. C79–057B, an unreported 1979 Wyoming Federal district court decision, in support of the proposition that safety should be considered in any definition of nondivisible loads. Rocky Mountain Prestress manufactured concrete panels that were to be mounted, two at a time, on A-frame trailers and transported from Denver to Casper for use in construction projects. Wyoming law allowed special permits for overweight "indivisible loads," but the Highway Department rejected plaintiff's application on the ground that two panels were a divisible load. Plaintiff sued the Chief Engineer of the Department, arguing among other things that Wyoming's permit law violated the Commerce Clause of the Constitution. The court held the law constitutional, but found that it had been applied in an arbitrary and capricious manner which impermissibly burdened interstate commerce. The court explained that:

> Our conclusion is buttressed by the admission of the Defendants that heavy equipment which is being carried by trailer qualifies as an indivisible load even though the parts thereof may be easily dismantled. Such an approach to granting overweight permits signifies that the State Highway Department has previously, as they must in this case, considered circumstances other than the mere physical divisibility of the goods in transit.
>
> * * * * *
>
> We would also observe that forestry goods, baled hay and sugar beets are statutory exceptions to the mandated weight limits. The special interest group exceptions in the Wyoming statutes discriminate against the Plaintiff and others similarly situated who may be equally deserving of exceptions from the weight limitation in view of the safety and economic factors involved. * * *
>
> * * * [T]he State's desire to protect its highways has been severely diluted by the discriminatory granting of overweight permits to special interest groups, as well as by the routine issuance of such permits based on an indivisible load regulatory provision that we believe was arbitrarily and capriciously applied to the Plaintiff.

FHWA Response: The court concluded that "the 'A' frame is the safest * * * mode of transportation for loading and shipping panels," but its evidence on that point was meager. The issue of safe transportation of concrete panels was discussed at some length in the SNPRM (see 58 FR 11455–11457). As we noted there, a single panel, mounted horizontally, would improve the vehicle's braking capability and reduce its susceptibility to side winds. Two such panels obviously constitute a divisible load, and a "safety" rationale for doubling the weight of a divisible load is not persuasive.

Black Hills Trucking now contends that one panel cannot be carried horizontally because it "is not constructed to stand up to forces coming through its sides," or vertically "because it is not heavy enough in proportion to the 'sail' area exposed to side winds which destabilize the load." The apparent fragility of these concrete panels does not make two of them any less divisible. Furthermore, the Great Plains experience winds high enough to overturn tractor trailer combinations and double-stack container trains. The interests of safety are better served by halting trucking operations under those conditions than by doubling the weight of the cargo in an effort to anchor the vehicle.

The *Rocky Mountain Prestress* decision is not binding on the FHWA. To the extent this rule requires Wyoming to adopt and enforce a new definition for purposes of issuing nondivisible load overweight permits for the Interstate System, it is no longer binding on the State either. The 1979 decision was based upon the State's arbitrary and capricious administration of its own permit law, in particular its failure to apply that law consistently to all motor carriers and commodities. At the time, there was no Federal law on nondivisible loads. Congress enacted nondivisible load provisions for vehicle weight in 1982 and for vehicle length in 1991. Proposed regulations to implement that authority have been subjected to extensive comment and discussion in this rulemaking. Wyoming, like the other States, will be required to adopt the new definition for Interstate operations. That definition will result in greatly increased nationwide uniformity in the treatment of nondivisible loads. Wyoming will have no more administrative discretion than any other State. A judicial challenge to the FHWA's definition of a nondivisible load would therefore confront a legal and factual situation completely different from that which existed in 1979.

Emergency Vehicles: Section 1023(e)(1) of the ISTEA prohibited the FHWA from penalizing States that allow emergency vehicles to use the Interstate at weights in excess of Federal axle and Bridge Formula limits. The exemption was in effect for 2 years after the date of enactment of the ISTEA and expired on December 18, 1993. Section 1023(e) also required a study of State laws and permit practices to determine whether statutory changes were needed to accommodate emergency vehicles.

To carry out the study, the FHWA requested comments on a variety of questions (57 FR 46941, October 13, 1992). The information submitted indicated that most fire trucks exceed the Federal single- and/or tandem-axle weight limits (20,000 and 34,000 pounds, respectively). These vehicles are rarely short enough to violate the Bridge Formula, however, and almost all of them have gross weights under 80,000 pounds. Technological developments in the manufacturing sector combined with the equipment preferences of fire departments are driving up the size and, especially, the weight of fire trucks. On the other hand, tandem and tridem axles are not favored because they reduce the maneuverability these vehicles need to reach burning buildings. Some States exempt fire equipment from normal weight limits, and others issue blanket overweight permits. The Caltrans reached a compromise with fire officials that will require the latter to observe specific axle limits for various types of vehicles and to make purchasing decisions accordingly.

The U.S. DOT's report was transmitted to Congress on September 7, 1993. It recommended that Congress take no further action because the matter could be resolved by an FHWA policy statement. On November 9, 1993, the Federal Highway Administrator informed the FHWA's regional offices,

and through them the States, that "the FHWA will not withhold Federal-aid funds from States which issue nondivisible load permits to emergency vehicles equipped for their intended use. We will not require that the vehicles have a full crew or be operating under emergency conditions. States may set whatever permit terms, conditions, and fees they consider appropriate." The Federal Highway Administrator added that this policy "is compatible with the Agency's draft definition" published on February 25, 1993, in the SNPRM and that if it "in any way conflicts with the definition ultimately adopted through the rulemaking process, appropriate action will be taken to amend or rescind the policy."

The Federal Highway Administrator's decision was based upon conclusions set forth in his November 9, 1993, letter:

> Some States may have refused to issue nondivisible load permits to emergency vehicles because much of their equipment is readily detachable. Fire trucks often carry firefighting teams, water, hoses, axes, respirators and other devices; advanced life support vehicles typically carry at least two paramedics (one of whom drives), defibrillators, oxygen tanks, stretchers, and medical supplies. In one sense, ancillary equipment and personnel are "divisible" parts of the load, and removing them might lighten an emergency vehicle enough to restore compliance with Interstate weight limits. Doing so, however, would defeat the purpose of these vehicles and make it impossible for them to respond effectively to emergencies. New vehicles may even be overweight as they leave the final stage manufacturing facility, either because the base vehicle is particularly heavy or because ancillary equipment is supplied with it. The equipment that could be removed from emergency vehicles to reduce weight is essential to the services they are designed to perform. These vehicles and loads are functionally if not physically nondivisible, and I believe the States should have the option to treat them as such.

In the language of the regulation we are adopting today, requiring an emergency vehicle to unload separable pieces of equipment would "compromise the intended use of the vehicle." Emergency vehicles meet the definition of a nondivisible vehicle or load.

Spent Nuclear Fuel: The Pennsylvania DOT pointed out that the FHWA informed the American Association of State Highway and Transportation Officials several years ago that the FHWA regards overweight casks used to move spent nuclear fuel as nondivisible. This determination was not reflected in the SNPRM. The casks used to transport spent nuclear materials, especially nuclear fuel, are extraordinarily strong and heavy, both to prevent a release in case the transporter vehicle was involved in an accident and to block radiation that would penetrate lighter materials. Some of these containment devices can make a vehicle overweight even before the nuclear materials are loaded. These vehicles cannot be used for any other cargo or reduced to legal weights without frustrating their purpose. A new provision has therefore been added which essentially states that specially designed casks used to move spent nuclear fuel meet the definition of a nondivisible load.

Other Issues: The Pennsylvania DOT suggested that the SNPRM be amended to acknowledge that both the President and State governors

> [H]ave the executive authority to temporarily modify any vehicle size or weight law or regulation, including the nondivisible criteria, in order to provide for emergency relief to promote the general welfare and public safety, without threat of Federal sanction after the emergency.

While the FHWA would not necessarily impose sanctions if weight enforcement suffered during emergencies that threatened public welfare, Federal weight law simply does not authorize waivers of the Interstate limits or regulatory definitions.

The Connecticut DOT suggested that we use the definition of a nondivisible load to establish "an Ultimate Limit or a guideline to be used by manufacturing." Federal size and weight laws confer no authority to regulate manufacturers.

The FHWA mentioned in the SNPRM that bulk commodities such as liquids, grain, and cement are inherently divisible. The CRASH suggested that the definition include "a much more complete listing of loads that are inherently divisible * * *." In view of the enormous variety of products that move by truck, we do not believe divisible loads could reasonably be itemized.

Grove Worldwide, a manufacturer of cranes, proposed that a load be defined as nondivisible if dismantling it would cause a competitive disadvantage, compromise the integrity and safety of the equipment when disassembled, or jeopardize the warranty. The FHWA considers these tests too far removed from the question of physical divisibility to be appropriate.

Procedure to Review and Correct Final List

Sections 1023 and 4006 of the ISTEA provide a review and correction procedure for the final list of ISTEA vehicles, published today as appendix C to 23 CFR part 658. Any person or State may request that the Secretary review the final list to determine if there is cause to believe that it contains a mistake. The Secretary may also initiate the review. If the Secretary believes an error exists, he or she must commence a proceeding to determine if the list should be corrected, and if so, make the correction. Proposed language establishing such a procedure was included in the SNPRM. No comments were received on this issue. Accordingly, that language has been adopted, unchanged, by this final rule in § 658.23(f).

Temporary Exemption for Public Transit Vehicles

Section 1023 of the ISTEA was amended by the Department of Transportation and Related Agencies Appropriations Act for fiscal year (FY) 1993, Public Law 102–388, 106 Stat. 1520. Section 341 added a new subsection (h) which reads in part as follows:

> (h) Public Transit Vehicles.—
> (1) Temporary Exemption.—The second sentence of section 127 of title 23, United States Code, relating to axle weight limitations for vehicles using the Dwight D. Eisenhower System of Interstate and Defense Highways, shall not apply, in the 2-year period beginning on the date of the enactment of this Act, to any vehicle which is regularly and exclusively used as an intrastate public agency transit passenger bus. The Secretary may extend such 2-year period for an additional year.

This prevents the FHWA from sanctioning States that fail to enforce the Interstate axle-weight limits for public transit vehicles at least until October 6, 1994. If the Secretary exercises the authority to extend the exemption an additional year, it would apply until October 6, 1995. The 2-year exemption was included in the ISTEA to allow States to suspend axle weight enforcement on the Interstate System against public transit vehicles while the Secretary conducts the study called for in section 1023(h)(2). That study, which is currently underway, is to determine whether or not public transit vehicles should be exempted from the requirements of 23 U.S.C. 127, State weight laws, or if such laws should be modified to accommodate these vehicles. The FHWA and the Federal Transit Administration published a joint notice and request for comments on this issue on November 16, 1993 (58 FR 60481). A report on the results of the study, along with recommendations, will ultimately be submitted by the Secretary to Congress.

In a comment to the SNPRM docket, the American Public Transit Association urged that the temporary exemption

language be codified into part 658. The FHWA agrees with this comment. Accordingly, the exemption is codified in this final rule at § 658.17(k).

Temporary Exemption for Emergency Vehicles

Section 1023(e) of the ISTEA added the following exemption from 23 U.S.C. 127:

(1) Temporary Exemption.—The second sentence of section 127 of title 23, United States Code, relating to axle weight limitations and the bridge formula for vehicles using the Dwight D. Eisenhower System of Interstate and Defense Highways, shall not apply, in the 2-year period beginning on the date of the enactment of this Act, to any existing vehicle which is used for the purpose of protecting persons and property from fires and other disasters that threaten public safety and which is in actual operation before such date of enactment and to any new vehicle to be used for such purpose while such vehicle is being delivered to a fire fighting agency. The Secretary may extend such 2-year period for an additional year.

This prevented the FHWA from sanctioning States that failed to enforce the Interstate axle-weight and Bridge Formula limits for fire or emergency vehicles in actual operation on or before December 18, 1991, and for such equipment being delivered from the manufacturer to a fire department. The normal gross weight limit was not affected by the exemption. The exemption remained in effect through December 18, 1993. The SNPRM proposed to codify the exemption at § 658.17(k).

Two comments were received on this issue. The South Dakota DOT expressed its desire to go on record as "not in favor of allowing a temporary or permanent axle weight exemption or bridge formula weight exemption for emergency vehicles." The State contends that "operation of these vehicles overweight threatens the public's safety" and "that emergency vehicles should be designed to operate within legal size and weight limits." The Caltrans objected to the FHWA's interpretation of the law which indicated that the normal gross weight limit (80,000 pounds) remained in effect during the period of the exemption. They contend that gross weight is determined by the Bridge Formula and that our interpretation was contradictory.

The FHWA believes that Congress intended the exemption in section 1023(e)(1) to cover (1) single- and tandem-axle limits, (2) application of the bridge formula to intermediate axles (the inner bridge limits), and (3) application of the Bridge Formula to the overall wheelbase of the vehicle (the outer bridge limit). However, the 80,000-pound maximum gross weight allowed by 23 U.S.C. 127(a) is not inherently part of the Bridge Formula. It is a separate statutory restriction, and we do not believe Congress intended to authorize an exemption to the 80,000-pound limit.

The 2-year exemption was included in the ISTEA to allow States to suspend enforcement action against these vehicles while the Secretary conducted the study called for in section 1023(e)(2). That study has been completed, as indicated above, and the authority of the Secretary to extend the temporary exemption an additional year will not be exercised. The temporary exemption expired December 18, 1993. However, the definition of a nondivisible load adopted in this final rule specifically declares emergency vehicles to be nondivisible. States may therefore issue overweight permits for these vehicles if they wish.

Interstate System Weight Requirements

The first sentence in 23 U.S.C. 127(a) was amended by the STAA of 1982 to require all States to allow the maximum weights permitted by Federal law on the Interstate System. In effect, the weight limits set forth in section 127 became minimums which the States must allow, as well as the maximums the States could allow, on the Interstate System. Since the STAA amendment of section 127 became effective (January 6, 1983), States have occasionally argued that the amendment applied only to the single-axle, tandem-axle, and maximum gross weight limits, and not to gross weights developed by the Bridge Formula. In addition, a degree of confusion regarding applicability has lingered over the years as a result of the regulations issued to implement the STAA (49 FR 23302, June 5, 1984). Although those regulations were published 1½ years after enactment of the STAA, the statutory action making the weight value minimums was not highlighted nor was any regulatory language included.

The SNPRM proposed to clarify and resolve this issue by including a § 658.17(f) as follows.

(f) States may not enforce on the Interstate System vehicle weight limits of less than 20,000 pounds on a single axle, 34,000 pounds on a tandem axle, or the weights derived from the bridge formula, up to a maximum of 80,000 pounds, including all enforcement tolerances.

Comments on this proposal were received from six State Departments of Transportation (Arizona, Montana, Nevada, Oregon, South Dakota, and Washington), as well as from the WASHTO's Subcommittee on Highway Transport. All seven commenters objected to the paragraph as proposed for fear that it would no longer allow the States to further control axle weight using a regulation based on pounds per inch of tire width. Each of the six States providing direct comments currently has this type of weight control regulation in force. The "Guide For Uniform Laws and Regulations Governing Truck Size and Weight Among the WASHTO States," prepared by the WASHTO Subcommittee on Highway Transport and adopted by the WASHTO Policy Committee on June 26, 1993, recommends that all 17 member States adopt a 600-pound/inch tire width weight control.

State tire loading regulations are intended to limit the use of single tires or wheels designed for dual tire applications. This is a practice which results in higher pavement stress and shorter pavement life, and greatly reduces the safety margin provided by dual tires. Depending on the pound-per-inch limit chosen, these regulations may also restrict the use of some "super single" tires. The Washington State DOT included in its docket comments a copy of a report of research on the effects of wide based single tires on flexible pavements conducted by the FHWA at our Pavement Testing Facility during 1989 and 1990. Dual 11R22.5 radial tires, previously identified as one of the most common truck tires in use today, were tested against a 425/65R22.5 wide base single tire. Under a load rating methodology established by the United States Tire and Rim Association, the load ratings for the duals and the single are equivalent; however, the footprint on the pavement is significantly different. The approximate footprint of an 11R22.5 tire is 8.5 inches. Thus, two sets of duals (four tires) can result in approximately 34 inches of tire being available to transmit an axle load to the pavement. For the 425/65R22.5 wide base tire, the footprint is approximately 11 inches, which would make approximately 22 inches available to transmit an axle load to the pavement. The research demonstrated that the 425/65R22.5 wide based single tire was significantly more damaging to conventional flexible pavements than the traditional 11R22.5 dual tires.

The Federal axle weight limits on the Interstate System were adopted to protect the tremendous Federal investment in that System. Restrictions on the weight a tire may carry, based on its width, are consistent with that goal and not forbidden by Federal law. It would be anomalous to adopt axle

weight limits to protect Interstate System pavements and then prevent States from blocking the use of tires so narrow that much of the protection was lost. In addition, a pound-per-inch tire limit does not directly limit the weight that an axle may carry, since additional or wider tires may be utilized. Therefore, unless such restrictions operate so that, as a practical matter, axles cannot be loaded to the Federal weight limits, they are not inconsistent with 23 U.S.C. 127. We believe that laws limiting tire weights as low as 500 pounds per inch width of tire or tread width will allow axles to be loaded to the Federal axle weight limits without particular difficulty.

Steering axles must be treated differently, however, since they cannot always be equipped with wider or additional tires. The FHWA has already recognized a different standard for steering axles by not requiring States to allow truckers to load them to 20,000 pounds when the manufacturer's weight rating is less than that. Therefore, States may not impose pound-per-inch restrictions that would reduce the allowed weight of steering axles on the Interstate System to less than 20,000 pounds or the manufacturer's weight rating, whichever is lower.

Arizona, Montana, and Oregon also suggested that proposed § 658.17(f) be amended to allow temporary weight restrictions based on climatic conditions or emergencies.

Some northern States have for decades enforced lower axle limits during spring thaw. When moisture in a pavement's sub-base, frozen during the winter months, begins to melt, the load-carrying capacity of the pavement structure is reduced until the moisture drains. The degree of reduction is a function of the overall pavement structure thickness, the type of underlying material, amount of moisture, and depth of frost penetration.

Federal weight restrictions apply only to the Interstate System. The standards to which the System has been built include pavement designs developed with the strength to allow maximum legal weights year round. The FHWA does not agree that there is a need to provide regulatory flexibility for climatic conditions. The pavement design parameters of the Interstate System preclude the need for this authority. However, the States do retain the authority to establish such restrictions for highways that are not part of the Interstate System.

"Emergency" weight restrictions requested by States generally are not restrictions at all, but rather the lessening of restrictions to allow heavier weights. For example, when natural disasters occur, carriers, relief agencies, or States would often like to allow trucks carrying relief supplies to exceed normal weight limits. Federal law simply does not allow waivers of this kind. On the other hand, if a flood or earthquake has seriously weakened a bridge or stretch of pavement, it remains within the police powers of the State or municipality to close or limit access to the facility in order to protect the public.

Of the three exceptions to § 658.17(f) sought by commenters, the FHWA agrees that States should retain the authority to enforce the tire loading restrictions, but does not concur in the request to provide climatic or emergency restrictions. Accordingly, § 658.17(f), as proposed in the SNPRM, is amended to read as follows:

§ 658.17 Weight.

* * * * *

(f) Except as provided herein, States may not enforce on the Interstate System vehicle weight limits of less than 20,000 pounds on a single axle, 34,000 pounds on a tandem axle, or the weights derived from the Bridge Formula, up to a maximum of 80,000 pounds, including all enforcement tolerances. States may not limit tire loads to less than 500 pounds per inch of tire or tread width, except that such limits may not be applied to tires on the steering axle. States may not limit steering axle weights to less than 20,000 pounds or the axle rating established by the manufacturer, whichever is lower.

Bus Length and Access

Section 4006(b)(1) of the ISTEA amended section 411(a) of the STAA [49 U.S.C. app. 2311(a)] by inserting "of less than 45 feet on the length of any bus," after "vehicle length limitation."

Section 4006(b)(2) of the ISTEA amended section 412(a)(2) of the STAA [49 U.S.C. app. 2312(a)(2)] by inserting "motor carrier of passengers" after "household goods carriers."

The first provision has the effect of requiring States to allow buses with a length of 45 feet or less on the NN and reasonable access routes. The second provision requires States to allow motor carriers of passengers to have the same access off the NN as household goods carriers, i.e., to "points of loading and unloading." In the SNPRM, the FHWA proposed changes to the "Length" and "Reasonable Access" sections of part 658 to account for these provisions.

Comments on this proposal were received from the Caltrans and the Department of California Highway Patrol. Both agencies recommended that a final rule include definitions of both "bus" and "motor carrier of passengers" to "prevent confusion on the interpretation and application of the regulations." The FHWA agrees with this comment.

The STAA defines a "commercial motor vehicle" in part as "any self-propelled * * * vehicle used on the highways in [interstate] commerce principally to transport passengers * * * (B) if such vehicle is designed to transport more than 10 passengers, including the driver * * *" (49 U.S.C. app. 2301(1)(B)). While this definition applies only to subchapter I of chapter 32 of title 49, U.S.C., which makes grants available to States that agree to enforce Federal, or compatible State, safety regulations, it is an indication of congressional intent. For purposes of administering the commercial vehicle safety program, "bus" was defined in 49 CFR 390.5 as "any motor vehicle designed, constructed, and or used for the transportation of passengers, including taxicabs." The Motor Carrier Safety Act of 1984 amended the definition of a bus to a "vehicle designed to transport more than 15 passengers, including the driver * * *." (49 U.S.C. app. 2503(1)(B)).

The intent of Congress, as expressed in the ISTEA, is to guarantee national route availability and reasonable access for "buses" not exceeding 45 feet in length. Since virtually all States already allowed 40-foot buses to operate Statewide prior to the ISTEA, the number of passengers the vehicle is designed to carry is not an issue, simply the establishment of a national standard length. Accordingly, this final rule will use the most generic of the definitions already established, that found in 49 CFR 390.5.

While the term "motor carrier of passengers" has not previously been defined, this type of operation can generally be characterized as belonging to at least one of three groups: (1) Common carriers that offer service on regular (and sometimes on irregular) routes, (2) contract carriers that provide charter service to groups, or (3) private carriers that do not serve the public but use buses as part of some other enterprise. Someone who uses a 45-foot bus for recreational or other non-business purposes would not qualify as a motor carrier of passengers. For this final rule "motor carrier of passengers" is defined as follows:

Motor Carrier of Passengers—is a common, contract, or private carrier using a bus to provide commercial transportation of passengers.

The list of definitions contained in 23 CFR 658.5 has been amended to include this definition. In addition, the

provisions of § 658.13 (Length) and § 658.19 (Reasonable Access) have been amended to account for these provisions.

Lengths of Trailers and Semitrailers

Fruehauf Trailer Corporation (Fruehauf) commented that the FHWA should clarify the methods by which length is determined for trailers which are part of a multi-unit vehicle subject to the freeze. Because of the attention focused on the LCV length issue by the freeze, Fruehauf contends that it is important that all States (and enforcement agencies) have a uniform understanding of how the length of the individual units is to be determined. Fruehauf's specific concern is with full trailers used in LCV's which are actually made up of a semitrailer and a converter dolly.

In a Notice of Interpretation (NOI) published on March 13, 1987, at 52 FR 7834, the FHWA addressed the issue of trailer or semitrailer length, as part of an overall discussion of length and width exclusive devices. The first length interpretation is relevant here.

1. The length of a semitrailer equipped with an upper coupler (mates with a truck tractor fifth wheel) and a full trailer (with either a permanently mounted dolly or equipped with a converter dolly) is to be measured from the front vertical plane of the foremost transverse load carrying structure to the rear vertical plane of the rearmost transverse load carrying structure. The towbar of a full trailer is excluded from the length measurement (of that trailer) since, technically, it carries no load, but rather it is the means by which the trailer unit is drawn.

The length of any two or more units subject to the freeze requirements of section 4006 is to be measured from the front of the foremost transverse load-carrying structure of the first cargo-carrying unit to the rear of the rearmost transverse load-carrying structure of the last such unit. The upper coupler on a semitrailer is not to be included in the length determination of these units.

National Network—California

This final rule will also amend appendix A to 23 CFR part 658, National Network—Federally-Designated Routes, to reflect the inclusion of the I–580 Richmond-San Rafael Bridge (toll) in the NN. Under the STAA, all Interstate System routes are part of the NN unless deletion is authorized by law. The I–580 Richmond-San Rafael Bridge was withheld from the NN until a direct connection to I–80 from the east end of the bridge could be completed. This condition was reflected in Note 1 to the California listing of NN routes in appendix A. Now that this connection has been completed, the FHWA is amending appendix A by removing Note 1 and redesignating Note 2 as "Note."

This amendment will merely reflect the fact that the I–580 Richmond-San Rafael Bridge is now included in the NN pursuant to the provisions of the STAA. For this reason, and the others set forth above, the FHWA has determined that prior notice and opportunity for public comment on this action are unnecessary. Furthermore, due to the technical nature of this amendment, the FHWA has determined that prior notice and opportunity for comment are not required under the U.S. Department of Transportation's Regulatory Policies and Procedures, as it is not anticipated that such action will result in receipt of useful information.

National Network—Virginia

The ISTEA freeze applies to the operation of specified CMV's on the Interstate and other portions of the NN. The identification of NN routes in Virginia contained in appendix A to 23 CFR part 658 utilizes Interstate System exit numbers to identify the beginning or end of some NN routes. During 1992, the State converted all Interstate System exit numbers from a consecutive number system to a milepost numbering system. In response to this portion of the SNPRM, the State indicated that there appeared to be a discrepancy between what was published in the SNPRM and what the State was considering to be its NN.

The State list not only includes those highway sections designated by the Secretary which comprise appendix A to part 658, but also additional segments which the State has also decided to open to STAA vehicles. Each State retains the authority to open additional mileage, beyond what is listed in appendix A of part 658, to STAA vehicles without the approval of the Secretary. In order to identify NN routes in Virginia which have been federally designated, we are reissuing the State's NN routes in appendix A, 23 CFR part 658, to reflect the new milepost-based exit numbers.

Definition Of Maxi-Cube

Among the vehicles specifically excluded from listing in appendix C, and therefore not subject to the restrictions described in section 4006 of the ISTEA, is the maxi-cube vehicle. "Maxi-Cube" is a registered trademark of LHT Industries, which designed the vehicle, but the maxi-cube regulations adopted in this rule apply to any vehicles that meet their terms.

In 1987, Congress amended the STAA by adopting a definition of a maxi-cube and authorizing the vehicle to operate on the same terms as other STAA vehicles (49 U.S.C. app. 2311(f)(2) and 2311(c), respectively). It soon became apparent that the definition, reproduced below, was flawed:

(2) For purposes of this section, *maxi-cube vehicle* means a truck tractor combined with a semi-trailer and a separable cargo-carrying unit which is designed to be loaded and unloaded through the semi-trailer, except that the entire combination shall not exceed 65 feet in length and the separable cargo-carrying unit shall not exceed 34 feet in length.

49 U.S.C. app. 2311(f)(2).

Although the term maxi-cube was intended to apply to a specific combination of straight truck and trailing unit, the 1987 language described the power unit as a "truck tractor," which the STAA elsewhere defines as "the noncargo carrying power unit that operates in combination with a semitrailer or trailer * * *" (49 U.S.C. app. 2311(f)(1)).

Theoretically, therefore, the maxi-cube is a noncargo-carrying power unit combined with a semitrailer and a separable cargo-carrying unit which is designed to be loaded and unloaded through the semi-trailer. Unfortunately, this vehicle is a chimera. The separable cargo-carrying unit cannot be placed on the "noncargo carrying" power unit, and if it were placed on the semitrailer, the result would seem to be a truck tractor-chassis-intermodal container combination. Container vehicles had long been legal, however, so the 1987 language certainly was not directed at them. In some sense all containers and semitrailers are designed to be loaded and unloaded "through" themselves, but the description does not really fit a combination with only one cargo-carrying unit. The fact is that the definition of the vehicle to be authorized did not correspond to the actual vehicle.

Recognizing the problem, Congress amended the STAA again in 1990 to make maxi-cubes "specialized equipment" and thus eligible for the special regulatory treatment authorized by 49 U.S.C. app. 2311(d). The accompanying report of the House Appropriations Committee said the following:

The bill includes language (Sec. 327) amending section 411(d) of the Surface Transportation Assistance Act of 1982 regarding maxi-cube vehicles. A maxi-cube vehicle is a truck combination consisting of a power unit capable of carrying cargo that pulls a semitrailer. The power unit is a single or tandem axle truck that carries either a

detachable or a permanently attached cargo box or platform. The trailing unit is a semitrailer attached to the front unit by a specially built draw bar which gives the entire combination a single point of articulation. The front of the rear unit is specially designed so cargo may be loaded through the rear unit to the front unit. The length of the trailing cargo unit can be no more than 34 feet excluding the draw bar. The distance from the front of the cargo box on the power unit to the rear of the trailing unit can be no more than 60 feet.

(H.R. Rep. No. 584, 101st Cong. 2d Sess. at 78–79 (1990).)

Although this is an accurate description of a maxi-cube, the flawed definition of the same vehicle in 49 U.S.C. app. 2311(f)(2) was not repealed. In the SNPRM, the FHWA therefore exercised its broad discretionary authority over specialized equipment to propose a definition of the maxi-cube that largely codified the policy guidance of the Committee Report while omitting or modifying the erroneous parts of the statutory definition. We believe this is consistent with the principle that ambiguous or confusing statutes must be interpreted and implemented in a manner that minimizes difficulties and produces the most sensible result.

The definition of a maxi-cube proposed in the SNPRM has been adopted in this final rule, with slight modifications for clarity. It should be noted that the word "semitrailer" used in the statute and Committee Report has been changed to "trailer or semitrailer," since some of the vehicles built as maxi-cubes in recent years are equipped with pintle-hooks, non-load-bearing hitches used for full trailers. Others are equipped with load-bearing fifth-wheel hitches typical of semitrailers. This modification of the definition is well within the FHWA's authority to promulgate rules to accommodate specialized equipment.

The SNPRM also proposed that maxi-cube vehicles should be measured with the adjustable-length drawbar (if so equipped) at its maximum extension, since we assumed that was how the drawbar would be positioned for over-the-road operations. The Pennsylvania DOT supported this proposal in its comments to the docket.

It appears, however, that adjustable drawbars usually are not fully extended when the vehicle is in motion. Magna Van and Coca Cola commented that 24 inches is the normal distance between the first and second units of their maxi-cube vehicles during over-the-road operations, but that longer distances are used for access to driveways and transferring freight in off-road situations. Other information submitted to the docket indicated that 27 inches is probably the longest distance between cargo units for highway travel. However, there are times when a longer drawbar setting may be desirable, such as on rough terrain to keep the cargo boxes from hitting each other; in urban areas while making sharp turns; or while loading and unloading cargo from the front unit while the rear unit is attached. The maximum reported unit separation in these instances is 42 inches.

The FHWA believes Congress intended the maxi-cube length limits to apply to vehicles in their normal operational configuration. We have concluded that the cargo capacity of these vehicles would be needlessly reduced if the rule required length measurements to be made with the drawbar at maximum extension, since that position is used only to assist in low-speed maneuvering or loading and unloading. The last sentence of § 658.13(e)(4) has therefore been modified to read:

If the maxi-cube vehicle is equipped with an adjustable drawbar, the 60- and 65-foot distances shall be measured with a drawbar spacing of not more than 27 inches. The drawbar may be temporarily extended beyond that distance to maneuver or load the vehicle.

The American Movers Conference believes that the load-through feature of the maxi-cube should be made optional. We do not agree. That language is included both in the statutory definition in 49 U.S.C. app. 2311(f)(2) and in the Appropriations Committee report. This feature is one of the primary reasons Congress declared maxi-cubes specialized equipment. Removing the load-through element from the definition would make these vehicles indistinguishable from truck-trailer combinations.

The State of Connecticut asked if the maxi-cube vehicle will be designated as specialized equipment since it will be limited to the NN and reasonable access routes. Maxi-cube vehicles are by statute specialized equipment, and Federal regulations for such equipment apply only on the NN and reasonable access routes.

This action concludes the FHWA rulemaking proceeding that was designated with the regulation identification number 2125–AC65.

Beverage Semitrailers

A rulemaking to designate as specialized equipment the 28-foot van-type, drop-frame beverage semitrailer when it is equipped with an upper coupler plate that extends in front of the semitrailer, has been underway since 1990. The last action on the subject was publication of an NPRM on June 25, 1990, at 55 FR 25850. The final rule was being prepared when the ISTEA was enacted. Since the rulemaking necessary to implement the "LCV-freeze" would, like the beverage semitrailer rule, amend 23 CFR part 658, the decision was made to include both in a single document. Since they amend the same existing regulation, combining them minimizes the number of separate changes made to an already complex regulatory document.

The STAA, codified at 49 U.S.C. app. 2311 *et seq.*, established length and width standards for vehicles using the highways designated as the NN (appendix A to 23 CFR part 658 (1993)). The STAA prohibited any State from enforcing a length limit of less than 28 feet on a semitrailer or trailer operating in a truck tractor-semitrailer-trailer combination on the NN (49 U.S.C. app. 2311 (a)). The STAA, under an equipment grandfather provision, also allows the use of 28.5-foot semitrailers and trailers in truck tractor-semitrailer-trailer combinations if they were actually and lawfully operating on December 1, 1982, within a 65-foot overall length limit in any State. The statute prohibited any State from denying reasonable access to points of loading and unloading for a truck tractor pulling a single 28-foot (28.5-foot if grandfathered) semitrailer that generally operates as part of a truck tractor-semitrailer-trailer combination. In addition, the STAA gave the Secretary authority to exclude from measurement of trailer length and width, devices necessary for the safe and efficient operation of CMV's, provided length exclusive devices did not have, by design or use, the capability to carry cargo (49 U.S.C. app. 2311(h), 2316(b)).

Questions involving permissible vehicle length and length exclusive devices are critical to a new design for 28-foot beverage semitrailers. As used in this proceeding, "beverage" means a liquid for drinking, including water. One new design places the kingpin under the nose of the trailer with a portion of the upper coupler plate extending beyond the front of the vehicle. Since these beverage semitrailers use an enclosed van-type, drop-frame design, mounting the kingpin in this manner allows the drop-frame portion of the semitrailer to be extended forward. The FHWA has issued several NOI of length and width exclusive devices. The most recent was published on March 13, 1987, at 52 FR 7834. That NOI recognized a number of length-exclusive design features, including (1) the pickup plate lip of the upper coupler, and (2) any non-load-

carrying device which falls within the swing radius of the semitrailer (measured from the center line of the kingpin to the front corner of the semitrailer). As applied to the new design described above, these two provisions have proved difficult to administer and have caused confusion and misunderstanding between the FHWA and the industry. The June 25, 1990, NPRM proposed to designate as specialized equipment van-type, drop-frame beverage semitrailers. A 30-day comment period (through July 25, 1990) was provided.

In addition to seeking general comments, the NPRM requested all interested parties to respond to four questions concerning these vehicles.

The FHWA solicited comments on the following questions as well as other comments:

1. Should "beverage trailer" and "beverage semitrailer" be defined in the proposed regulation?

2. Is the proposed length limit for the upper coupler extension of the semitrailer clear?

3. Will the semitrailer, as configured, be as safe as one with the upper coupler plate positioned fully under the semitrailer?

4. Will the position of the center of the kingpin, not more than 28 feet from the rear of the semitrailer, produce offtracking characteristics that are significantly greater than those of conventional 28-foot semitrailers?

Discussion

Eight responses to the June 25, 1990, NPRM were submitted to the docket. The respondents included four State Departments of Transportation; California (Caltrans), Florida (FDOT), Minnesota (MnDOT), and Virginia (VDOT) and the Connecticut Department of Motor Vehicles, the Port Authority of New York and New Jersey, Hackney and Sons, Inc. (trailer manufacturer), and one individual. Of these respondents, six favored designating the beverage semitrailer as specified equipment, one (Caltrans) opposed, and one (VDOT) was not sure the vehicle could operate on its current system of highways for STAA dimensioned vehicles.

Comments Submitted to Docket 90–9

1. Should "beverage trailer" and "beverage semitrailer" be defined in the proposed regulation?

Six respondents commented on defining the "beverage trailer" and "beverage semitrailer." Two State DOT's (FDOT and VDOT) and the Port Authority requested that the terms "beverage trailer" and "beverage semitrailer" be defined in order to administer the regulation without erroneous interpretations. They see this terminology as a potential enforcement problem. The individual stated that the definition was incomplete as it was now written and should specify that the trailer has side access only for cargo. The trailer manufacturer requested that it not be defined because the trailers are also used for palletized cargo as well. Other types of cargo hauled on this type of trailer include automobile batteries, coin compartments from pay telephones, mushrooms, and nursery plants.

The trailer manufacturer also suggested that the regulation read as follows: "with the center line of the kingpin mounted not more than 28 feet from the rear of the semitrailer * * *." It requested the addition of the words "the center line of" because (1) in the semitrailer design under consideration, every inch is important, (2) this change would provide more swing clearance for the tractor under the gooseneck area of the semitrailer, (3) the length of the trailer body would not be increased, and (4) it is common in the industry to specify kingpin location by kingpin center. Based on these comments, the FHWA has modified the definition to state that the semitrailer have "side access only" and that the cargo be limited to bottled or canned beverages. The definition has also been revised to allow the 28-foot length to be measured from the centerline of the kingpin to the rear of the semitrailer.

2. Is the proposed length limit for the upper coupler extension of the semitrailer clear?

The trailer manufacturer and the individual commented that the proposed length limit of the upper coupler was clear and in a workable location. They did not foresee any possible misinterpretation. The trailer manufacturer responded that by limiting the upper coupler extension to fall within the swing radius of the front corner of the semitrailer it is both clear and very workable. This approach has been allowed for the purpose of excluding other front-mounted items from length measurement and accordingly is to be used for this case as well. The FDOT commented that the proposed length limit was not clear as described in the June 25, 1990, NPRM. The FDOT also suggests that language is needed to assure that the coupler plate does not become a cargo carrier in and of itself and that the device stays reasonable in length. The MnDOT responded that its law currently allows semitrailers of 28.5 feet, in three vehicle combinations, and the proposed design would only minimally exceed the current standard.

In accordance with these comments, the FHWA concludes that not allowing the upper coupler plate extension to extend beyond the swing radius of the semitrailer is a clear and sufficient means to restrict the length of this device. The operational rules have been amended to specify that the upper coupler plate itself cannot be used to carry cargo.

3. Will the semitrailer, as configured, be as safe as one with the upper coupler plate positioned fully under the semitrailer?

The Caltrans, MnDOT, trailer manufacturer, and individual agreed that the configuration would be as safe as the upper coupler positioned fully under the semitrailer. The FDOT commented that the final rule should include requirements similar to those found in 49 CFR part 393, subpart F—Coupling Devices and Towing Methods. These and other Federal regulations continue to apply to beverage trailers and need not be cross-referenced in every other applicable regulation. Due to the specialized nature of the equipment discussed here, however, reference to an applicable provision of 49 CFR part 393 is included.

The trailer manufacturer responded that the configuration would be safe because the maximum kingpin-to-trailer axle span will be 25.5 feet. A single 53-foot semitrailer can have a kingpin-to-center of trailer tandem-axle span of 45.5 feet and still be considered safe. The individual commented that there is no reason to believe that trailers produced to this configuration would be less safe than trailers with upper couplers fully under the trailer. Dump trailers and short container chassis often have configurations that place the kingpin forward of the body.

The VDOT commented that demonstrations should be conducted with each type of semitrailer to determine any difference between the two mounting plates. A demonstration is not necessary because this style of trailer has been in operation for several years, and the operating characteristics are known to be compatible to other trailers in current use.

Based on the comments, the FHWA concludes that the semitrailer as configured will be as safe as one with the upper coupler positioned fully under the semitrailer.

4. Will the position of the kingpin, not more than 28 feet from the rear of the semitrailer, produce offtracking characteristics that are significantly greater than those of conventional 28-foot semitrailers?

The Port Authority and the manufacturer responded "no" to the question. The Port Authority commented that it appears to them that the offtracking of the beverage semitrailer combinations set forth in the proposed regulation will not differ significantly from the conventional semitrailer combinations already permitted upon port authority vehicular crossings. The trailer manufacturer used a "sum of squares" method to determine offtracking (Society of Automotive Engineers (SAE) J695) and does not find a great increase in offtracking.

The individual commented that offtracking of these specialized trailers will be greater than conventional 28-foot trailers since the distance from the kingpin to the trailer's axle will increase by up to 3 feet. Also, using the techniques of SAE J695, he calculated the offtracking for conventional and beverage semitrailers as shown in the following table:

COMPARISON OF OFFTRACKING OF SELECTED SEMITRAILERS

Radius conventional curve semitrailer	Conventional 28-foot semitrailer	Beverage semitrailer	48-foot
50 feet	6.86 feet .	8.70 feet .	
120 feet ...	2.55 feet .	3.17 feet .	8.53 feet.

The FDOT responded that the potential of an extra 2 or 3 feet to the kingpin setting may be important with units running as a tandem combination; however, as a single-unit semitrailer, the difference would be insignificant when considering the 41-foot kingpin setting that is being discussed as a *de facto* national limit for such settings.

Based on the comments, the FHWA concludes that the offtracking characteristics of the beverage semitrailer being designated as specialized equipment are not significantly greater than those of conventional 28-foot semitrailers.

5. Other comments.

The Caltrans, FDOT, and MnDOT expressed concerns about future petitions for the FHWA to propose a similar rule for longer beverage semitrailers or semitrailers of a similar design for carrying other goods. The Caltrans' concern is that the beverage semitrailer is another small step toward allowing larger vehicles by means of an exception process. For example, since the weight of the beverage semitrailer and load rest on the upper coupler plate extending from the front of the semitrailer, why not allow the van portion to the semitrailer to be extended over the plate? Also, if a weight supporting upper coupler plate is permitted for a 28-foot beverage semitrailer, is a 48-foot beverage semitrailer next? The possibility of a 48-foot beverage semitrailer raises strong concerns about offtracking. A typical semitrailer has the kingpin located 3 feet from the front of the semitrailer. The Caltrans' evaluation of the State Highway System for designation of terminal access routes is on the basis of a 48-foot trailer with a 43-foot kingpin-to-center of the rearmost axle which is equivalent to the 41-foot kingpin-to-center of tandem axles.

The FDOT responded that the proposed rule needs to be modified to assure that other trailers/semitrailers do not grow in length as a result of this proposed rule. It should be expected that other segments of the industry will seek the same benefits as are being provided to the beverage haulers under this proposed rule. Similarly, the MnDOT would discourage the FHWA from further "piecemeal" exemptions until a comprehensive review of the commercial vehicle length definition is conducted. The State finds that this examination is warranted in light of the recent research from the Roads and Transportation Association of Canada, which demonstrates that the U.S. may in fact be discouraging uniformity and the use of more stable vehicle configurations on U.S. highways, due to current vehicle definitions. The State supported the use of the terms "box length" and uniform "kingpin or wheelbase" for specifying length limits for commercial vehicle equipment. On the other hand, the MnDOT also commented that the configuration under discussion here would not have adverse effects on pavements, bridges, or maneuvering.

The FHWA understands the concerns of these States about its handling of petitions from other segments of the trucking industry for relief similar to that being provided for beverage semitrailers. The FHWA also recognizes that different ways to specify trailer length provisions do exist. Future petitions for similar relief provisions will be evaluated with these concerns in mind.

Finally, the Caltrans commented that the 28-foot beverage semitrailer was not specialized equipment, but rather another attempt to incrementally increase (by regulatory action) the limits set by the STAA. The FHWA disagrees. This equipment as defined by this rulemaking is highly specialized.

Conclusions

In order to remove any doubt about using 28-foot beverage semitrailers with an upper coupler plate that extends beyond the front of the semitrailer on the NN without a special permit, the FHWA is designating them as specialized equipment pursuant to our authority under section 411(d) of the STAA (49 U.S.C. app. 2311(d)).

This designation as specialized equipment applies only to van-type, drop-frame, side-loading only, beverage semitrailers for which the upper coupler plate extends beyond the front of the semitrailer, and the distance from the centerline of the kingpin connection to the rear of the semitrailer is not greater than 28 feet. The rule preempts States from imposing an overall length limit on such vehicles operating in semitrailer or double trailer combinations and guarantees these truck tractor-single beverage semitrailer combinations the same access to points of loading and unloading as 28-foot (28.5-foot if grandfathered) semitrailers in 23 CFR 658.19. After reviewing the comments to the docket, the FHWA has concluded that this action would allow for a productivity gain without adversely effecting public safety. A definition of beverage semitrailer has been added to § 658.5, and regulatory language has been added to § 658.13. This action concludes the FHWA rulemaking proceeding that was designated with the regulation identification number 2125–AC57.

Certification

Section 1023(c) of the ISTEA amended 23 U.S.C. 141(b) by adding a new sentence at the end which reads as follows:

> Each State shall also certify that it is enforcing and complying with the provisions of section 127(d) of this title and section 411(j) of the Surface Transportation Assistance Act of 1982.
>
> (49 U.S.C. app. 2311(j)).

As implemented by 23 CFR 657.13, 23 U.S.C. 141(b) requires each State to certify annually that it is enforcing its size and weight laws on the Federal-aid Primary System (FAP), Federal-aid Urban System (FAU), Federal-aid Secondary System (FAS), and the Interstate System in accordance with 23 U.S.C. 127.

Under the new ISTEA provision, States must also certify that they are enforcing and complying with the ISTEA freeze on the use of LCV's and other multi-unit vehicles. Failure to certify would subject a State to the penalties provided in 23 U.S.C. 141(c)(2).

The ISTEA, however, effectively replaced the FAP with the NHS, and eliminated the FAU and FAS Systems, without providing a conforming amendment to 23 U.S.C. 141(b). Until 23 U.S.C. 141 is amended to reflect changes in system nomenclature, the FHWA will require the States to certify size and weight enforcement on those routes which, prior to October 1, 1991, were designated as part of the FAP, FAS, or FAU Systems.

The State of Alaska objected to the certification statement proposed in the SNPRM. That statement would require the State to certify that it is enforcing the freeze provisions of 23 U.S.C. 127(d) and that its State laws are consistent with 23 U.S.C. 127 (a) and (b). Alaska asserts that section 127 does not apply to the State because the State does not have any Interstate System mileage as defined in 23 U.S.C. 103, 139(a) or 139(b). The FHWA agrees with this comment.

The same situation with respect to highway system also exists in Puerto Rico, which is considered a "State" for the purposes of title 23, United States Code.

The certification language proposed by the SNPRM has been retained, except that language to recognize the situations in Alaska and Puerto Rico has also been included.

Language describing size and weight enforcement coverage in urban areas has also been clarified in this final rule.

Since its initial publication in 1980 (45 FR 52365), § 657.15 has required that "Urban areas not subject to State jurisdiction shall be identified and the statement shall address total (Federal-aid) mileage involved and an analysis of enforcement efforts in such areas." In practice, the FHWA's interpretation of this requirement over the years has been to focus on those areas over 50,000 population, also called urbanized areas (as determined by the Bureau of the Census). The FHWA recognizes an area as "urban" when the population is 5,000 or more. It is not now, nor has it ever been, the intent of the FHWA to require extensive size and weight enforcement activities, or an analysis thereof, in areas with a population between 5,000 and 50,000. The intent of this requirement has always been to ensure that an adequate size and weight enforcement effort be conducted by larger cities, i.e., over 50,000 population, where the State weight enforcement agency does not have legal jurisdiction. Substitution of the word "urbanized" for "urban" (both terms as defined in 23 U.S.C. 101) in the second sentence of § 657.15(b) accomplishes this clarification.

What, prior to October 1, 1991, was Federal-aid system mileage in urban areas of less than 50,000 population, should continue to be covered by the State's overall weight enforcement program. This change in wording does not preclude, nor should it discourage, weight enforcement activity by local jurisdictions. Such activity is encouraged with results to be reported as part of the overall enforcement activity in the State.

Conforming Amendment

ISTEA section 4006(c) consisted of a conforming amendment as follows:

> Section 411(e)(1) of such Act (the STAA of 1982) is amended by striking "those Primary System highways" and inserting "those highways of the Federal-aid primary system in existence on June 1, 1991 * * *."

Section 411(e)(1) of the STAA describes the type of highways that the Secretary shall designate as open to the vehicles described by the STAA. These designated highways, in combination with the Interstate System, have come to be known as the NN. The ISTEA effectively replaced what had been known as the FAP System with the NHS. This conforming amendment corrects the technical problem of designating segments of a highway system (the FAP) which no longer exists. The necessary corrections to the definitions of "Federal-aid Primary System" and "National Network," both found in 23 CFR 658.5, have been made by this final rule.

Operation of Certain Specialized Hauling Vehicles on Interstate Route 68

Section 1023(d) of the ISTEA added 23 U.S.C. 127(e) to read as follows:

> (e) Operation of Certain Specialized Hauling Vehicles on Interstate Route 68.—The single-axle, tandem-axle, and bridge formula limits set forth in subsection (a) (23 U.S.C. 127(a)) shall not apply to the operation on Interstate Route 68 in Garrett and Allegany Counties, Maryland, of any specialized vehicle equipped with a steering axle and a tridem axle and used for hauling coal, logs, and pulpwood if such vehicle is of a type of vehicle as was operating in such counties on United States Route 40 or 48 for such purpose on August 1, 1991.

This exempts the described vehicles with selected cargo from the axle and Bridge Formula weight limits that Maryland must enforce on Interstate Route 68 in Allegany and Garrett Counties. However, the normal gross weight limit (80,000 pounds) remains in effect. This change is adopted by this final rule in § 658.17(j).

Reassignment of Size and Weight Responsibilities Within the FHWA

On October 1, 1991, responsibility for the vehicle Size and Weight and NN Programs in the FHWA's regional and divisional offices was transferred to the Office of Motor Carriers. Revisions to 23 CFR 657.11 and 657.17 were proposed in the SNPRM to reflect this change.

No comments were received on this issue. This final rule includes the changes as proposed.

Size and weight responsibilities in the Washington, DC., Headquarters office remain assigned to the Office of Motor Carriers.

Rulemaking Analyses and Notices

This final rule implements sections 1023 and 4006 of the ISTEA, which restrict the operation of LCV's on the Interstate Highway System and CMV combinations with two or more cargo-carrying units on the NN to the type of vehicles in use on or before June 1, 1991, subject to whatever State rules, regulations, or restrictions were in effect on that date.

As noted in the following paragraphs, the FHWA has determined that this rulemaking is: (1) Not a significant regulatory action within the meaning of Executive Order 12866; (2) not a significant action within the meaning of Department of Transportation Regulatory Policies and Procedures; (3) will not have a significant economic impact on a substantial number of small entities; (4) does not require the preparation of a federalism assessment; and (5) does not require the preparation of an environmental impact statement. All of these findings were made and included in the NPRM and again in the SNPRM, in each case after the FHWA had carefully reviewed the applicable Federal statutes and Executive Orders.

The WTA submitted comments to the docket in response to both the NPRM and the SNPRM challenging what it saw as the FHWA's casual dismissal of determinations required by various statutes and Executive Orders. In comments on the NPRM, the WTA argued that a long-term effect of any freeze would be to prohibit the natural evolution of technology in the trucking industry. Such a situation, in turn, would be likely to cause major and significant impacts on competing transportation modes, related businesses, and the general public. Accordingly, the WTA insisted that the FHWA conduct (1) a full regulatory evaluation, (2) a full economic assessment, (3) a federalism assessment, and (4) an environmental impact study.

Effects on Small Entities and Other Economic Issues

After undertaking the analysis required by the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA reiterated in the SNPRM its conclusion that this rulemaking would not have a significant economic impact on a substantial number of small entities. This conclusion remains unchanged in this final rule. The WTA, responding to an earlier document, stated that "there is no question that the form and substance of this NPRM are clearly harmful to small entities. Most businesses affected in Wyoming are small entities. The few large entities doing business in Wyoming are similarly adversely affected."

This rule in no way restricts the ability of small entities to enter the LCV segment of the motor carrier industry. The LCV segment of the industry can expand as rapidly as it finds customers. Neither the rule nor any State affected by the rule limits the number of LCV's that may be placed in service, or the number of motor carriers that may operate them. The rule does not reduce the highway network on which carriers may run LCV's; it simply lists the routes where the States have decided very large vehicles can operate without seriously damaging pavements and bridges. In Wyoming, that amounts to every NN route in the State.

The WTA seems to be demanding, not better regulatory analyses, but something like a full-scale econometric model of the transportation segment of the economy. The WTA apparently believes that such a model, when run, would demonstrate that the ISTEA freeze is likely to change the competitive balance between railroad and highway transportation, retard the technological development of trucks, reduce employment in the motor carrier industry, and raise freight costs.

Because the LCV freeze includes all State routes currently in use, and because we are not aware that any State wishes to expand its LCV network, we expect that the freeze will have none of the effects predicted by the WTA, at least in the short term. The FHWA believes that the "frozen" LCV Network offers ample opportunity for reasonable growth. Insufficient data exist to evaluate the possible longer-term effects of this rulemaking, and any conclusions presented here would be speculative in nature.

Environmental Issues

In considering this rulemaking action from the perspective of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA), the FHWA has twice found that it would have no effect on the quality of the environment. The WTA disagreed: "A rule which dictates increased use of fuels, a scarce natural resource, affects the quality of the environment in a negative fashion." The rule does not dictate increased use of fuels. If LCV's move freight at a lower fuel or emission cost per ton/mile than other motor vehicles, as the WTA appears to believe, the rule would not prevent LCV's from displacing less efficient vehicles. The FHWA sees no reason to change its conclusion.

Changes to Part 658—National Network

As discussed earlier, this final rule makes two technical amendments to appendix A, 23 CFR part 658, which lists federally-designated routes on the NN. These changes would amend the listings for California, to reflect the inclusion of the I–580 Richmond-San Rafael Bridge in the NN, and also for Virginia, to reflect that State's new milepost-based exit numbering system. For the reasons set forth earlier in this document, the FHWA has determined that prior notice and opportunity for comment are not required for either amendment under the U.S. Department of Transportation's Regulatory Policies and Procedures, as it is not anticipated that such action will result in the receipt of useful information.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of U.S. Department of Transportation Regulatory Policies and Procedures. It is anticipated that the economic impact of this rulemaking will be minimal; therefore, a regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act, the FHWA has evaluated the effects of this rule on small entities. Based on the evaluation, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. This action merely lists applicable limitations by specific vehicle configuration, by State, in effect on June 1, 1991, and will not further restrict the operation of any vehicle in lawful operation on or before June 1, 1991, which is subject to those limitations.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment. Although its effect will be to prevent the expansion of the ISTEA vehicle network beyond that which States allowed on June 1, 1991, that is a direct result of the underlying statute. Moreover, there is no indication at this time that the States planned any significant expansion of that network which would be impeded by this requirement. This action merely implements requirements of the ISTEA.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction

This action does not contain an additional or expanded collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Data collection necessary for the States to be able to certify enforcement of State size and weight laws currently operates under OMB approval number 2125–0034.

National Environmental Policy Act

The FHWA has analyzed this action for the purpose of the NEPA and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification 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 23 CFR Parts 657 and 658

Grant programs—transportation, Highways and roads, and Motor carrier size and weight.

Issued on: May 27, 1994.

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA is amending 23 CFR, subchapter G, parts 657 and 658 as set forth below.

PART 657—CERTIFICATION OF SIZE AND WEIGHT ENFORCEMENT

1. The authority citation for 23 CFR part 657 is revised to read as follows:

Authority: Sec. 123, Pub. L. 95–599, 92 Stat. 2689; 23 U.S.C. 127, 141, and 315; 49 U.S.C. app. 2311, 2312, and 2316; sec. 1023, Pub. L. 102–240, 105 Stat. 1914; and 49 CFR 1.48(b)(19), (b)(23), (c)(1), and (c)(19).

2. Section 657.11 is revised to read as follows:

§ 657.11 Evaluation of operations.

(a) The State shall submit its enforcement plan or annual update to the Office of Motor Carriers in the FHWA division office by July 1 of each year. However, if a State's legislative or budgetary cycle is not consonant with that date, the FHWA and the State may jointly select an alternate date. In any event, a State must have an approved plan in effect by October 1 of each year. Failure of a State to submit or update a plan will result in the State being unable to certify in accordance with § 657.13 for the period to be covered by the plan.

(b) The Office of Motor Carriers in the FHWA division office shall review the State's operation under the accepted plan on a continuing basis and shall prepare an evaluation report annually. The State will be advised of the results of the evaluation and of any needed changes either in the plan itself or in its implementation. Copies of the evaluation report and subsequent modifications resulting from the evaluation shall be forwarded through the Regional Director of Motor Carriers to the Washington, D.C., Headquarters office.

3. Section 657.13 is revised to read as follows:

§ 657.13 Certification requirement.

Each State shall certify to the Federal Highway Administrator, before January 1 of each year, that it is enforcing all State laws respecting maximum vehicle size and weight permitted on what, prior to October 1, 1991, were the Federal-aid Primary, Secondary, and Urban Systems, including the Interstate System, in accordance with 23 U.S.C. 127. The States must also certify that they are enforcing and complying with the ISTEA freeze on the use of LCV's and other multi-unit vehicles. The certification shall be supported by information on activities and results achieved during the preceding 12-month period ending on September 30 of each year.

4. Section 657.15 is revised to read as follows:

§ 657.15 Certification content.

The certification shall consist of the following elements and each element shall be addressed even though the response is negative:

(a) A statement by the Governor of the State, or an official designated by the Governor, that the State's vehicle weight laws and regulations governing use of the Interstate System conform to 23 U.S.C. 127.

(b) A statement by the Governor of the State, or an official designated by the Governor, that all State size and weight limits are being enforced on the Interstate System and those routes which prior to October 1, 1991, were designated as part of the Federal-aid Primary, Urban, and Secondary Systems, and that the State is enforcing and complying with the provisions of 23 U.S.C. 127(d) and 49 U.S.C. app. 2311(j). Urbanized areas not subject to State jurisdiction shall be identified. The statement shall include an analysis of enforcement efforts in such areas.

(c) Except for Alaska and Puerto Rico, the certifying statements required by paragraphs (a) and (b) of this section shall be worded as follows (the statements for Alaska and Puerto Rico do not have to reference 23 U.S.C. 127(d) in (c)(2), or include paragraph (c)(3) of this section):

I, *(name of certifying official), (position title)*, of the State of _____ do hereby certify:

(1) That all State laws and regulations governing vehicle size and weight are being enforced on those highways which, prior to October 1, 1991, were designated as part of the Federal-aid Primary, Federal-aid Secondary, or Federal-aid Urban Systems;

(2) That the State is enforcing the freeze provisions of the Intermodal Surface Transportation Efficiency Act of 1991 (23 U.S.C. 127(d) and 49 U.S.C. app. 2311(j)); and

(3) That all State laws governing vehicle weight on the Interstate System are consistent with 23 U.S.C. 127 (a) and (b).

(d) If this statement is made by an official other than the Governor, a copy of the document designating the official, signed by the Governor, shall also be included in the certification made under this part.

(e) A copy of any State law or regulation pertaining to vehicle sizes and weights adopted since the State's last certification and an analysis of the changes made. Those laws and regulations pertaining to special permits and penalties shall be specifically identified and analyzed in accordance with section 123 of the Surface Transportation Assistance Act of 1978 (Pub. L. 95–599).

(f) A report of State size and weight enforcement efforts during the period covered by the certification which addresses the following:

(1) Actual operations as compared with those forecast by the plan submitted earlier, with particular attention to changes in or deviations from the operations proposed.

(2) Impacts of the process as actually applied, in terms of changes in the number of oversize and/or overweight vehicles.

(3) *Measures of activity*—(i) *Vehicles weighed.* Separate totals shall be reported for the annual number of vehicles weighed on fixed scales, on semiportable scales, on portable scales, and on WIM when used for enforcement.

(ii) *Penalties.* Penalties reported shall include citations issued, civil assessments, and incidences of load shifting or off-loading of excess weight categorized as follows: violations of axle and/or gross vehicle weights, or violations resulting from application of the bridge formula.

(iii) *Permits.* The number of permits issued for *overweight* loads shall be reported. The reported numbers shall specify permits for divisible and nondivisible loads and whether issued on a trip or annual basis. Permits issued for excess height, length, or width need not be reported except where issued for the overwidth movement of a divisible load.

5. Section 657.17 is revised to read as follows:

§ 657.17 Certification submittal.

(a) The Governor, or an official designated by the Governor, shall submit the certification to the Office of Motor Carriers in the FHWA division office prior to January 1 of each year.

(b) The Office of Motor Carriers in the FHWA division office shall forward the original certification to the Associate Administrator for Motor Carriers and one copy to the Office of Chief Counsel. Copies of appropriate evaluations and/or comments shall accompany any transmittal.

PART 658—TRUCK SIZE AND WEIGHT, ROUTE DESIGNATIONS—LENGTH, WIDTH, AND WEIGHT LIMITATIONS

6. The authority citation for 23 CFR part 658 is revised to read as follows:

Authority: 23 U.S.C. 127 and 315; 49 U.S.C. app. 2311, 2312, and 2316; 49 CFR 1.48(b)(19) and (c)(19).

7. Section 658.1 is revised to read as follows:

§ 658.1 Purpose.

The purpose of this part is to identify a National Network of highways available to vehicles authorized by provisions of the Surface Transportation Assistance Act of 1982 (STAA) as amended, and to prescribe national policies that govern truck and bus size and weight.

8. Section 658.5 is amended by removing the arabic letter paragraph designations from all definitions, placing the definitions in alphabetical order, revising two existing definitions, and adding six new definitions in appropriate order. The added and revised definitions read as follows:

§ 658.5 Definitions.

* * * * *

Beverage semitrailer. A van-type, drop-frame semitrailer designed and used specifically for the transport and delivery of bottled or canned beverages (i.e., liquids for drinking, including water) which has side-only access for loading and unloading this commodity. Semitrailer has the same meaning as in 49 CFR 390.5.

* * * * *

Cargo-carrying unit. As used in this part, cargo-carrying unit means any portion of a commercial motor vehicle (CMV) combination (other than a truck tractor) used for the carrying of cargo, including a trailer, semitrailer, or the cargo-carrying section of a single-unit truck.

* * * * *

Federal-aid Primary System. The Federal-aid Highway System of rural arterials and their extensions into or through urban areas in existence on June 1, 1991, as described in 23 U.S.C. 103(b) in effect at that time.

* * * * *

Longer combination vehicle (LCV). As used in this part, longer combination vehicle means any combination of a truck tractor and two or more trailers or semitrailers which operates on the Interstate System at a gross vehicle weight greater than 80,000 pounds.

* * * * *

Maxi-cube vehicle. A maxi-cube vehicle is a combination vehicle consisting of a power unit and a trailing unit, both of which are designed to carry cargo. The power unit is a nonarticulated truck with one or more drive axles that carries either a detachable or a permanently attached cargo box. The trailing unit is a trailer or semitrailer with a cargo box so designed that the power unit may be loaded and unloaded through the trailing unit. Neither cargo box shall exceed 34 feet in length, excluding drawbar or hitching device; the distance from the front of the first to the rear of the second cargo box shall not exceed 60 feet, including the space between the cargo boxes; and the overall length of the combination vehicle shall not exceed 65 feet, including the space between the cargo boxes.

* * * * *

Motor carrier of passengers. As used in this part, a motor carrier of passengers is a common, contract, or private carrier using a bus to provide commercial transportation of passengers. Bus has the same meaning as in 49 CFR 390.5.

* * * * *

National Network (NN). The composite of the individual network of highways from each State on which vehicles authorized by the provisions of the STAA are allowed to operate. The network in each State includes the Interstate System, exclusive of those portions excepted under § 658.11(f) or deleted under § 658.11(d), and those portions of the Federal-aid Primary System in existence on June 1, 1991, set out by the FHWA in appendix A to this part.

* * * * *

Nondivisible load or vehicle.

(1) As used in this part, *nondivisible* means any load or vehicle exceeding applicable length or weight limits which, if separated into smaller loads or vehicles, would:

(i) Compromise the intended use of the vehicle, i.e., make it unable to perform the function for which it was intended;

(ii) Destroy the value of the load or vehicle, i.e., make it unusable for its intended purpose; or

(iii) Require more than 8 workhours to dismantle using appropriate equipment. The applicant for a nondivisible load permit has the burden of proof as to the number of workhours required to dismantle the load.

(2) A State may treat emergency response vehicles and casks designed and used for the transport of spent nuclear materials as nondivisible vehicles or loads.

* * * * *

§§ 658.13 and 658.15 [Amended]

9. In the list below, for each section indicated in the left column, remove the citation indicated in the middle column from wherever it appears in the section, and add the citation indicated in the right column:

Section	Remove	Add
658.13(d)(1)(i)	658.5(k)	658.5
658.13(d)(2)(i)	658.5(k)	658.5
658.13(e)	658.5(e)	658.5
658.15(b)	658.5(i)	658.5
658.15(c)	658.5(g)	658.5

10. In § 658.13, paragraphs (d), (e), and (f) are redesignated as paragraphs (e), (f), and (g), respectively, a new paragraph (d) is added, and new paragraphs (e)(4) and (e)(5) are added under redesignated paragraph (e) to read as follows:

§ 658.13 Length.

* * * * *

(d) No State shall impose a limit of less than 45 feet on the length of any bus on the NN.

(e) * * *

(4) *Maxi-cube vehicle.* No State shall impose a length limit on a maxi-cube vehicle, as defined in § 658.5 of this part, of less than 34 feet on either cargo box, excluding drawbar or hitching device; 60 feet on the distance from the front of the first to the rear of the second cargo box, including the space between the cargo boxes; or 65 feet on the overall length of the combination, including the space between the cargo boxes. The measurement for compliance with the 60- and 65-foot distance shall include the actual distance between cargo boxes, measured along the centerline of the drawbar or hitching device. For maxi-cubes with an adjustable length drawbar or hitching device, the 60- and 65-foot distances shall be measured with a drawbar spacing of not more than 27 inches. The drawbar may be temporarily extended beyond that distance to maneuver or load the vehicle.

(5) *Beverage semitrailer.* (i) A beverage semitrailer is specialized equipment if it has an upper coupler plate that extends beyond the front of the semitrailer, but not beyond its swing radius, as measured from the center line of the kingpin to a front corner of the semitrailer, which cannot be used for carrying cargo other than the structure of the semitrailer, and with the center line of the kingpin not more than 28 feet from the rear of the semitrailer (exclusive of rear-mounted devices not measured in determining semitrailer length). No State shall impose an overall length limit on such vehicles when operating in a truck tractor-beverage

semitrailer or truck tractor-beverage semitrailer-beverage trailer combination on the NN.

(ii) The beverage trailer referred to in paragraph (e)(5)(i) of this section means a beverage semitrailer and converter dolly. Converter dolly has the same meaning as in 49 CFR 393.5.

(iii) Truck tractor-beverage semitrailer combinations shall have the same access to points of loading and unloading as 28-foot semitrailers (28.5-foot where allowed by § 658.13) in 23 CFR 658.19.

* * * * *

11. In § 658.17, paragraphs (f), (g), and (h) are redesignated as paragraphs (g), (h), and (i), respectively; new paragraphs (f), (j), and (k) are added; and redesignated paragraph (h) is revised. Paragraphs (f) through (k) now read as follows:

§ 658.17 Weight.

* * * * *

(f) Except as provided herein, States may not enforce on the Interstate System vehicle weight limits of less than 20,000 pounds on a single axle, 34,000 pounds on a tandem axle, or the weights derived from the Bridge Formula, up to a maximum of 80,000 pounds, including all enforcement tolerances. States may not limit tire loads to less than 500 pounds per inch of tire or tread width, except that such limits may not be applied to tires on the steering axle. States may not limit steering axle weights to less than 20,000 pounds or the axle rating established by the manufacturer, whichever is lower.

(g) The weights in paragraphs (b), (c), (d), and (e) of this section shall be inclusive of all tolerances, enforcement or otherwise, with the exception of a scale allowance factor when using portable scales (wheel-load weighers). The current accuracy of such scales is generally within 2 or 3 percent of actual weight, but in no case shall an allowance in excess of 5 percent be applied. Penalty or fine schedules which impose no fine up to a specified threshold, i.e., 1,000 pounds, will be considered as tolerance provisions not authorized by 23 U.S.C. 127.

(h) States may issue special permits without regard to the axle, gross, or Federal Bridge Formula requirements for nondivisible vehicles or loads.

(i) The provisions of paragraphs (b), (c), and (d) of this section shall not apply to single-, or tandem-axle weights, or gross weights legally authorized under State law on July 1, 1956. The group of axles requirements established in this section shall not apply to vehicles legally grandfathered under State groups of axles tables or formulas on January 4, 1975.

(j) The provisions of paragraphs (c) through (e) of this section shall not apply to the operation on Interstate Route 68 in Allegany and Garrett Counties, Maryland, of any specialized vehicle equipped with a steering axle and a tridem axle and used for hauling coal, logs, and pulpwood if such vehicle is of a type of vehicle as was operating in such counties on U.S. Routes 40 or 48 for such purposes on August 1, 1991.

(k) Beginning October 6, 1992, and ending October 5, 1994, the provisions of paragraphs (c) through (e) of this section shall not apply to any vehicle which is regularly and exclusively used as an intrastate public agency transit passenger bus. The Secretary may extend this temporary exemption for an additional year.

12. In § 658.19, paragraph (a) is revised to read as follows:

§ 658.19 Reasonable access.

(a) No State may enact or enforce any law denying reasonable access to vehicles with dimensions authorized by the STAA between the NN and terminals and facilities for food, fuel, repairs, and rest. In addition, no State may enact or enforce any law denying reasonable access between the NN and points of loading and unloading to household goods carriers, motor carriers of passengers, and any truck tractor-semitrailer combination in which the semitrailer has a length not to exceed 28 feet (28.5 feet where allowed pursuant to § 658.13(b)(5) of this part) and which generally operates as part of a vehicle combination described in §§ 658.13(b)(5) and 658.15(a) of this part.

* * * * *

13. Part 658 is amended by adding § 658.23 as follows:

§ 658.23 LCV freeze; cargo-carrying unit freeze.

(a) (1) Except as otherwise provided in this section and except for tow trucks with vehicles in tow, a State may allow the operation of LCV's on the Interstate System only as listed in appendix C to this part.

(2) Except as otherwise provided in this section, a State may not allow the operation on the NN of any CMV combination with two or more cargo-carrying units (not including the truck tractor) whose cargo-carrying units exceed:

(i) The maximum combination trailer, semitrailer, or other type of length limitation authorized by State law or regulation of that State on or before June 1, 1991; or

(ii) The length of the cargo-carrying units of those CMV combinations, by specific configuration, in actual, lawful operation on a regular or periodic basis (including continuing seasonal operation) in that State on or before June 1, 1991, as listed in appendix C to this part.

(b) Notwithstanding paragraph (a)(2) of this section, the following CMV combinations with two or more cargo-carrying units may operate on the NN.

(1) Truck tractor-semitrailer-trailer and truck tractor-semitrailer-semitrailer combinations with a maximum length of the individual cargo units of 28.5 feet or less.

(2) Vehicles described in § 658.13(e) and (g).

(3) Truck tractor-trailer and truck tractor-semitrailer combinations with an overall length of 65 feet or less.

(4) Maxi-cubes.

(5) Tow trucks with vehicles in tow.

(c) For specific safety purposes and road construction, a State may make minor adjustments of a temporary and emergency nature to route designations and vehicle operating restrictions applicable to combinations subject to sections 1023 and 4006 of Pub. L. 102–240 and in effect on June 1, 1991 (July 6, 1991, for Alaska). Adjustments which last 30 days or less may be made without notifying the FHWA. Minor adjustments which exceed 30 days require approval of the FHWA. When such adjustments are needed, a State must submit to the Division Office of Motor Carriers, by the end of the 30th day, a written description of the emergency, the date on which it began, and the date on which it is expected to conclude. If the adjustment involves route designations, the State shall describe the new route on which vehicles otherwise subject to the freeze imposed by sections 1023 and 4006 of Pub. L. 102–240 are allowed to operate. To the extent possible, the geometric and pavement design characteristics of the alternate route should be equivalent to those of the highway section which is temporarily unavailable. Approval or disapproval by Office of Motor Carriers officials of adjustments involving route designations shall be coordinated with the Division Administrator. If the adjustment involves vehicle operating restrictions, the State shall list the restrictions that have been removed or modified. Approval or disapproval of the adjustment by the Division Office of Motor Carriers shall take place only after consultation with the Regional Office of Motor Carriers. If the adjustment is approved, a copy of the approved submission shall be forwarded through the Regional Office of Motor Carriers, to the Associate Administrator for Motor Carriers at Headquarters, who

will publish the notice of adjustment, with an expiration date, in the **Federal Register**. Requests for extensions of time beyond the originally established conclusion date shall be subject to the same approval and publication process as the original request. If upon consultation with the Regional Office of Motor Carriers, a decision is reached that minor adjustments made by a State are not legitimately attributable to road or bridge construction or safety, the Division Office of Motor Carriers will so inform the State, and the original conditions of the freeze must be reimposed immediately. Failure to do so may subject the State to a penalty pursuant to 23 U.S.C. 141.

(d) A State may issue a permit authorizing a CMV to transport an overlength nondivisible load on two or more cargo-carrying units on the NN without regard to the restrictions in § 658.23(a)(2).

(e) States further restricting or prohibiting the operation of vehicles subject to sections 1023 and 4006 of Public Law 102–240 after June 1, 1991, shall notify the FHWA Division Office of Motor Carriers within 30 days after the restriction is effective. The Division Office of Motor Carriers shall forward the information through the Regional Office of Motor Carriers to the Associate Administrator for Motor Carriers at Headquarters. The FHWA will publish the restriction in the **Federal Register** as an amendment to appendix C to this part. Failure to provide such notification may subject the State to a penalty pursuant to 23 U.S.C. 141.

(f) The Federal Highway Administrator, on his or her own motion or upon a request by any person (including a State), shall review the information set forth in appendix C to this part. If the Administrator determines there is cause to believe that a mistake was made in the accuracy of the information contained in appendix C to this part, the Administrator shall commence a proceeding to determine whether the information published should be corrected. If the Administrator determines that there is a mistake in the accuracy of the information contained in appendix C to this part, the Administrator shall publish in the **Federal Register** the appropriate corrections to reflect that determination.

14. Appendix A to part 658 is amended in the entry for the State of California by removing Note 1 and redesignating Note 2, and by revising the entry for the State of Virginia to read as follows:

APPENDIX A TO PART 658—NATIONAL NETWORK—FEDERALLY DESIGNATED ROUTES

Route	From	To
US 11	I–81 Exit 195	0.16 Mi. N. of VA 645 Rockbridge Co.
US 11	VA 220 Alt. N. Int.	2.15 Mi. S. of VA 220 Alt. N. Int. Cloverdale.
US 11	VA 100 Dublin	VA 643 S. of Dublin.
US 11	1.52 Mi. N. of VA 75.	US 19 N. Int. Abington.
US 13	MD State Line	I–64 Exit 282 Norfolk.
US 17	US 29 Opal	VA 2/US 17 BR New Post.
US 17	VA 134 York County.	I–64 Exit 258 Newport News.
US 17	BR/SCL Fredericksburg.	US 17 New Post VA 2.
US 19	I–81 Exit 14 (via VA 140) Abington.	US 460 N. Int./ VA 720 Bluefield.
US 23	TN State Line	US 58 Alt. Big Stone Gap.
US 23	0.33 Mi. N. of US 23 BR Norton.	KY State Line.
US 25E	TN State Line	KY State Line.
US 29	NC State Line	I–66 Exit 43 Gainesville.
US 33	N. Carlton Street Harrisonburg.	US 340 Elkton.
US 33	I–295 Exit 49	0.96 Mi. W. of I–295 Hanover County.
US 50	VA 259 Gore	VA 37 Frederick County.
US 50	Apple Blossom Loop Road Winchester.	I–81 Exit 313 Winchester.
US 58	VA 721 W. of Martinsville.	US 220 BR N. Int. Martinsville.
US 58	S. Fairy Street Martinsville.	WCL Emporia.
US 58	0.6 Mi. E. of ECL Emporia.	VA 35 S. Int. Courtland.
US 58	US 58 BR E. of Courtland.	US 13/I–264 Bowers Hill.
US 58 Alt	US 23 Norton	US 19 Hansonville.
US 58 Alt	0.4 Mi. W. of US 11.	I–81 Exit 17 Abington.
US 58 BR	VA 35 Courtland.	US 58 E. of Courtland.
US 58	W. Int. VA 337 Claremont St. Norfolk.	US 460/St. Paul's Blvd. Norfolk.
US 60	0.03 Mi. West of VA 887 Chesterfield County.	US 522 Powhatan.

APPENDIX A TO PART 658—NATIONAL NETWORK—FEDERALLY DESIGNATED ROUTES—Continued

Route	From	To
US 220	NC State Line	I–581 Roanoke.
US 220	I–81 Exit 150	SCL Fincastle.
US 220 BR	US 220 S. Int.	0.16 Mi. N. of VA 825 S. of Martinsville.
US 220 BR	US 58 N. Int. Martinsville.	US 220 N. Int. Bassett Forks.
US 250	US 340 E. Int. Waynesboro.	VA 254 Waynesboro.
US 250	I–81 Exit 222	VA 261 Statler Blvd. Staunton.
US 258	NC State Line	US 58 Franklin.
US 258	VA 10 Benns Church.	VA 143 Jefferson Ave. Newport News.
US 301	VA 1250 S. of I–295.	I–295 Exit 41 Hanover County.
US 301	US 301 BR N. Int. Bowling Green.	MD State Line.
US 340/ 522.	I–66 Exit 6 Front Royal.	2.85 Mi. N. of I–66.
US 340	VA 7 Berryville	WV State Line.
US 360	US 58 South Boston.	VA 150 Chesterfield County.
US 360	I–64 Exit 192	VA 627 Village Richmond.
US 460	VA 67 W. Int. Raven.	US 19 Claypool Hill.
US 460	VA 720 Bluefield.	WV State Line at Bluefield.
US 460	WV State Line at Glen Lyn.	I–81 Exit 118 Christiansburg.
US 460	I–581 Roanoke	0.08 Mi. E. of VA 1512 Lynchburg.
US 460	US 29 Lynchburg.	1 Mi. W. of VA 24 Appomattox County.
US 460	0.64 Mi. E. of VA 707 Appomattox County.	I–85 Exit 61 Petersburg.
US 460	I–95 Exit 50 Petersburg.	US 58 Suffolk.
US 501	VA 360 S. Int. Halifax.	US 58 South Boston.
US 522	0.6 Mi. S. of US 50.	US 50 Frederick County.
US 522	VA 37 Frederick County.	1.07 Mi. N. of VA 705 Cross Junction.
VA 3	US 1 Fredericksburg.	VA 20 Wilderness.
VA 7	I–81 Exit 315 Winchester.	0.68 Mi. W. of WCL Round Hill.

APPENDIX A TO PART 658—NATIONAL NETWORK—FEDERALLY DESIGNATED ROUTES—Continued

Route	From	To
VA 10	US 58 Suffolk	VA 666 Smithfield.
VA 10	ECI Hopewell	0.37 Mi. W. of W. Int. VA 156 Hopewell.
VA 10	US 1 Chesterfield County.	VA 827 W. of Hopewell.
VA 20	I-64 Exit 121	Carlton Rd. Charlottesville.
VA 30	I-95 Exit 98 Doswell.	US 1.
VA 33	I-64 Exit 220	VA 30 E. Int. West Point.
VA 36	I-95 Exit 52 Petersburg.	VA 156 Hopewell.
VA 37	I-81 Exit 310 S. of Winchester.	I-81 Exit 317 (via US 11) N. of Winchester.
VA 42	VA 257 S. Int. Bridgewater	VA 290 Dayton.
VA 57	VA 753 Bassett.	US 220 Bassett Forks.
VA 86	US 29 Danville	NC State Line.
VA 100	I-81 Exit 98	US 11 Dublin.
VA 105	US 60 Newport News.	I-64 Exit 250.
VA 114	US 460 Christiansburg.	0.09 Mi. E. of VA 750 Montgomery County.
VA 156	VA 10 W. Int. Hopewell.	VA 36 Hopewell.
VA 199	US 60 Williamsburg.	I-64 Exit 242.
VA 207	I-95 Exit 104	0.2 Mi. S. of VA 619 Milford.
VA 220 Alt	US 11 N. Int. N. of Cloverdale.	I-81 Exit 150/ US 220.
VA 277	I-81 Exit 307 Stephens City.	1.6 Mi. E. of I-81 Exit 307.
VA 419	I-81 Exit 141 Salem.	Midland Ave. Salem.
VA 624	I-64 Exit 96	Old SCL Waynesboro.
Commonwealth Blvd. in Martinsville.	Market Street	N. Fairy Street.

APPENDIX A TO PART 658—NATIONAL NETWORK—FEDERALLY DESIGNATED ROUTES—Continued

Route	From	To
*	*	*
CALIFORNIA		
*	*	*
Note: I-580 Oakland—All vehicles over 4½ tons (except passenger buses and stages) are prohibited on MacArthur Freeway between Grand Avenue and the north city limits of San Leandro. (Excepted under 23 CFR 658.11(f)).		
*	*	*
Virginia		
Note 1: I-66 Washington, DC, area—There is a 24-hour total truck ban on I-66 from I-495 Capital Beltway to the District of Columbia. (Excepted under 23 CFR 658.11(f)).		
Note 2: I-264 Norfolk—Truck widths are limited to 96 inches for the westbound tube of the Elizabeth River Downtown Tunnel from Norfolk to Portsmouth because of clearance deficiencies.		

15. Part 658 is amended by adding appendix C to read as follows:

Appendix C to Part 658—Trucks over 80,000 Pounds on the Interstate System and Trucks over STAA Lengths on the National Network

This appendix contains the weight and size provisions that were in effect on or before June 1, 1991 (July 6, 1991 for Alaska), for vehicles covered by 23 U.S.C. 127(d) (LCV's) and 49 U.S.C. app. 2311(j) (commercial motor vehicles (CMV's) with 2 or more cargo-carrying units). Weights and dimensions are "frozen" at the values shown here, which were in effect on June 1, 1991 (Alaska, July 6, 1991). All vehicles are listed by configuration type.

Trucks Over 80,000 Pounds on the Interstate System

In the State-by-State descriptions, CMV combinations which can also be LCV's are identified with the letters "LCV" following the type of combination vehicle. The maximum allowable gross vehicle weight is given in this appendix (in thousands of pounds indicated by a "K"), as well as information summarizing the operational conditions, routes, and legal citations. The term "Interstate System" as used herein refers to the Dwight D. Eisenhower System of Interstate and Defense Highways.

Trucks Over STAA Lengths on the National Network

Listed for each State by combination type is either:

1. The maximum cargo-carrying length (shown in feet); or

2. A notation that such vehicle is not allowed (indicated by a "NO").

CMV's are categorized as follows:

1. A CMV combination consisting of a truck tractor and two trailing units.

2. A CMV combination consisting of a truck tractor and three trailing units.

3. CMV combinations with two or more cargo-carrying units not included in descriptions 1 or 2.

In the following table the top number is the maximum cargo-carrying length measured in feet from the front of the first cargo unit to the rear of the last cargo unit. This distance is not to include length exclusive devices which have been approved by the Secretary or by any State. Devices excluded from length determination shall only include items whose function is related to the safe and efficient operation of the semitrailer or trailer. No device excluded from length determination shall be designed or used for carrying cargo. The number below the length measurement is the maximum gross weight in thousands of pounds that the type of vehicle can carry when operating as an LCV on the Interstate System. For every State where there is a length or weight number in the table that follows, additional information is provided.

VEHICLE COMBINATIONS SUBJECT TO PUB. L. 102-240

State	1 Truck tractor and 2 trailing units	2 Truck tractor and 3 trailing units	3 Other
Alabama	NO	NO	NO
Alaska	95'	110'	83'
Arizona	95' 111K	95' 123.5K	(1)
Arkansas	NO	NO	NO
California	NO	NO	NO

VEHICLE COMBINATIONS SUBJECT TO PUB. L. 102–240—Continued

State	1 Truck tractor and 2 trailing units	2 Truck tractor and 3 trailing units	3 Other
Colorado	111′ 110K	115.5′ 110K	78′
Connecticut	NO	NO	NO
Delaware	NO	NO	NO
Dist. of Columbia	NO	NO	NO
Florida	106′ (2)	NO	NO
Georgia	NO	NO	NO
Hawaii	65′ (2)	NO	NO
Idaho	95′ 105.5K	95′ 105.5K	(1)
Illinois	NO	NO	NO
Indiana	106′ 127.4K	104.5′ 127.4K	58′
Iowa	NO	NO	NO
Kansas	109′ 120K	109′ 120K	NO
Kentucky	NO	NO	NO
Louisiana	NO	NO	NO
Maine	NO	NO	NO
Maryland	NO	NO	NO
Massachusetts	104′ 127.4K	NO	NO
Michigan	58′ 154K	NO	NO
Minnesota	NO	NO	NO
Mississippi	65′ (2)	NO	NO
Missouri	109′ 120K	109′ 120K	NO
Montana	93′ 137.8K	100′ 131.06K	(1)
Nebraska	95′ 95K	95′ (2)	68′
Nevada	95′ 129K	95′ 129K	98′
New Hampshire	NO	NO	NO
New Jersey	NO	NO	NO
New Mexico	86.4K(3)	NO	NO
New York	102′ 143K	NO	NO
North Carolina	NO	NO	NO
North Dakota	103′ 105.5K	100′ 105.5K	103′
Ohio	102′ 127.4K	95′ 115K	NO
Oklahoma	110′ 90K	95′ 90K	NO
Oregon	68′ 105.5K	96′ 105.5K	NO
Pennsylvania	NO	NO	NO
Puerto Rico	NO	NO	NO
Rhode Island	NO	NO	NO
South Carolina	NO	NO	NO
South Dakota	100′ 129K	100′ 129K	(1)
Tennessee	NO	NO	NO
Texas	NO	NO	NO
Utah	95′ 129K	95′ 129K	(1)
Vermont	NO	NO	NO
Virginia	NO	NO	NO
Washington	68′ 105.5K	NO	68′
West Virginia	NO	NO	NO
Wisconsin	NO	NO	NO
Wyoming	81′ 117K	NO	(1)

(1)—State submission includes multiple vehicles in this category—see individual State listings.

(2)—No maximum weight is established as this vehicle combination is not considered an "LCV" per the ISTEA definition. Florida's combination is not allowed to operate on the Interstate System, and the combinations for Hawaii, Mississippi, and Nebraska are not allowed to exceed 80,000 pounds.

(3)—No maximum cargo-carrying length is established for this combination. Because State law limits each trailing unit to not more than 28.5 feet in length, this combination is allowed to operate on all NN routes under the authority of the STAA of 1982, regardless of actual cargo-carrying length. The maximum weight listed is New Mexico's maximum allowable gross weight on the Interstate System under the grandfather authority of 23 U.S.C. 127.

The following abbreviation convention is used throughout the narrative State-by-State descriptions for the captions OPERATIONAL CONDITIONS, ROUTES, and LEGAL CITATIONS: two letter State abbreviation, dash, "TT" for truck tractor, and 2 or 3 for two or three trailing units. For example, the phrase "Arizona truck tractor and 2 trailing units", would be noted as "AZ-TT2"; the phrase "Indiana truck tractor and 3 trailing units" would be noted as "IN–TT3", etc.

STATE: ALASKA

COMBINATION: Truck tractor and 2 trailing units

LENGTH OF THE CARGO-CARRYING UNITS: 95 feet

OPERATIONAL CONDITIONS:

WEIGHT: The combination must be in compliance with State laws and regulations. There are no highways in

the State subject to Interstate System weight limits. Therefore, the ISTEA freeze as it applies to maximum weight is not applicable.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement.

VEHICLE: Combinations with an overall length greater than 75 feet, measured bumper to bumper, must display an "OVERSIZE warning sign on the front and rear. In combinations where one cargo-carrying unit is more than 5,000 pounds heavier than the other, the heavier unit shall be placed immediately behind the power unit. Weather restrictions are imposed when hazardous conditions exist, as determined by the Alaska Department of Transportation and Public Facilities (DOT&PF) and the Alaska Department of Public Safety, Division of State Troopers. Time of day travel is not restricted.

PERMIT: None required.

ACCESS: Alaska allows reasonable access not to exceed 5 miles to reach or return from terminals and facilities for food, fuel, or rest. The most direct route must be used. The Commissioner of the Alaska DOT&PF may allow access to specific routes if it can be shown that travel frequency, necessity, and route accommodation are required.

ROUTES

	From	To
AK–1	Anchorage (Potter Weigh Station).	Palmer (Palmer-Wasilla Highway Junction).
AK–2	Fairbanks (Gaffney Road Junction).	Delta Junction (MP 1412 Alaska Highway).
AK–3	Jct. AK–1	Fairbanks (Gaffney Road Junction).

LEGAL CITATIONS:

17 AAC 25, and 35; the Administrative Permit Manual

STATE: ALASKA

COMBINATION: Truck tractor and 3 trailing units

LENGTH OF THE CARGO-CARRYING UNITS: 110 feet

OPERATIONAL CONDITIONS:

WEIGHT and ACCESS: Same as the AK–TT2 combination.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement. Drivers of this combination must have 10 years of experience in Alaska and certified training in operation of these combinations.

VEHICLE: Individual trailer length in a three trailing unit combination shall not exceed 45 feet. Engine power rating shall not be less than 400 horsepower.

These combinations are allowed to operate only between April 15 and September 30 of each year. Weather restrictions are imposed when hazardous conditions exist, as determined by the Alaska DOT&PF and the Department of Public Safety, Division of State Troopers. No movement is permitted if visibility is less than 1,000 feet.

PERMIT: Permits are required with specified durations of not less than 3 months or more than 18 months. There is a fee.

ROUTES

	From	To
AK–1	Anchorage (Potter Weigh Station).	Jct. AK–3.
AK–3	Jct. AK–1	Fairbanks (Gaffney Road Junction)

LEGAL CITATIONS: Same as the AK–TT2 combination.

STATE: ALASKA

COMBINATION: Truck-trailer

LENGTH OF THE CARGO-CARRYING UNITS: 83 feet

OPERATIONAL CONDITIONS:

WEIGHT, DRIVER, PERMIT, and ACCESS: Same as the AK–tt2 combination.

VEHICLE: Same as the AK–TT2 combination, except that overall combination length may not exceed 90 feet.

ROUTES: Same as the AK–TT2 combination.

LEGAL CITATIONS: Same as the AK–TT2 combination.

STATE: ARIZONA

COMBINATION: Truck tractor and 2 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 95 feet

MAXIMUM GROSS VEHICLE WEIGHT: 111,000 pounds

OPERATIONAL CONDITIONS:

WEIGHT: Single-axle maximum weight limit is 20,000 pounds, tandem-axle maximum weight limit is 34,000 pounds, and the gross vehicle weight limit is 111,000 pounds, subject to the Federal Bridge Formula.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement. Drivers must comply with the Federal Motor Carrier Safety Regulations of the U.S. Department of Transportation and Title 28, Arizona Revised Statutes.

VEHICLE: This vehicle must be able to operate at speeds compatible with other traffic on level roads and maintain 20 miles per hour speed on grades where operated. A heavy-duty fifth wheel is required. The kingpin must be a solid type, not a screw-out or folding type. All hitch connectors must be of a no-slack type, preferably an air-actuated ram. Axles must be those designed for the width of the body. All braking systems must comply with State and Federal requirements. A brake force limiting valve, sometimes called a "slippery road" valve, may be provided on the steering axle. Mud flaps or splash guards are required. When traveling on a smooth, paved surface, trailers must follow in the path of the towing vehicle without shifting or swerving more than 3 inches to either side when the towing vehicle is moving in a straight line.

PERMITS: Permits are required. Fees are charged. This vehicle is allowed continuous travel, however, the State may restrict or prohibit operations during periods when traffic, weather, or other safety considerations make such operations unsafe or inadvisable. All multiple-trailer combinations shall be driven in the right-hand traffic lane.

Access: Access is allowed for 20 miles from I–15 Exits 8 and 27 or 20 miles from other authorized routes.

ROUTES

	From	To
I–15	Nevada	Utah
US 89	20 miles south of Utah.	Utah
US 160	US 163	New Mexico
US 163	US 160	Utah

LEGAL CITATIONS

ARS 28–107	ARS 28–1009.	ARS 28–1011.O
ARS 28–108.5.	ARS 28–1009.01	ARS 28–1012
ARS 28–108.13.	ARS 28–1011.A.	ARS 28–1013
ARS 28–108.14.	ARS 28–1011.C.	ARS 28–1014
ARS 28–403	ARS 28–1011.F.	ARS 28–1091
ARS 28–405	ARS 28–1011.K	ARS 28–1051
ARS 28–1001	ARS 28–1011.L.	ARS 28–1052

ROUTES—Continued

	From	To
ARS 28–1004.G. ARS 28–1008.	ARS 28–1011.M.	R17–40–426

STATE: ARIZONA

COMBINATION: Truck tractor and 3 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 95 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 123,500 pounds

OPERATIONAL CONDITIONS:

VEHICLE, and ACCESS: Same as the AZ-TT2 combination.

WEIGHT: Single-axle maximum weight limit is 20,000 pounds, tandem-axle maximum weight limit is 34,000 pounds, and the gross vehicle weight limit is 123,500 pounds, subject to the Federal Bridge Formula.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement. Drivers must comply with the Federal Motor Carrier Safety Regulations of the U.S. Department of Transportation and Title 28, Arizona Revised Statutes. Drivers must be trained by an experienced driver of a three trailing unit combination. Training should be through special instructions or by traveling with the new driver until such time as the new driver is deemed adequately qualified by the trainer on the use and operation of these combinations.

PERMIT: Permits are required. Fees are charged. This vehicle is allowed continuous travel, however, the State may restrict or prohibit operations during periods when traffic, weather, or other safety considerations make such operations unsafe or inadvisable. These combinations shall not be dispatched during adverse weather conditions. All multiple-trailer combinations shall be driven in the right-hand traffic lane.

ROUTES: Same as the AZ-TT2 combination.

LEGAL CITATIONS: Same as the AZ-TT2 combination.

STATE: ARIZONA

COMBINATION: Truck-trailer

LENGTH OF THE CARGO-CARRYING UNITS: 69 feet

OPERATIONAL CONDITIONS:

WEIGHT: This combination must operate in compliance with State laws and regulations. Because it is not an LCV, it is not subject to the ISTEA freeze as it applies to maximum weight.

DRIVER, VEHICLE, PERMIT, and ACCESS: Same as the AZ-TT2 combination.

ROUTES: Same as the AZ-TT2 combination.

LEGAL CITATIONS: Same as the AZ-TT2 combination.

STATE: ARIZONA

COMBINATION: Truck-semitrailer-trailer

LENGTH OF THE CARGO-CARRYING UNITS: 98 feet

OPERATIONAL CONDITIONS:

WEIGHT: This combination must operate in compliance with State laws and regulations. Because it is not an LCV, it is not subject to the ISTEA freeze as it applies to maximum weight.

DRIVER, VEHICLE, PERMIT, and ACCESS: Same as the AZ-TT2 combination.

ROUTES: Same as the AZ-TT2 combination.

LEGAL CITATIONS: Same as the AZ-TT2 combination.

STATE: COLORADO

COMBINATION: Truck tractor and 2 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 111 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 110,000 pounds

OPERATIONAL CONDITIONS:

WEIGHT: The maximum gross weight is 110,000 pounds, subject to the formula W=800(L+40) where "W" equals the gross weight in pounds and "L" equals the length in feet between the centers of the first and last axles, or the gross weight determined by the Federal Bridge Formula, whichever is least. A single axle shall not exceed 20,000 pounds and a tandem axle shall not exceed 36,000 pounds.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement. The driver cannot have had any suspension of driving privileges in any State during the past 3 years where such suspension arose out of the operation of a motor vehicle used as a contract or common carrier of persons or property.

The driver must be certified by the motor carrier permit holder's safety office. The certification shall demonstrate that the driver has complied with all written requirements, and that the driver has successfully completed a company-approved road test for each type of combination vehicle operated.

VEHICLE: Vehicles shall not have fewer than six axles or more than nine axles. They shall be configured such that the shorter trailer shall be operated as the rear trailer, and the trailer with the heavier gross weight shall be operated as the front trailer. In the event that the shorter trailer is also the heavier, the load must be adjusted so that the front trailer is the longer and heavier of the two.

Vehicles shall have adequate power to maintain a minimum speed of 20 miles per hour on any grade over which the combination operates and can resume a speed of 20 miles per hour after stopping on any such grade.

Tires must conform to the standards in the Department of Public Safety's (DPS) Rules and Regulations Concerning Minimum Standards for the Operation of Commercial Motor Vehicles, at 8 CCR 1507–1 and C.R.S. 42–4–225 and 42–2–406.

Vehicles are required to have a heavy-duty fifth wheel and equal strength pick-up plates that meet the standards in the DPS Commercial Vehicle Rules. This equipment must be properly lubricated and located in a position that provides stability during normal operation, including braking. The trailers shall follow in the path of the towing vehicle without shifting or swerving more than 3 inches to either side when the towing vehicle is moving in a straight line.

Kingpins must be of a solid type and permanently fastened. Screw-out or folding type kingpins are prohibited.

Hitch connections must be of a no-slack type, preferably air-actuated ram.

Drawbar lengths shall be adequate to provide for the clearances required between the towing vehicle and the trailer(s) for turning and backing maneuvers.

Axles must be those designed for the width of the body of the trailer(s).

Braking systems must comply with the DPS Commercial Vehicle Rules and C.R.S. 42–4–220. Fast air-transmission and release valves must be provided on all trailer(s) and converter dolly axles. A brake force limiting valve, sometimes called a "slippery road" valve, may be provided on the steering axle.

PERMIT: An annual permit is required for which a fee is charged. Also, the vehicle must have an overweight permit pursuant to C.R.S. 42–4–409(11)(a)(II) (A), (B), or (C), and comply with Rule 4–15 in the rules pertaining to Extra-Legal Vehicles or Loads.

A truck tractor and two trailing units wherein at least one of the trailing units exceeds 28.5 feet in length shall not operate on the following designated highway segments during the hours of 6 a.m. to 9 a.m. and from 3 p.m. to 6 p.m.,

Monday through Friday, for Colorado Springs, Denver, and Pueblo. (A truck tractor with two trailing units wherein at least one of the trailing units exceeds 28.5 feet in length not operating at greater than the legal maximum weight of 80,000 pounds is subject to different hours-of-operation restrictions. Refer to rules pertaining to Extra-Legal Vehicles or Loads).

Colorado Springs: I–25 between Exit 135 (CO 83 Academy Blvd. So.) and Exit 150 (CO 83, Academy Blvd. No.).

Denver: I–25 between Exit 200 (Jct. I–225) and Exit 223 (CO 128, 120th Avenue),

I–70 between Exit 259 (CO 26/US 40) and Exit 282 (Jct. I–225),

I–76 between Exit 5 (Jct. I–25) and Exit 12 (US 85),

I–225 entire length,

I–270 entire length.

Pueblo: I–25 between Exit 94 (CO 45 Lake Ave.) and Exit 101 (US 50/CO 47).

The holder of a longer vehicle combination (LVC) permit must have an established safety program as provided in Chapter 9 of the "Colorado Department of Highways Rules and Regulations for Operation of Longer Vehicle Combinations on Designated State Highway Segments." Elements of the program include compliance with minimum safety standards at 8 CCR 1507–1, hazardous materials regulations at 8 CCR 1507–7, –8, and –9, Colorado Uniform Motor Vehicle Law, Articles 1 through 4 of Title 42, C.R.S. as amended, and Public Utility Commission regulations at 4 CCR 723–6, –8, –15, –22, and –23.

ACCESS: A vehicle shall not be operated off the designated portions of the Interstate System except to access food, fuel, repairs, and rest or to access a facility. Access to a facility shall be subject to the following conditions:

(1) The facility must:

(a) Be either a manufacturing or a distribution center, a warehouse, or truck terminal located in an area where industrial uses are permitted;

(b) Be a construction site; and

(c) Meet the following criteria:

1 vehicles are formed for transport or broken down for delivery on the premises;

2 adequate off-roadway space exists on the premises to safely maneuver the vehicles; and

3 adequate equipment is available on the premises to handle, load, and unload the vehicle, its trailers, and cargo.

(2) The facility must be located within a maximum distance of 10 miles from the point where the vehicle enters or exits the designated portions of the Interstate System. Such 10-mile distance shall be measured by the actual route(s) to be traveled to the facility, rather than by a straight line radius from the designated Interstate System to the facility;

(3) The access route(s) between the designated Interstate System and the facility must be approved in advance by the public entity (Colorado DOT, municipality, or county) having jurisdiction for the roadway(s) that make up the route(s). Where the State of Colorado has jurisdiction over the access route(s), it will consider the following safety, engineering, and other criteria in determining whether to approve the route(s):

(a) Safety of the motoring public;

(b) Geometrics of the street and roadway;

(c) Traffic volumes and patterns;

(d) Protection of State highways, roadways, and structures;

(e) Zoning and general characteristics of the route(s) to be encountered; and

(f) Other relevant criteria warranted by special circumstances of the proposed route(s).

Local entities, counties, and municipalities having jurisdiction over route(s), should consider similar criteria in determining whether to approve the proposed ingress and egress route(s); and

(4) A permit holder shall access only the facility or location authorized by the permit. If the permit authorizes more than one facility or location, then on any single trip by an LVC from the designated Interstate System the permit holder may access only one facility or location before returning to the designated Interstate System.

ROUTES

	From	To
I–25	New Mexico	Wyoming
I–70	Utah	I–70 Exit 90 Rifle
I–70	I–70 Exit 259 Golden.	Kansas
I–76	Jct. I–70	Nebraska
I–225	Jct. I–25	Jct. I–70
I–270	Jct. I–76	Jct. I–70

LEGAL CITATIONS: Vehicles must comply with all applicable statutes, such as C.R.S. 42–4–402(1), 42–4–404(1), 42–4–407(1)(c)(III)(A), 42–4–409(11)(a)(II) (A), (B) or (C). All LVC's must comply with the Extra-Legal Vehicles and Loads Rules and the Longer Vehicle Combination Rules. However, when the rules address the same subject, the LVC, since it is operating at greater than 80,000 pounds, must comply with the Extra-Legal Vehicles and Loads Rules. Such rules are: 4–1–2 and 4–1–3 concerning holiday travel restrictions, 4–1–5 concerning hours of operation restrictions, 4–8 concerning minimum distance between vehicles and 4–15 concerning maximum allowable gross weight.

STATE: COLORADO

COMBINATION: Truck tractor and 3 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 115.5 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 110,000 pounds

OPERATIONAL CONDITIONS: Same as the CO–TT2 combination.

ROUTES: Same as the CO–TT2 combination.

LEGAL CITATIONS: Same as the CO–TT2 combination.

STATE: COLORADO

COMBINATION: Truck-trailer

LENGTH OF THE CARGO-CARRYING UNITS: 78 feet

OPERATIONAL CONDITIONS:

WEIGHT: This combination must operate in compliance with State laws and regulations. Because it is not an LCV, it is not subject to the ISTEA freeze as it applies to maximum weight.

DRIVER, VEHICLE, PERMIT, and ACCESS: Same as the CO–TT2 combination.

ROUTES: Same as the CO–TT2 combination.

LEGAL CITATIONS: Same as the CO–TT2 combination.

STATE: FLORIDA

COMBINATION: Truck tractor and 2 trailing units

LENGTH OF THE CARGO-CARRYING UNITS: 106 feet

OPERATIONAL CONDITIONS: All overdimensional and weight regulations of the Florida Turnpike Authority shall apply to such units unless specifically excluded under the terms of the Tandem Trailer Permit or these regulations.

WEIGHT: This combination must operate in compliance with State laws and regulations. Because it is not an LCV, it is not subject to the ISTEA freeze as it applies to maximum weight.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement. Proposed drivers of tandem-trailer units shall be registered by the Florida Turnpike Authority prior to driving such

equipment on the turnpike system. For further information, see Rule 14–62.016 FAC.

VEHICLE: A complete tandem-trailer combination shall consist of a truck tractor, first semitrailer, fifth-wheel converter dolly, and a second semitrailer. The converter dolly may be either a separate unit or an integral component of the first semitrailer. The width shall not exceed 102 inches and the height shall not exceed 13 feet 6 inches. A tractor used in the tandem-trailer operations shall be capable of hauling the maximum gross load to be transported by a permittee at a speed of not less than 40 miles per hour on all portions of the turnpike system excepting that portion of the roadway, as posted in 1988, between mileposts 234 and 238 where a minimum speed of 30 miles per hour will be permitted.

Every tandem-trailer combination shall be equipped with full air brakes or air-activated hydraulic brakes on the tractor and either air or electric brakes on the dolly and trailers.

A tractor, which will be used to haul a complete tandem-trailer combination with a total gross weight of 110,000 pounds or more, shall be equipped with tandem rear axles and driving power shall be applied to all wheels on both axles. When the above tandem-axle tractor is required, a tandem-axle dolly converter must be used.

Every tandem-trailer combination shall be equipped with emergency equipment that equals or exceeds both the equipment requirements and the performance standards cited in Chapter 316, Florida Statutes and subpart H "Emergency Equipment" of 49 CFR 393.95.

A converter (fifth-wheel) dolly used in the tandem-trailer operations may have either single or tandem axles, according to its total gross weight. In addition to the primary towbar(s), the dolly vehicle must be equipped with safety chains or cables for connecting the dolly to the lead semitrailer and must be adequate to prevent breakaway.

Lamps and Reflectors. Each tractor, trailer, and converter dolly in a tandem-trailer combination shall be equipped with electric lamps and reflectors mounted on the vehicle in accordance with Chapter 316, Florida Statutes, and subpart B "Lighting Devices, Reflectors and Electrical Equipment," of 49 CFR 393.9 through 49 CFR 393.33.

Coupling Devices. Coupling devices shall be so designed, constructed, and installed and the vehicles in a tandem-trailer combination shall equal or exceed both the equipment requirements and the performance standards established on 49 CFR 393.70, except that such devices shall be so designed and constructed as to ensure that any such combination traveling on a level, smooth paved surface will follow in the path of the towing vehicle without shifting or swerving from side to side over 2 inches to each side of the path of the vehicle when it is moving in a straight line. (For further information see Rule 14–62.002; 14–62.005; 14–62.006; 14–62.007; 14–62.008; 14–62.009; 14–62.010; 14–62.011; 14–62.012; 14–62.013; and 14–62.015, FAC)

PERMIT: Tandem-trailer units may operate on the turnpike system under a Tandem Trailer Permit issued by the Florida Turnpike Authority upon application, except as provided in subparagraph (2) below.

(1) The Florida Turnpike Authority shall provide a copy of each such permit to the Motor Carrier Compliance Office.

(2) Tandem-trailer trucks of the dimensions mandated by the STAA of 1982 and operating in compliance with Rule Chapter 14–54, FAC, and under the provisions of section 316.515, Florida Statutes shall be exempt from the provisions of this rule chapter to the extent provided in Rule 14–54.0011, FAC.

(For further information see Rules 14–62.001; 14–62.022; 14–62.023; 14–62.024; 14–62.026; 14–62.027, FAC)

ACCESS: Staging. Tandem-trailer combinations shall be made up and broken up only in special assembly (staging) areas as designated for this purpose. For further information, see Rule 14–62.017, FAC. Make-up and break-up of tandem-trailer combinations shall not be allowed on a public right-of-way unless the area is designated for such use or unless an emergency exists.

ROUTES

	From	To
Florida's Turnpike.	South end Homestead Extension at US 1.	Exit 304 Wildwood.

LEGAL CITATIONS: Chapter 14–62, "Regulations Governing Tandem Combinations of Florida's Turnpike," Florida Administrative Code.

STATE: HAWAII

COMBINATION: Truck tractor and 2 trailing units

LENGTH OF CARGO CARRYING UNITS: 65 feet

OPERATIONAL CONDITIONS:

WEIGHT: This combination must operate in compliance with State laws and regulations.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement.

VEHICLE: No load may exceed the carrying capacity of the axles specified by the manufacturer and no combination vehicle shall have a total weight in excess of its designed gross combination weight limit.

PERMITS: No permits are required.

ACCESS: Designated routes off the NN.

ROUTES: All NN routes except HI–95 from H–1 to Barbers Point Harbor.

LEGAL CITATIONS: Chapter 291, Section 34, Hawaii Revised Statutes and Chapter 104 of Title 19, Administrative Rules.

STATE: IDAHO

COMBINATION: Truck tractor and 2 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 95 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 105,500 pounds

OPERATIONAL CONDITIONS:

WEIGHT: Single axle: 20,000 pounds, tandem axle: 34,000 pounds, and gross vehicle weight up to 105,500 pounds.

Axle spacing: must comply with Idaho Code 49–1001.

Trailer weights: The respective loading of any trailer shall not be substantially greater than the weight of any trailer located ahead of it in the vehicle combination. Substantially greater shall be defined as more than 4,000 pounds heavier.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement.

VEHICLE: The rules provide that all CMV's with two or more cargo-carrying units (except for truck-trailer combinations which are limited to an 85-foot combination length) are subject to calculated maximum off-tracking (CMOT) limits. The CMOT formula is:

$CMOT=R-[R^2-(A^2+B^2+C^2+D^2+E^2)]^{1/2}$

$R=161$

A, B, C, D, E, etc.=measurements between points of articulation or pivot. Squared dimensions to stinger steer points of articulation are negative.

The power unit of LCV's and extra-length combinations shall have adequate power and traction to maintain a speed of 15 miles per hour under normal operating conditions on any up-grade over which the combination is operated.

Fifth-wheel, drawbar, and other coupling devices shall be as specified by Federal Motor Carrier Safety Regulations, section 393.70.

Every combination operated under special permit authority shall be covered by insurance meeting State and Federal requirements. Evidence of this insurance must be carried in the permitted vehicle.

PERMIT: Permits are required. Permit duration is for 1 year from the date of issuance.

ACCESS: Combinations with a CMOT limit of less than 6.5 feet may use any Interstate or designated highway system interchange for access. Combinations with a CMOT of 6.5 to 8.75 feet may use only the following Interstate System interchanges:

I–15 Exits 58 and 119.

I–84 Exits 3, 49, 50, 52, 54, 57, 95, 168, 173, 182, 208, and 211.

I–86 Exits 36, 40, 56, and 58.

ROUTES: All NN routes.

LEGAL CITATIONS: Other regulations and restrictions that must be complied with are:

Idaho Code 49–1001, –1002, –1004, –1010, and –1011.

Idaho Transportation Department Rules 39.C.01, .06, .08, .09, .10, .11, .15, and .19–.23.

STATE: IDAHO

COMBINATION: Truck tractor and 3 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 95 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 105,500 pounds

OPERATIONAL CONDITIONS: Same as the ID–TT2 combination.

ROUTES: Same as the ID–TT2 combination.

LEGAL CITATIONS: Same as the ID–TT2 combination.

STATE: IDAHO

COMBINATION: Truck-trailer

LENGTH OF THE CARGO-CARRYING UNITS: 78 feet

OPERATIONAL CONDITIONS:

WEIGHT: This combination must operate in compliance with State laws and regulations. Because it is not an LCV, it is not subject to the ISTEA freeze as it applies to maximum weight.

DRIVER, PERMIT, and ACCESS: Same as the ID–TT2 combination.

VEHICLE: Overall combination length limited to 85 feet.

ROUTES: Same as the ID–TT2 combination.

LEGAL CITATIONS: Same as the ID–TT2 combination.

STATE: IDAHO

COMBINATION: Truck-trailer-trailer, and Truck-semitrailer-trailer.

LENGTH OF THE CARGO-CARRYING UNITS: 98 feet

OPERATIONAL CONDITIONS:

WEIGHT: This combination must operate in compliance with State laws and regulations. Because it is not an LCV, it is not subject to the ISTEA freeze as it applies to maximum weight.

DRIVER, PERMIT, and ACCESS: Same as the ID–TT2 combination.

VEHICLE: Overall combination length limited to 105 feet.

ROUTES: Same as the ID–TT2 combination.

LEGAL CITATIONS: Same as the ID–TT2 combination.

STATE: INDIANA

COMBINATION: Truck tractor and 2 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 106 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 127,400 pounds

OPERATIONAL CONDITIONS:

WEIGHT: Single axle=22,400 pounds. Axles spaced less than 40 inches between centers are considered to be single axles.

Tandem axle=36,000 pounds. Axles spaced more than 40 inches but less than 9 feet between centers are considered to be tandem axles.

Gross vehicle weight=90,000 pounds plus 1,070 pounds per foot for each foot of total vehicle length in excess of 60 feet with a maximum gross weight not to exceed 127,400 pounds.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement, and a Toll Road identification card. Drivers must be at least 26 years old, in good health, and with 5 years of experience driving tractor-semitrailers or tandem-trailer combinations. Experience must include driving in all four seasons.

VEHICLE: Lightest trailer to the rear. Distance between coupled trailers shall not exceed 9 feet. The combination vehicle, including coupling devices, shall be designed and constructed so as to ensure that while traveling on a level, smooth paved surface each trailing unit will follow in the path of the towing vehicle without shifting or swerving from side to side more than 3 inches. The combination vehicle must have at least five axles but not more than nine axles and except on ramps be able to achieve and maintain a speed of 45 miles per hour. Following distance is 500 feet, and passing maneuvers must be completed within 1 mile. The truck tractor must be equipped at a minimum with emergency equipment including fire extinguisher, spare fuses, tire chains, tire tread minimums, and disabled vehicle warning devices. Every dolly must be coupled with safety chain directly to the frame of the semitrailer by which it is towed. Each unit in a multi-trailer combination must be equipped at a minimum with electric lights and reflectors mounted on the vehicle.

PERMIT: A free annual tandem-trailer permit must be obtained from the Indiana DOT for loads which exceed 90,000 pounds. A multiple-trip access permit, for which a fee is charged, must also be obtained for access to points of delivery or to breakdown locations. Permission to operate can be temporarily suspended by the Indiana DOT due to weather, road conditions, holiday traffic, or other emergency conditions. Any oversize vehicle whose length exceeds 80 feet shall not be operated at a speed in excess of 45 miles per hour. Oversize loads are not to be operated at any time when wind velocity exceeds 25 miles per hour.

ACCESS: 15 miles from toll gates.

ROUTES

	From	To
I–80/90 (IN Toll Road).	Toll Road Gate 21.	Ohio.
I–90 (IN Toll Road).	Illinois	Toll Road Gate 21.

LEGAL CITATIONS:

Indiana Code 9–8–1–16
Indiana Code 8–15–2
135 Indiana Administrative Code 2

STATE: INDIANA

COMBINATION: Truck tractor and 3 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 104.5 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 127,400 pounds

OPERATIONAL CONDITIONS:

WEIGHT, DRIVER, PERMIT, and ACCESS: Same as the IN–TT2 combination.

VEHICLE: Semitrailers and trailers shall not be longer than 28.5 feet, and the minimum number of axles for the combination is seven. Three trailing unit combinations must be equipped with adequate spray-suppressant mud flaps which are properly maintained.

ROUTES: Same as the IN–TT2 combination.

LEGAL CITATIONS: Same as the IN–TT2 combination.

STATE: INDIANA

COMBINATION: Combination of three or more vehicles coupled together

LENGTH OF THE CARGO CARRYING UNITS: 58 feet

OPERATIONAL CONDITIONS:

WEIGHT: This combination must operate in compliance with State laws and regulations. Because it is not an LCV, it is not subject to the ISTEA freeze as it applies to maximum weight.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement.

VEHICLE: The maximum width is 102 inches, and the maximum height is 13 feet 6 inches.

PERMIT: None required.

ACCESS: Unlimited.

ROUTES: All roads within the State.

LEGAL CITATIONS: Indiana Code 9–8–1–2.

STATE: KANSAS

COMBINATION: Truck tractor and 2 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 109 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 120,000 pounds

OPERATIONAL CONDITIONS:

WEIGHT: Combinations consisting of a truck tractor and two trailing units must comply with the Federal Bridge Formula, with maximum weights of 20,000 pounds on a single axle and 34,000 pounds on a tandem axle, and with a maximum gross weight of 120,000 pounds.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement.

VEHICLE: Truck tractor and two trailing unit combinations must meet legal width and height with no time-of-day travel restrictions or other special requirements.

PERMIT: Permits are not required for operation on the Kansas Turnpike. A permit is required for access between the Turnpike and motor freight terminals located within a 10-mile radius of each toll booth, except at the northeastern end of the Turnpike where a 20-mile radius is allowed. Access permits are valid for 6 months.

ACCESS: Turnpike access routes include all routes between the Turnpike and a motor freight terminal located within a 10-mile radius of each toll booth, except at the northeastern end of the Turnpike where a 20-mile radius is allowed.

ROUTES

	From	To
I–35 Kansas Tpk. Authority (KTA).	Oklahoma	KTA Exit 127.
I–70 KTA	KTA Exit 182	KTA Exit 223.
I–335 KTA	KTA Exit 127	KTA Exit 177.
I–470 KTA	KTA Exit 177	KTA Exit 182.
LEGAL CITATIONS:		
Kansas Statutes Annotated (KSA)		
KSA 8–1911 .	KSA 68–2004	KSA 68–2019.
KSA 8–1914 .	KSA 68–2005	KSA 68–2048a.
KSA 68–2003.		

STATE: KANSAS

COMBINATION: Truck tractor and 3 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 109 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 120,000 pounds

OPERATIONAL CONDITIONS: The operations of triple trailing unit combinations are governed by two sets of criteria: (1) The Turnpike and Turnpike access rules, and (2) the SVC rules which apply off of the Turnpike except in the case of vehicles operating under Turnpike access authority. The Turnpike and Turnpike access rules allow a maximum combination vehicle length of 119 feet overall. The SVC rules require "Triples" to have trailers of no more than 28.5 feet maximum length or a cargo-carrying length of approximately 95 feet.

The Turnpike and Turnpike access rules have no time-of-day travel restrictions or other special requirements.

The SVC rules have several operational conditions. SVC's cannot operate on holidays or during holiday weekends. SVC's cannot be dispatched or operated during adverse weather conditions. SVC's must travel in the right lane, except for passing, and the following distance is 100 feet for every 10 miles per hour. SVC permits can include any restrictions deemed necessary, including specific routes and hours, days, and/or seasons of operation. Rules and regulations can be promulgated regarding driver qualifications, vehicle equipment, and operational standards.

WEIGHT: All triple trailing unit combinations must comply with the Federal Bridge Formula with maximum axle weights of 20,000 pounds on a single axle and 34,000 pounds on a tandem axle. The maximum gross weight is 120,000 pounds on the Turnpike and Turnpike access routes, but the SVC's have a maximum weight of 110,000 pounds.

DRIVER: A commercial driver's license with the appropriate endorsement is required under both Turnpike and SVC rules. In addition, for SVC operation drivers must have completed SVC driver training and a company road test. Drivers must also have 2 years of experience driving tractor-semitrailers and 1 year driving doubles.

VEHICLE: Vehicle requirements apply to the SVC program only. All axles, except steering axles, must have dual wheels, and all vehicles must be able to achieve and maintain a speed of 40 miles per hour on all grades. Antispray mud flaps shall be attached to the rear of each axle except the steering axle. Mud flaps shall have a surface designed to absorb and deflect excess moisture to the road surface. Drop and lift axles are prohibited. Vehicles may have a minimum of six and a maximum of nine axles. The heaviest trailers are to be placed forward. Hazardous cargo is prohibited. Convex mirrors are required on both sides of the cab. Equipment must comply with the requirements of 49 CFR 390–399.

Any SVC shall be stable at all times during normal braking and normal operation. When traveling on a level, smooth paved surface, an SVC shall follow the towing vehicle without shifting or swerving beyond the restraints of the lane of travel.

PERMIT: Same as the KS–TT2 combination on the Turnpike and Turnpike access routes. A fee per company plus a permit fee for each power unit is required for the SVC program, and the SVC permits are valid for 1 year. SVC's operated pursuant to regulation 36–1–33 under an annual permit shall be covered by insurance.

ACCESS: Turnpike access routes include all routes between the Turnpike and a motor freight terminal located within a 10-mile radius of each toll booth, except at the northeastern end of the Turnpike where a 20-mile radius is allowed. SVC access routes include all routes between the Interstate and a motor freight terminal located within 5 miles of the Interstate at Goodland.

ROUTES:

A. For vehicles subject to the Turnpike and Turnpike access rules:

	From	To
I–35 KTA	Oklahoma	KTA Exit 127.
I–70 KTA	KTA Exit 182	KTA Exit 223.
I–335 KTA	KTA Exit 127	KTA Exit 177.
I–470 KTA	KTA Exit 177	KTA Exit 182.

B. For vehicles subject to the SVC rules:

	From	To
I–70	Colorado	I–70 Exit 19 Goodland.

LEGAL CITATIONS: Same as the KS–TT2 combination, plus KSA 8–1915.

STATE: MASSACHUSETTS

COMBINATION: Truck tractor and 2 trailing units—LCV

LENGTH OF CARGO-CARRYING UNITS: 104 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 127,400 pounds

OPERATIONAL CONDITIONS:

WEIGHT: Any combination of vehicles may not exceed a maximum gross weight of 127,400 pounds. The maximum gross weight of the tractor and first semitrailer shall not exceed 71,000 pounds. The maximum gross weight of each unit of dolly and semitrailer shall not exceed 56,400 pounds. The maximum gross weight for the tractor and first semitrailer is governed by the formula 35,000 pounds plus 1,000 pounds per foot between the center of the foremost axle and the center of the rearmost axle of the semitrailer. The maximum gross weight on any one axle is 22,400 pounds, and on any tandem axle it is 36,000 pounds. Axles less than 46 inches between centers are considered to be one axle.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement and must be registered with the Massachusetts Turnpike Authority (MTA). Registration shall include all specified driving records, safety records, physical examinations, and minimum of 5 years of driving experience with tractor trailers.

VEHICLE:

(1) Brake Regulation. The brakes on any vehicle, dolly converter, or combination of vehicles used in tandem-trailer operations as a minimum shall comply with Federal Motor Carrier Safety Regulations in 49 CFR part 393. In addition, any vehicle, dolly converter or combination of vehicles used in tandem-trailer operations shall meet the requirements of the provisions of the Massachusetts Motor Vehicle Law. Tandem-trailer combinations certified on or after June 1, 1968, shall be equipped with suitable devices to accelerate application and release of the brakes of the towed vehicle.

(2) Axles. A tractor used to haul a tandem trailer combination with a gross weight of more than 110,000 pounds shall be equipped with tandem rear axles, each of which shall be engaged to bear its full share of the load on the roadway surface.

(3) Tandem Assembly. When the gross weight of the trailers vary by more than 20 percent, they shall be coupled with the heaviest trailer attached to the tractor. Coupling devices and towing devices shall comply with the Federal regulations as stated in 49 CFR part 393. When the distance between the rear of the one semitrailer and the front of the following semitrailer is 10 feet or more, the dolly shall be equipped with a device, or the trailers shall be connected along the sides with suitable material, which will indicate to other Turnpike users that the trailers are connected and are in effect one unit. The MTA shall approve the devices or connections to be used on the semitrailers that would indicate it is one unit. Coupling devices shall be so designed, constructed, and installed, and the vehicles in a tandem trailer combination shall be so designed and constructed to ensure that when traveling on a level, smooth paved surface they will follow in the path of the towing vehicle without shifting or swerving over 3 inches to each side of the path of the towing vehicle when it is moving in a straight line. A tandem trailer unit may pass another vehicle traveling in the same direction only if the speed differential will allow the tandem trailer unit to complete the maneuver and return to the normal driving lane within a distance of 1 mile.

Each truck tractor shall be equipped with at least one spare fuse or other overload protective device, if the devices are not of a reset type, for each kind and size used. The vehicle is to carry at least one set of tire chains for at least one driving wheel on each side between October 15 and May 1 of each year. Each truck tractor shall carry a fire extinguisher which shall have an aggregate rating of 20 BC.

PERMIT: A permittee must demonstrate to the MTA that it has insurance coverage of the type and amounts required by Turnpike regulation. Both the tractor manufacturer and the permittee shall certify to the MTA, prior to the approval of a tractor, that it is capable of hauling the maximum permissible gross load to be transported by the permittee at a speed not less than 20 miles per hour on all portions of the turnpike system. The MTA may revoke or temporarily suspend any permit at will and the instructions of the MTA or Massachusetts State Police shall be complied with immediately.

ACCESS: Makeup and breakup areas. Tandem trailer units shall not leave the Turnpike right-of-way and shall be assembled and disassembled only in designated areas.

ROUTES

	From	To
I–90 Mass Turnpike.	New York State.	Turnpike Exit 18 Boston.

LEGAL CITATIONS:

The MTA, Massachusetts Rules and Regulations 730, and CMR 4.00.

STATE: MICHIGAN

COMBINATION: Truck tractor and 2 trailing units—LCV

LENGTH OF CARGO-CARRYING UNITS: 58 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 154,000 pounds

OPERATIONAL CONDITIONS:

WEIGHT: The single-axle weight limit for LCV's is 18,000 pounds for axles spaced 9 feet or more apart. For axles spaced more than 3.5 feet but less than 9 feet apart, the single-axle weight limit is 13,000 pounds. The tandem-axle weight limit is 16,000 pounds per axle for the first tandem and 13,000 pounds per axle for all other tandems. Axles spaced less than 3.5 feet apart are limited to 9,000 pounds per axle. Maximum load per inch width of tire is 700 pounds. Maximum gross weight is determined based on axle and axle group weight limits. The maximum practical gross weight is 154,000 pounds.

When restricted seasonal loadings are in effect, load per inch width of tire and maximum axle weights are reduced as follows: Rigid pavements—525 pounds per inch of tire width, 25 percent axle weight reduction; Flexible pavements—450 pounds per inch of tire width, 35 percent axle weight reduction.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement.

VEHICLE: Truck height may not exceed 13.5 feet. There is no overall length for LCV's operating on the Interstate System when semitrailer and trailer lengths do not exceed 28.5 feet. If either the trailer or semitrailer is longer than 28.5 feet, the distance from the front of the first box to the rear of the second box may not exceed 58 feet.

A combination of vehicles shall not have more than 11 axles, and the ratio of gross weight to net horsepower delivered to the clutch shall not exceed 400 to 1.

PERMIT: Permits for divisible loads of more than 80,000 pounds must conform to either Federal or grandfathered axle and bridge spacing requirements.

ACCESS: All designated State highways.

ROUTES: All Interstate routes and designated State highways.

LEGAL CITATIONS:

Michigan Public Act 300, section 257.722
Michigan Public Act 300, section 257.719

STATE: MISSISSIPPI

COMBINATION: Truck tractor and 2 trailing units

LENGTH OF THE CARGO-CARRYING UNITS: 65 feet

OPERATIONAL CONDITIONS:

WEIGHT: This combination must operate in compliance with State laws and regulations.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement.

VEHICLE: Each trailing unit may be a maximum of 30 feet long.

PERMIT: None required.

ACCESS: No restrictions, may operate Statewide.

ROUTES: All NN routes.

LEGAL CITATIONS: Section 63–5–19, Mississippi Code, Annotated, 1972.

STATE: MISSOURI

COMBINATION: Truck tractor and 2 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 109 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 120,000 pounds when entering Missouri from Kansas; 95,000 pounds when entering from Nebraska; 90,000 pounds when entering from Oklahoma.

OPERATIONAL CONDITIONS: Missouri allows vehicles from neighboring States access to terminals in Missouri which are within 20 miles of the Missouri State Line. These vehicles must be legal in the State from which they are entering Missouri.

WEIGHT, DRIVER, VEHICLE: Same conditions which apply to a truck tractor and two trailing units legally operating in Kansas, Nebraska, or Oklahoma.

PERMIT: Annual blanket overdimension permits are issued to allow a truck tractor and two trailing units legally operating in Kansas, Nebraska, or Oklahoma to move to and from terminals in Missouri which are located within a 20-mile band of the State Line for these three States. There is a permit fee per power unit. The permits carry routine permit restrictions, but do not address driver qualifications or any other restrictions not included in the rules and regulations for all permitted movement.

ACCESS: Routes as necessary to reach terminals.

ROUTES: All NN routes within a 20-mile band from the Kansas, Nebraska, and Oklahoma borders.

LEGAL CITATIONS: § 304.170 and § 304.200 Revised Statutes of Missouri 1990.

STATE: MISSOURI

COMBINATION: Truck tractor and 3 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 109 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 120,000 pounds when entering Missouri from Kansas; 90,000 pounds when entering from Oklahoma.

OPERATIONAL CONDITIONS: Missouri allows vehicles from neighboring States access to terminals in Missouri which are within 20 miles of the Missouri State Line. These vehicles must be legal in the State from which they are entering Missouri.

WEIGHT, DRIVER, VEHICLE: Same conditions which apply to a truck tractor and three trailing units legally operating in Kansas or Oklahoma.

PERMIT: Annual blanket overdimension permits are issued to allow a truck tractor and three trailing units legally operating in Kansas or Oklahoma, to move to and from terminals in Missouri which are located within a 20-mile band of the State Line for these two States. There is a permit fee per power unit. The permits carry routine permit restrictions, but do not address driver qualifications or any other restrictions not included in the rules and regulations for all permitted movement.

ACCESS: Routes as necessary to reach terminals.

ROUTES: All NN routes within a 20-mile band from the Kansas and Oklahoma borders.

LEGAL CITATIONS: § 304.170 & § 304.200 Revised Statutes of Missouri 1990.

STATE: MONTANA

COMBINATION: Truck tractor and 2 trailing units—LCV

LENGTH OF CARGO-CARRYING UNITS: 93 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 137,800 pounds

OPERATIONAL CONDITIONS:

WEIGHT: Except for vehicles operating under the Montana/Alberta Memorandum of Understanding (MOU), any vehicle carrying a divisible load over 80,000 pounds must comply with the Federal Bridge Formula found in 23 U.S.C. 127.

Maximum single-axle limit: 20,000 pounds
Maximum tandem-axle limit: 34,000 pounds
Maximum gross weight is based upon application of the Bridge Formula.
Maximum weight allowed per inch of tire width is 600 pounds.

WEIGHT, MONTANA/ALBERTA MOU:

Maximum single-axle limit: 20,000 pounds
Maximum tandem-axle limit: 37,500 pounds
Maximum tridem-axle limit:
Axles spaced from 94" to less than 118": 46,300 pounds
Axles spaced from 118" to less than 141": 50,700 pounds
Axles spaced from 141" to 146": 52,900 pounds
Maximum gross weight:
A-Train: 118,000 pounds
B-Train (eight axle): 137,800 pounds
B-Train (seven axle): 124,600 pounds

The designation of "A-Train" or "B-Train" refers to the manner in which the two trailing units are connected.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement.

VEHICLE: No special requirements beyond compliance with Federal Motor Carrier Safety Regulations.

PERMIT: Special permit required for double trailer combinations if either trailer exceeds 28.5 feet. Permits are available on an annual or a trip basis and provide for continuous travel. Statutory reference: 61–10–124, MCA. For vehicles being operated under the Montana/Alberta MOU, operators must have paid gross vehicle weight fees for the total weight being carried. In addition, a term Restricted Route and Oversize Permit for which an annual fee is charged must be obtained. Finally, vehicle operators must secure a single-trip, overweight permit prior to each trip.

ACCESS: Access must be authorized by the Montana DOT. For vehicles

operated under the Montana/Alberta MOU, access routes from I–15 into Shelby are authorized when permits are issued. For vehicles with a cargo-carrying length greater than 88 feet, but not more than 93 feet, a 2-mile access from the Interstate System is automatically granted to terminals and service areas. Access outside the 2-mile provision may be granted on a case-by-case basis by the Administrator of the Motor Carrier Services Division.

ROUTES: Combinations with a cargo-carrying length greater than 88 feet, but not more than 93 feet, are limited to the Interstate System. Combinations with a cargo-carrying length of 88 feet or less can use all NN routes except U.S. 87 from milepost 79.3 to 82.5. For vehicles being operated under the Montana/Alberta MOU, the only route available is I–15 from the border with Canada to Shelby.

LEGAL CITATION:

61–10–124 MCA.	61–10–104 MCA.	ARM 18.8.509(6)
61–10–107 (3) MCA.	61–10–121 MCA.	ARM 18.8.517, 518

Montana/Alberta Memorandum of Understanding
Administrative Rules of Montana

STATE: MONTANA

COMBINATION: Truck tractor and 3 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 100 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 131,060 pounds

OPERATIONAL CONDITIONS:

WEIGHT: Any vehicle carrying a divisible load over 80,000 pounds must comply with the Federal Bridge Formula found in 23 U.S.C. 127.

Maximum single-axle limit: 20,000 pounds
Maximum tandem-axle limit: 34,000 pounds
Maximum gross weight is based upon application of the Bridge Formula.
Maximum weight allowed per inch of tire width is 600 pounds.

DRIVER: Drivers of three trailing unit combinations must be certified by the operating company. This certification includes an actual driving test and knowledge of Federal Motor Carrier Safety Regulations and State law pertaining to triple vehicle operations. Drivers are also required to have a commercial driver's license with the appropriate endorsement.

VEHICLE: The 100-foot cargo-carrying length is only with a conventional tractor within a 110-foot overall length limit. If a cabover tractor is used, the cargo length is 95 feet within a 105-foot overall length limit. Vehicles involved in three trailing unit operations must comply with the following regulations:

1. Shall maintain a minimum speed of 20 miles per hour on any grade;
2. Kingpins must be solid and permanently affixed;
3. Hitch connections must be no-slack type;
4. Drawbars shall be of minimum practical length;
5. Permanently affixed axles must be designed for the width of the trailer;
6. Anti-sail mudflaps or splash and spray suppression devices are required;
7. The heavier trailers shall be in front of lighter trailers;
8. A minimum distance of 100 feet per 10 miles per hour is required between other vehicles except when passing;
9. Operating at speeds greater than 55 miles per hour is prohibited; and
10. Vehicle and driver are subject to Federal Motor Carrier Safety Regulations.

Reference: 18.8.517 Administrative Rules of Montana.

PERMIT: Special triple vehicle permits are required for the operation of these combinations. Permits are available on an annual or trip basis. Permits are good for travel on the Interstate System only and are subject to the following conditions:

1. Travel is prohibited during adverse weather conditions;
2. Transportation of Class A explosives is prohibited; and
3. Companies operating triple combinations must have an established safety program including driver certifications.

ACCESS: Access is for 2 miles beyond the Interstate System, or further if granted by the Administrator of the Motor Carrier Services Division.

ROUTES: Interstate System routes in the State.

LEGAL CITATION: 18.8.517 Administrative Rules of Montana.

STATE: MONTANA

COMBINATION: Truck-Trailer

LENGTH OF CARGO-CARRYING UNITS: 88 feet

OPERATIONAL CONDITIONS:

WEIGHT: This combination must operate in compliance with State laws and regulations. Because it is not an LCV, it is not subject to the ISTEA freeze as it applies to maximum weight.

DRIVER, and ACCESS: Same as the MT–TT2 combination.

VEHICLE: Same as the MT–TT2 combination, except overall length limited to 95 feet.

PERMIT: Special permit required if overall length exceeds 75 feet. Special permits allow continuous travel and are available on an annual or trip basis.

ROUTES: Same as the MT–TT2 combination.

LEGAL CITATIONS: 61–10–121 and 61–10–124, MCA.

STATE: MONTANA

COMBINATION: Truck-trailer-trailer

LENGTH OF THE CARGO-CARRYING UNITS: 103 feet

WEIGHT: This combination must operate in compliance with State laws and regulations. Because it is not an LCV, it is not subject to the ISTEA freeze as it applies to maximum weight.

DRIVER, PERMIT, and ACCESS: Same as the MT–TT2 combination.

VEHICLE: The cargo-carrying unit length is 103 feet with a conventional truck within a 110-foot overall length limit, and 98 feet with a cab-over-engine truck within a 105-foot overall length limit. On two-lane highways the cargo-carrying unit length is 88 feet within a 95-foot overall length limit.

ROUTES: All NN routes except U.S. 87 between mileposts 79.3 and 82.5.

LEGAL CITATIONS:

61–10–124 MCA
61–10–121 MCA
ARM 18–8–509

STATE: NEBRASKA

COMBINATION: Truck tractor and 2 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 95 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 95,000 pounds

OPERATIONAL CONDITIONS:

WEIGHT: The following conditions are for a truck tractor and 2 trailing units with a length of cargo-carrying units of 65 feet or less.

Maximum Weight:
Single axle = 20,000 pounds
Tandem axle = 34,000 pounds
Gross = Determined by Federal Bridge Formula B, but not to exceed 95,000 pounds.

Truck tractor and 2 trailing unit combinations with a length of cargo-carrying units of over 65 feet are required to travel empty.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement. There are no additional special qualifications where the cargo-carrying unit lengths are 65 feet or less. For cargo-carrying unit lengths over 65 feet, the driver must comply with all State and Federal

requirements and must not have had any accidents while operating such vehicles.

VEHICLE: For combinations with a cargo-carrying length over 65 feet, but not over 85 feet, the semitrailer cannot exceed 48 feet in length and the full trailer cannot be less than 26 feet or more than 28 feet long. The shorter trailer must be placed to the rear. The wheel path of the trailer(s) cannot vary more than 3 inches from that of the towing vehicle.

For combinations with a cargo-carrying length greater than 85 feet, up to and including 95 feet, the trailers must be of approximately equal length.

PERMIT: A weight permit in accordance with Chapter 12 of the Nebraska Department of Roads Rules and Regulations is required for operating on the Interstate System with weight in excess of 80,000 pounds. Combinations with a length of cargo-carrying units over 65 feet are not eligible for the overweight permit. A length permit, in accordance with Chapter 11 of the Nebraska Department of Roads Rules and Regulations, is required for two trailing unit combinations with a length of cargo-carrying units over 65 feet in length. Conditions of the length permit prohibit movements on Saturdays, Sundays, and holidays; when ground wind speed exceeds 25 miles per hour; and when visibility is less than 800 feet. Movement is also prohibited during steady rain, snow, sleet, ice, or other conditions causing slippery pavement. Between November 15 and April 15 permission to move must be obtained from the Nebraska Department of Roads Permit Office within 3 hours of the movement. Between April 16 and November 14 permission to move must be obtained within 3 days of the movement. Fees are charged for the 10-day weight permit and the annual length permit. These permits can be revoked if the terms are violated.

ACCESS: Two trailing unit combinations with a length of cargo-carrying units of not more than 65 feet may operate on all State highways. For two trailing unit combinations with a length of cargo-carrying units over 65 feet, access to and from the Interstate is limited to designated staging areas within 6 miles of I–80 between the Wyoming State Line and Exit 440 (Nebraska Route 50). Except for weather, emergency, and repair, two trailing unit combinations with a length of cargo-carrying units over 65 feet cannot reenter the Interstate after having left it.

ROUTES: Vehicles requiring length permits are restricted to I–80 from Wyoming to Exit 440 (Nebraska Highway 50). There are no route restrictions for vehicles not requiring length permits.

LEGAL CITATIONS:

Nebraska Revised Statutes Reissued 1988

§ 39–6,179 (Double trailers under 65 feet)

§ 39–6,179.01 (Double trailers over 65 feet)

§ 39–6,180.01 (Authorized weight limits)

§ 39–6,181 (Vehicles; size; weight; load; overweight; special permits; etc.)

Nebraska Department of Roads Rules and Regulations, Title 408, Chapter 1 (Double trailers over 65 feet)

STATE: NEBRASKA

COMBINATION: Truck tractor and 3 trailing units

LENGTH OF THE CARGO-CARRYING UNITS: 95 feet

OPERATIONAL CONDITIONS:

WEIGHT: A truck tractor and three trailing unit combination is required to travel empty.

DRIVER, PERMIT, and ACCESS: Same as the NE–TT2 combination.

VEHICLE: A three trailing unit combination must have trailers of approximately equal length and the overall vehicle length cannot exceed 105 feet.

ROUTES: I–80 from Wyoming to Exit 440 (Nebraska Highway 50).

LEGAL CITATIONS:

Neb. Rev. Stat. § 39–6,179.01 (Reissue 1988)

Nebraska Department of Roads Rules and Regulations, Title 408, Chapter 1

STATE: NEBRASKA

COMBINATION: Truck-trailer

LENGTH OF THE CARGO-CARRYING UNITS: 68 feet

OPERATIONAL CONDITIONS:

WEIGHT: This combination must operate in compliance with State laws and regulations. Because it is not an LCV, it is not subject to the ISTEA freeze as it applies to maximum weight.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement.

VEHICLE: The overall vehicle length, including load, cannot exceed 75 feet.

PERMIT: No permit is required.

ACCESS: Statewide during daylight hours only.

ROUTES: All NN routes.

LEGAL CITATIONS: Neb. Rev. Stat. § 39–6,179.

STATE: NEVADA

COMBINATION: Truck tractor and 2 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 95 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 129,000 pounds

OPERATIONAL CONDITIONS:

WEIGHT: The single-axle weight limit is 20,000 pounds, the tandem-axle weight limit is 34,000 pounds, and the gross weight is subject to the Federal Bridge Formula limits, provided that two consecutive tandems with a distance of 36 feet or more between the first and last axle may carry 34,000 pounds on each tandem.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement, be at least 25 years old, and have had a medical exam within previous 24 months. Every operator must be covered by a liability insurance policy with personal injury and property damage limits meeting State requirements.

VEHICLE: No trailer may be longer than 48 feet. If one trailer is 48 feet long, the other trailer cannot exceed 42 feet. Towed vehicles must not shift or sway more than 3 inches to right or left and must track in a straight line on a level, smooth paved highway. Vehicles must be able to accelerate and operate on a level highway at speeds which are compatible with other traffic and with the speed limits and must be able to maintain a minimum of 20 miles per hour on any grade on which they may operate. All vehicles must have safety chains on converter dollies. Vehicles must carry snow chains for each drive wheel.

Vehicle operations may be suspended in adverse weather and high winds, as determined by police or the Nevada DOT.

The shortest trailer must be in the rear of a combination unless it is heavier than the longer trailer.

Brakes must comply with all State and Federal requirements for commercial vehicles including automatic braking for separation of vehicles, parking brakes, and working lights.

Vehicles must not exceed posted speed limits and cannot operate on any highway on which they cannot at all times stay on the right side of the center line. All LCV's must keep a distance of at least 500 feet from each other.

Every full-sized truck or truck tractor used in a combination of vehicles must be equipped with at least the following emergency and safety equipment:

1. One fire extinguisher which meets "Classification B" of the National Fire Protection Association.

2. One spare light bulb for every electrical lighting device used on the rear of the last vehicle in a combination of vehicles.

3. One spare fuse for each different kind and size of fuse used in every vehicle in the combination of vehicles. If the electrical system of any vehicle in the combination contains any devices for protection of electrical circuits from overloading, other than fuses and circuit breakers which can be reset, one spare of each such device must be kept as emergency and safety equipment.

4. Any flares, reflectors or red electrical lanterns which meet State or Federal law or regulation.

Before operating a combination of vehicles on a highway of this State, the owner or operator of the combination shall certify to the Nevada DOT, on a form provided by it, that all vehicles and equipment in the combination meet the requirements of and will be operated in compliance with NAC 484.300 to 484.440, inclusive.

All axles except for steering axles and axles that weigh less than 10,000 pounds must have at least four tires unless the tire width of each tire on the axles is 14 inches or greater.

PERMIT: Permits are required and a fee is charged. They may be revoked for violation of any of the provisions of the legal regulations. The State may suspend operation on roads deemed unsafe or impracticable. Permits must be carried in the vehicle along with identification devices issued by the Nevada Department of Motor Vehicles.

ACCESS: As authorized by the Nevada DOT.

ROUTES: All NN routes, except US 93 from Nevada State route 500 to Arizona.

LEGAL CITATIONS: NRS 484.400, .405(4), .425, .430, .739, 408.100–4, .100–6(a), and 706.531. Also, "Regulations for the Operation of 70 to 105 foot Combinations" (1990).

STATE: NEVADA

COMBINATION: Truck tractor and 3 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 95 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 129.000 pounds

OPERATIONAL CONDITIONS: Same as the NV–TT2 combination.

ROUTES: Same as the NV–TT2 combination.

LEGAL CITATIONS: Same as the NV–TT2 combination.

STATE: NEVADA

COMBINATION: Truck-trailer, and Truck-trailer-trailer

LENGTH OF THE CARGO-CARRYING UNITS: 98 feet

OPERATIONAL CONDITIONS:

WEIGHT: This combination must operate in compliance with State laws and regulations. Because it is not an LCV, it is not subject to the ISTEA freeze as it applies to maximum weight.

DRIVER, VEHICLE, and ACCESS: Same as the NV–TT2 combination.

PERMITS: Same as the NV–TT2 combination, except permits for Truck-trailer, or Truck-trailer-trailer combinations are only required when the overall length is 70 feet or more.

ROUTES: Same as the NV–TT2 combination.

LEGAL CITATIONS: Same as the NV–TT2 combination.

STATE: NEW MEXICO

COMBINATION: Truck tractor and 2 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: Not applicable

MAXIMUM ALLOWABLE GROSS WEIGHT: 86,400 pounds

OPERATIONAL CONDITIONS: The cargo-carrying length restriction does not apply to this combination. The length of each trailing unit is limited to 28.5 feet. This describes a two trailing unit vehicle whose operation is guaranteed by the STAA of 1982 regardless of inter-unit spacing. As long as each trailing unit is 28.5 feet long or less, cargo-carrying length is not restricted. This combination is listed as a LCV because it can exceed the 80,000-pound threshold established in the Congressional definition. The 86,400-pound gross weight limit is grandfathered for New Mexico.

WEIGHT: Single axle = 21,600 pounds. Tandem axle = 34,200 pounds. Load per inch of tire width = 600 pounds. The total gross weight with load imposed on the highway by any vehicle or combination of vehicles where the distance between the first and last axles is less than 19 feet shall not exceed that given for the respective distances in the following table:

Distance in feet between first and last axles of group	Allowed load in pounds on group of axles
4	34,320
5	35,100
6	35,880
7	36,660
8	37,440
9	38,220
10	39,000
11	39,780
12	40,560
13	41,340
14	42,120
15	42,900
16	43,680
17	44,460
18	45,240

The total gross weight with load imposed on the highway by any vehicle or combination of vehicles where the distance between the first and last axles is 19 feet or more shall not exceed that given for the respective distances in the following table:

Distance in feet between first and last axles of group	Allowed load in pounds on group of axles
19	53,100
20	54,000
21	54,900
22	55,800
23	56,700
24	57,600
25	58,500
26	59,400
27	60,300
28	61,200
29	62,100
30	63,000
31	63,900
32	64,800
33	65,700
34	66,600
35	67,500
36	68,400
37	69,300
38	70,200
39	71,100
40	72,000
41	72,900
42	73,800
43	74,700
44	75,600
45	76,500
46	77,400
47	78,300
48	79,200
49	80,100
50	81,000
51	81,900
52	82,800
53	83,700
54	84,600
55	85,500
56 and over	86,400

The distance between the centers of the axles shall be measured to the nearest even foot. When a fraction is exactly one-half the next larger whole number shall be used.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement.

VEHICLE: No special requirements beyond normal Federal Motor Carrier or State regulations. The maximum length of the trailing units is 28.5 feet.

PERMIT: None Required.

ACCESS: STAA vehicles must be allowed reasonable access in accordance with 23 CFR 658.19.

ROUTES: All Interstate highways.

LEGAL CITATIONS:

66–7–409 NMSA 1978
66–7–410 NMSA 1978

STATE: NEW YORK

COMBINATION: Truck tractor and 2 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 102 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 143,000 pounds

OPERATIONAL CONDITIONS:

WEIGHT: The following information pertains to tandem trailer combinations with either trailer more than 28.5 feet long but not more than 48 feet long. A nine-axle combination vehicle may not exceed a total maximum gross weight of 143,000 pounds. An eight-axle combination vehicle may not exceed a total maximum gross weight of 138,400 pounds. The maximum gross weight that may be carried upon any combination of units is limited by the maximum gross weight that can be carried upon the axles as follows. For a nine-axle combination: Drive axles—36,000 pounds, axles four/five—36,000 pounds, axles six/seven—27,000 pounds, and axles eight/nine—36,000 pounds. A minimum 12-foot axle spacing between the fifth and sixth axles is also required on the nine-axle LCV. For an eight-axle combination: Drive axles—36,000 pounds, axles four/five—36,000 pounds, sixth axle—22,400 pounds, and axles seven/eight—36,000 pounds. The eight-axle LCV has no minimum axle-spacing requirements. For gross weights in excess of 138,400 pounds the combination must include a tandem-axle dolly to meet the nine-axle requirements. Maximum permissible gross weight for B-train combination is 127,000 pounds.

When the gross weight of the two trailers in a tandem combination vary more than 20 percent, the heaviest of the two must be placed in the lead position.

For tandem trailer combinations in which neither trailing unit exceeds 28.5 feet in length the following maximum allowable weights apply: for a single axle—28,000 pounds (except that steering axles may not exceed 22,400 pounds), for a tandem axle—42,500 pounds, for a tri-axle—52,500 pounds. The gross weight may not exceed 100,000 pounds or the manufacturers gross weight rating, whichever is lower.

DRIVER: For operation on highways under the jurisdiction of the New York State Thruway Authority (NYSTA), except for the full length of I–84 and that portion of I–287 from Thruway exit 8 to I–95, the driver must have a commercial driver's license with the appropriate endorsement, and hold a Tandem Trailer Driver's Permit issued by the NYSTA. In order to obtain an NYSTA driver's permit, an applicant must (1) hold a valid commercial driver's license with multiple-trailer endorsement; (2) be over 26 years old, in good health, and have at least 5 years of provable experience driving tractor-trailer combinations; and (3) meet all other application requirements with regard to driving history established by the NYSTA. Qualified drivers receive a Tandem Trailer Driver's Permit for Tandem Vehicle Operation which is valid only for the operation of the certified equipment owned by the company to which the permit is issued.

For operation on highways under the jurisdiction of the New York State DOT, cities not wholly included in one county, the full length of I–84 and that portion of I–287 from Thruway exit 8 to I–95, the driver must have a commercial driver's license with the appropriate endorsement.

VEHICLE: All vehicles must meet the requirements of applicable Federal and State statutes, rules, and regulations. Vehicles operating on highways under the jurisdiction of the NYSTA, except for the full length of I–84 and that portion of I–287 from Thruway exit 8 to I–95, must also meet the following additional requirements. The tractor manufacturer and the permittee shall certify to the NYSTA prior to the approval of the tractor that it is capable of hauling the maximum permissible gross load at a speed of not less than 20 miles per hour on all portions of the thruway system.

The brakes on any vehicle, dolly converter, or combination of vehicles shall comply with 49 CFR part 393 and, in addition, any vehicle or dolly converter shall meet the provisions of the New York State Traffic Law.

Tandem trailer operations shall be equipped, at a minimum, with emergency equipment as required by 49 CFR part 393, subpart H, as amended, tire chains from October 15 to May 1 of each year, a fire extinguisher with an aggregate rating of 20BC, and each trailer with specific lamps and reflectors.

All tractors certified by the NYSTA for use with tandem trailers will be assigned an identification number by the NYSTA which must be placed on the vehicle. The number must be at least 3 inches in height and visible to a person standing at ground level opposite the driver's position in the cab.

Axle Type. Tractors to be used for hauling 110,000 pounds or more shall be equipped with tandem rear axles, both with driving power. Tractors to be used for hauling 110,000 pounds or less may have a single drive axle. Tandem combinations using single wheel tires commonly referred to as "Super Singles" are required to use triple-axle tractors, dual-axle trailers, and dual-axle dollies.

Dollies. Every converter dolly certified on and after June 1, 1968, used to convert a semitrailer to a full trailer may have either single or tandem axles at the option of the permittee. Single-axle dollies may not utilize low profile tires. Combination vehicles with a gross weight in excess of 138,400 pounds must have a tandem-axle dolly to meet the nine-axle requirement. If the distance between two semitrailers is 10 feet or more, the dolly shall be equipped with a device or the trailers connected along the sides with suitable material to indicate they are in effect one unit. The devices or connection shall be approved by the NYSTA prior to use on a tandem trailer combination. The NYSTA tandem-trailer provisions require that converter dollies shall be coupled with one or more safety chains or cables to the frame or an extension of the frame of the motor vehicle by which it is towed. Each dolly converter must also be equipped with mud flaps. Tandem combinations using a sliding fifth wheel attached to the lead trailer, known as a "B-Train" combination, will require a separate Thruway Engineer Service approval prior to the initial tandem run. Special provisions regarding B-Trains will be reviewed at the time of the application or request for use on the Thruway.

PERMIT: For operation on highways under the jurisdiction of the New York State DOT, cities not wholly included in one county, or the following highway sections under NYSTA jurisdiction: the full length of I–84 and that portion of I–287 from Thruway exit 8 to I–95, a permit to exceed the weight limits set forth in section 385(15) of the New York State Vehicle and Traffic Law must be obtained from the State DOT, city involved, or the NYSTA. A fee is charged for the permit.

For operation on highways under the jurisdiction of the NYSTA, except for the full length of I–84 and that portion of I–287 from Thruway exit 8 to I–95, companies must file an application for a Tandem Trailer Permit with the NYSTA. Permits are issued to such companies upon meeting qualifications, including insurance, for tandem combinations over 65 feet in length. No permit fee is charged; however, Thruway tolls are charged for each use of the Thruway, and the equipment must be certified by the NYSTA annually. The annual re-certification of equipment is handled by: New York State Thruway Authority, Manager of Traffic Safety Services, P.O. Box 189, Albany, New York 12201–0189

Transportation of hazardous materials is subject to special restrictions plus 49 CFR part 397 of the Federal Motor Carrier Safety Regulations.

ACCESS: For tandem trailer combinations with either trailer more than 28.5 feet long but not more than 48 feet long, the following access is available to authorized operating routes.

I–87 (New York Thruway) Access provided at Thruway Exit 21B to or from a point 1,500 feet north of the Thruway on US 9W.

I–90 (NYSTA-Berkshire Section) access provided at:

(1) Thruway Exit B–1 to or from a point 0.8 mile north of the southern most access ramp on US 9.

(2) Thruway Exit B–3 within a 2,000-foot radius of the Thruway ramps to NY 22.

I–90 (New York Thruway) access provided at:

(1) Thruway Exit 28 within a radius of 1,500 feet of the toll booth at Fultonville, New York.

(2) Thruway Exit 32 to or from a point 0.6 mile north of the Thruway along NY 233.

(3) Thruway Exit 44 to or from a point 0.8 mile from the Thruway along NY 332 and Collett Road.

(4) Thruway Exit 52 to or from:

(a) A point 1.7 miles west and south of the Thruway via Walden Avenue and NY 240 (Harlem Road);

(b) A point 0.85 mile east and south of the Thruway via Walden Avenue and a roadway purchased by the Town of Cheektowaga from Sorrento Cheese, Inc.

(5) Thruway Exit 54 to or from a point approximately 2.5 miles east and north of the Thruway via routes NY 400 and NY 277.

(6) Thruway Exit 56 to or from a point approximately 2 miles west and south of the Thruway via NY 179 and Old Mile Strip Road.

I–190 (NYSTA—Niagara Section) access provided at:

(1) Thruway Exit N1 to or from:

(a) A point 0.8 mile west of the Thruway exit along Dingens Street.

(b) A point 0.45 mile from the Thruway exit via Dingens Street and James E. Casey Drive.

(2) Thruway Exit N5 to or from a point approximately 1.0 miles south of the Thruway via Louisiana Street and South Street.

(3) Thruway Exit N15 to or from a point 0.5 mile southeast of the Thruway via NY 325 (Sheridan Drive) and Kenmore Avenue.

(4) Thruway Exit N17 to or from:

(a) A point 1.5 miles north of the Thruway on NY 266 (River Road).

(b) A point approximately 0.4 mile south of the Thruway on NY 266 (River Road).

Tandem trailer combinations in which neither trailing unit exceeds 28.5 feet in length are restricted to the Designated Qualifying and Access Highway System.

ROUTES: For tandem trailer combinations with either trailer more than 28.5 feet long, but not more than 48 feet long, the following routes are available:

	From	To
I–87 (New York Thruway).	Bronx/Westchester County Line.	Thruway Exit 24.
I–90 (New York Thruway).	Pennsylvania.	Thruway Exit 24.
I–90 (New York Thruway Berkshire Section).	Thruway Exit B–1.	Massachusetts.
I–190 (New York Thruway Niagara Section).	Thruway Exit 53.	Int'l Border with Canada.
NY 912M (Berkshire Connection of the New York Thruway).	Thruway Exit 21A.	Thruway Exit B–1.

Tandem trailer combinations in which neither trailing unit exceeds 28.5 feet in length may operate on all NN Highways.

LEGAL CITATIONS:

Public Authorities Law—Title 9, sec. 350, et. seq. (section 361 is most relevant)

New York State Thruway Authority Rules & Regulations, sections 100.6, 100.8, and 103.13

New York State Vehicle & Traffic Law, sections 385 and 1630

STATE: NORTH DAKOTA

COMBINATION: Truck tractor and 2 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 103 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 105,500 pounds

OPERATIONAL CONDITIONS:

WEIGHT: The Gross Vehicle Weight (GVW) of any vehicle or combination of vehicles is determined by the Federal Bridge Formula, including the exception for two sets of tandems spaced 36 feet apart.

No single axle shall carry a gross weight in excess of 20,000 pounds. Axles spaced 40 inches or less apart are considered one axle. Axles spaced 8 feet or more apart are considered as individual axles. The gross weight of two individual axles may be restricted by the weight formula. Spacing between axles shall be measured from axle center to axle center.

Axles spaced over 40 inches but less than 8 feet apart shall not carry a gross weight in excess of 17,000 pounds per axle. The gross weight of three or more axles in a grouping is determined by the measurement between the extreme axle centers. During the spring breakup season or on otherwise posted highways, reductions in the above axle weights may be specified.

The weight in pounds on any one wheel shall not exceed one-half the allowable axle weight. Dual tires are considered one wheel.

The weight per inch of tire width shall not exceed 550 pounds. The width of tire shall be the manufacturer's rating.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement.

VEHICLE: The cargo length of a two trailing unit combination may not exceed 100 feet (when the power unit is a truck tractor) or 103 feet (when the power unit is a truck) when traveling on the NN or local highways designated by local authorities.

All hitches must be of a load-bearing capacity capable of bearing the weight of the towed vehicles. The towing vehicle must have a hitch commonly described as a fifth wheel or gooseneck design, or one that is attached to the frame.

The hitch on the rear of the vehicle connected to the towing vehicle must be attached to the frame of the towed vehicle. All hitches, other than a fifth wheel or gooseneck, must be of a ball

and socket type with a locking device or a pintle hook.

The drawn vehicles shall be equipped with brakes and safety chains adequate to control the movement of, and to stop and hold, such vehicles. When the drawn vehicle is of a fifth wheel or gooseneck design, safety chains are not required.

In any truck or truck tractor and two trailer combination, the lighter trailer must always be operated as the rear trailer, except when the gross weight differential with the other trailer does not exceed 5,000 pounds.

The power unit shall have adequate power and traction to maintain a minimum speed of 15 miles per hour on all grades.

PERMIT: No permits are required for GVW of 80,000 pounds or less. Single-trip permits are required for GVW exceeding 80,000 pounds. Weather restrictions (37–06–04–06, NDAC), weight distribution on trailers (37–06–04, NDAC), and signing requirements (37–06–04–05, NDAC) are applicable.

Movements of LCV's are prohibited when:

1. Road surfaces, due to ice, snow, slush, or frost present a slippery condition which may be hazardous to the operation of the unit or to other highway users;

2. Wind or other conditions may cause the unit or any part thereof to swerve, whip, sway, or fail to follow substantially in the path of the towing vehicle; or

3. Visibility is reduced due to snow, ice, sleet, fog, mist, rain, dust, or smoke.

The North Dakota Highway Patrol may restrict or prohibit operations during periods when in its judgment traffic, weather, or other safety conditions make travel unsafe.

The last trailer in any combination must have a "LONG LOAD" sign mounted on the rear. It must be a minimum of 12 inches in height and 60 inches in length. The lettering must be 8 inches in height with 1-inch brush strokes. The letters must be black on a yellow background.

Legal width—8 feet 6 inches on all highways.

Legal height—13 feet 6 inches.

ACCESS: Access for vehicles with cargo-carrying length of 68 feet or more is 10 miles off the NN. Vehicles with a cargo-carrying length less than 68 feet may travel on all highways in North Dakota.

ROUTES: All NN routes.

LEGAL CITATIONS: North Dakota Century Code, section 38–12–04; North Dakota Administrative Code, article 37–06.

STATE: NORTH DAKOTA

COMBINATION: Truck tractor and 3 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 100 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 105,500 pounds

OPERATIONAL CONDITIONS:

WEIGHT, DRIVER, PERMIT, and ACCESS: Same as the ND–TT2 combination.

VEHICLE: Same as the ND–TT2 combination, and in addition, in any combination with three trailing units the lightest trailer must always be operated as the rear trailer. For the first two trailing units the lighter trailer must always be second except when the gross weight differential with the other trailer does not exceed 5,000 pounds.

ROUTES: Same as the ND–TT2 combination.

LEGAL CITATIONS: Same as the ND–TT2 combination.

STATE: NORTH DAKOTA

COMBINATION: Truck-trailer, and Truck-trailer-trailer

LENGTH OF THE CARGO-CARRYING UNITS: 103 feet

OPERATIONAL CONDITIONS:

WEIGHT: This combination must operate in compliance with State laws and regulations. Because it is not an LCV, it is not subject to the ISTEA freeze as it applies to maximum weight.

DRIVER, VEHICLE, PERMIT, and ACCESS: Same as the ND–TT2 combination.

ROUTES: Same as the ND–TT2 combination.

LEGAL CITATIONS: Same as the ND–TT2 combination.

STATE: OHIO

COMBINATION: Truck tractor and 2 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 102 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 127,400 pounds

OPERATIONAL CONDITIONS: Long double combination vehicles are only allowed on that portion of Ohio's Interstate System which is under the jurisdiction of the Ohio Turnpike Commission (OTC). These same vehicles are not allowed on any portion of the Interstate System under the jurisdiction of the Ohio DOT.

WEIGHT: The OTC has established the following provisions for operation:

Maximum Weight: Single axle = 21,000 pounds; tandem axle spaced 4 feet or less apart = 24,000 pounds; tandem axle spaced more than 4 feet but less than 8 feet apart = 34,000 pounds; gross weight for doubles 90 feet or less in length = 90,000 pounds; gross weight for doubles over 90 feet but less than 112 feet in length = 127,400 pounds.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement, be over 26 years of age, in good health, and shall have not less than 5 years of experience driving tractor-trailer or tractor-short double trailer motor vehicles. Such driving experience shall include experience throughout the four seasons. Drivers must comply with the applicable current requirements of the Federal Motor Carrier Safety Regulations, Federal Hazardous Materials Regulations, and the Economic and Safety regulations of the Ohio Public Utility Commission.

VEHICLE: Vehicles being operated under permit at night must be equipped with all lights and reflectors required by the Ohio Public Utilities Commission and the Federal Motor Carrier Safety Regulations, except that the trailer shall be equipped with two red tail lights and two red or amber stop lights mounted with one set on each side. Trailer and semitrailer length for doubles cannot exceed 48 feet, and mixed trailer length combinations are not allowed for combination vehicles over 90 feet in length. Combined cargo-carrying length, including the trailer hitch, cannot be less than 80 feet or more than 102 feet. The number of axles on a double shall be a minimum of five and a maximum of nine. A tractor used in the operation of a double shall be capable of hauling the maximum weight at a speed of not less than 40 miles per hour on all portions of the Turnpike.

PERMIT: A special permit is required if the vehicle is over 102 inches wide, 14 feet high, or 65 feet in length including overhang. Tractor-semitrailer-semitrailer combinations require a permit if over 75 feet in length, excluding an allowed 3-foot front overhang and a 4-foot rear overhang. For vehicles over 120 inches wide, 14 feet high, or 80 feet long or if any unit of the combination vehicle is over 60 feet in length, travel is restricted to daylight hours Monday through noon Saturday, except holidays and the day before and after holidays. Operators are restricted to daylight driving if the load overhang is more than 4 feet. A "Long Double Trailer Permit" issued by the OTC is required for operation of doubles in excess of 90 feet in length. Towing units and coupling devices shall have

sufficient structural strength to ensure safe operation. Vehicles and coupling devices shall be so designed, constructed, and installed in a double as to ensure that any towed vehicles when traveling on a level, smooth paved surface will follow in the path of the towing vehicle without shifting or swerving more than 3 inches to either side of the path of the towing vehicle when the latter is moving in a straight line. Vehicle coupling devices and brakes shall meet the requirements of the Ohio Public Utilities Commission and Federal Motor Carrier Safety Regulations. The distance between the rearmost axle of a semitrailer and the front axle of the next semitrailer in a coupled double unit shall not exceed 12 feet 6 inches. In no event shall the distance between the semitrailers coupled in a double exceed 9 feet. Double and triple trailer combinations must be equipped with adequate, properly maintained spray-suppressant mud flaps on all axles except the steering axle. In the event that the gross weights of the trailers vary by more than 20 percent, they shall be coupled according to their gross weights with the heavier trailer forward. A minimum distance of 500 feet shall be maintained between double units and/or triple units except when overtaking and passing another vehicle. A double shall remain in the right-hand, outside lane except when passing or when emergency or work-zone conditions exist. When, in the opinion of the OTC, the weather conditions are such that operation of a double is inadvisable, the OTC will notify the permittee that travel is prohibited for a certain period of time.

Class A and B explosives; Class A poisons; and Class 1, 2, and 3 radioactive material cannot be transported in double trailer combinations. Other hazardous materials may be transported in one trailer of a double. The hazardous materials should be placed in the front trailer unless doing so will result in the second trailer weighing more than the first trailer.

ACCESS: Tandem trailer units shall not leave the Turnpike right-of-way and shall be assembled and disassembled only in designated areas located at Exits 4, 7, 10, 11, 13, 14, and 16.

ROUTES

	From	To
I–76 Ohio Turnpike.	Turnpike Exit 15.	Pennsylvania.
I–80 Ohio Turnpike.	Turnpike Exit 8A.	Turnpike Exit 15.
I–80/90 Ohio Turnpike.	Indiana	Turnpike Exit 8A.

LEGAL CITATIONS: Statutory authority, as contained in Chapter 5537 of the Ohio Revised Code, to regulate the dimensions and weights of vehicles using the Turnpike.

STATE: OHIO

COMBINATION: Truck tractor and 3 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 95 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 115,000 pounds

OPERATIONAL CONDITIONS: Same as the OH–TT2 combination, except as follows:

WEIGHT: Gross weight for triples with an overall length greater than 90 feet but not over 105 feet in length = 115,000 pounds.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement, be over 26 years of age, in good health, and shall have not less than 5 years of experience driving double trailer combination units. Such driving experience shall include experience throughout the four seasons. Each driver must have special training on triple combinations to be provided by the Permittee.

VEHICLE: Triple trailer combination vehicles are allowed to operate on the Turnpike provided the combination vehicle is at least 90 feet long but less than 105 feet long and each trailer is not more than 28.5 feet in length. The minimum number of axles on the triple shall be seven and the maximum is nine.

PERMIT: A triple trailer permit to operate on the Turnpike is required for triple trailer combinations in excess of 90 feet in length. There is an annual fee for the permit. Class A and B explosives; Class A poisons; and Class 1, 2, and 3 radioactive material cannot be transported in triple trailer combinations. Other hazardous materials may be transported in two trailers of a triple. The hazardous materials should be placed in the front two trailers unless doing so will result in the third trailer weighing more than either one of the lead trailers.

ACCESS: With two exceptions, triple trailer units shall not leave the Turnpike right-of-way and shall be assembled and disassembled only in designated areas located at Exits 4, 7, 10, 11, 13, 14, and 16. The first exception is that triple trailer combinations are allowed on State Route 21 from I–80 Exit 11 (Ohio Turnpike) to a terminal located approximately 500 feet to the north in the town of Richfield. The second exception is for a segment of State Route 7 from Ohio Turnpike Exit 16 to 1 mile south.

ROUTES

	From	To
I–76 Ohio Turnpike.	Turnpike Exit 15.	Pennsylvania.
I–80 Ohio Turnpike.	Turnpike Exit 8A.	Turnpike Exit 15.
I–80/90 Ohio Turnpike.	Indiana	Turnpike Exit 8A.
OH–7	Turnpike Exit 16.	Extending 1 mile south.

LEGAL CITATIONS: Same as the OH–TT2 combination.

STATE: OKLAHOMA

COMBINATION: Truck tractor and 2 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 110 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 90,000 pounds

OPERATIONAL CONDITIONS:

WEIGHT: Single axle = 20,000 pounds; tandem axle = 34,000 pounds; gross vehicle weight = 90,000 pounds. The total weight on any group of two or more consecutive axles shall not exceed the amounts shown in Table 1.

TABLE 1.—OKLAHOMA ALLOWABLE AXLE GROUP WEIGHT

Axle Spacing (ft)	Maximum load (lbs) by axle group				
	2 Axles	3 Axles	4 Axles	5 Axles	6 Axles
4	34,000	.....	.....	.....	.....
5	34,000	.....	.....	.....	.....
6	34,000	.....	.....	.....	.....
7	34,000	.....	.....	.....	.....
8	34,000	42,000	.....	.....	.....
9	39,000	42,500	.....	.....	.....
10	40,000	43,500	.....	.....	.....

TABLE 1.—OKLAHOMA ALLOWABLE AXLE GROUP WEIGHT—Continued

Axle Spacing (ft)	Maximum load (lbs) by axle group				
	2 Axles	3 Axles	4 Axles	5 Axles	6 Axles
11	.....	44,000	.....	.....	.....
12	.....	45,000	50,000	.....	.....
13	.....	45,500	50,500	.....	.....
14	.....	46,500	51,500	.....	.....
15	.....	47,000	52,000	.....	.....
16	.....	48,000	52,500	58,000	.....
17	.....	48,500	53,500	58,500	.....
18	.....	49,500	54,000	59,000	.....
19	.....	50,000	54,500	60,000	.....
20	.....	51,000	55,500	60,500	66,000
21	.....	51,500	56,000	61,000	66,500
22	.....	52,500	56,500	61,500	67,000
23	.....	53,000	57,500	62,500	68,000
24	.....	54,000	58,000	63,000	68,500
25	.....	54,500	58,500	63,500	69,000
26	.....	56,000	59,500	64,000	69,500
27	.....	57,500	60,000	65,000	70,000
28	.....	59,000	60,500	65,500	71,000
29	.....	60,500	61,500	66,000	71,500
30	.....	62,000	62,000	66,500	72,000
31	.....	63,500	63,500	67,000	72,500
32	.....	64,000	64,000	68,000	73,500
33	.....	.....	64,500	68,500	74,000
34	.....	.....	65,000	69,000	74,500
35	.....	.....	66,000	70,000	75,000
36	.....	.....	68,000	70,500	75,500
37	.....	.....	68,000	71,000	76,000
38	.....	.....	69,000	72,000	77,000
39	.....	.....	70,000	72,500	77,500
40	.....	.....	71,000	73,000	78,000
41	.....	.....	72,000	73,500	78,500
42	.....	.....	73,000	74,000	79,000
43	.....	.....	73,280	75,000	80,000
44	.....	.....	73,280	75,500	80,500
45	.....	.....	73,280	76,000	81,000
46	.....	.....	73,280	76,500	81,500
47	.....	.....	73,500	77,500	82,000
48	.....	.....	74,000	78,000	82,000
49	.....	.....	74,500	78,500	83,500
50	.....	.....	75,500	79,000	84,000
51	.....	.....	76,000	80,000	84,500
52	.....	.....	76,500	80,500	85,000
53	.....	.....	77,500	81,000	86,000
54	.....	.....	78,000	81,500	86,500
55	.....	.....	78,500	82,500	87,000
56	.....	.....	79,500	83,000	87,500
57	.....	.....	80,000	83,500	88,000
58	.....	.....	.....	84,000	89,000
59	.....	.....	.....	85,000	89,500
60	.....	.....	.....	85,500	90,000

DRIVER: All drivers must have a commercial driver's license with the appropriate endorsement and must meet the requirements of the Federal Motor Carrier Safety Regulations (49 CFR parts 390–397). State requirements more stringent and not in conflict with Federal requirements take precedence.

VEHICLE: All vehicles must meet the requirements of applicable Federal and State statutes, rules, and regulations. Vehicle and load shall not exceed 102 inches in width on the Interstate System and four-lane divided highways. Maximum semitrailer length is 59.5 feet.

Multiple trailer combinations must be stable at all times during braking and normal operation. A multiple trailer combination when traveling on a level, smooth paved surface must follow in the path of the towing vehicle without shifting or swerving more than 3 inches to either side when the towing vehicle is moving in a straight line. Heavier trailers are to be placed to the front in multiple trailer combinations.

PERMIT: An annual special authorization permit is required for tandem trailer vehicles operating on the Interstate System having a gross weight of more than 80,000 pounds. A fee is charged for the special authorization permit.

ACCESS: Access is allowed from legally available routes (listed below) to service facilities and terminals within a 5-mile radius.

	From	To
I–40 Bus	I–40 Exit 119	US 81 El Reno.
US 60	I–35 Exit 214	US 177 Ponca City.
US 62	US 69 Muskogee.	OK 80 Ft. Gibson.

	From	To
US 62	I–44 Exit 39A Lawton.	OK 115 Cache.
US 64	I–35 Exit 186 Perry.	US 77 Perry.
US 64	I–40 Exit 325 Roland.	Arkansas.
US 70	OK 76 Wilson	I–35 Exits 31A-B Ardmore.
US 77	I–35 Exit 141 Edmond.	3.5 mi. W of I–35.
US 81	OK 51 Hennessey.	11.5 mi. N of US 412.
US 169	OK 51 Tulsa	OK 20 Collinsville.
US 270	OK 9 Tecumseh.	I–40 Exit 181.
US 412	OK 58 Ringwood.	I–35 Exits 194A-B.
US 412	US 69 Chouteau.	OK 412 B.
OK 3	I–44 Exit 123	Oklahoma/Canadian County Line.
OK 7	I–44 Exits 36A-B.	OK 65 Pumpkin Center.
OK 7	I–35 Exit 55	US 177 Sulphur.
OK 7	South intersection US 81 Duncan.	7.5 mi. E of US 81.
OK 9	I–35 Exit 108A.	US 77 Norman.
OK 11	I–35 Exit 222	US 177 Blackwell.
OK 33	US 77 Guthrie.	I–35 Exit 157 Guthrie.
OK 51	I–35 Exit 174	US 177 Stillwater.
OK 165	US 64/Bus. US 64 Muskogee.	Muskogee Tpk.

ROUTES: Doubles with 29-foot trailers may use any route on the NN. Doubles which include a grandfathered 59.5-foot semitrailer or trailer are limited to Interstate and four-lane divided highways as shown below:

	From	To
I–35	Texas	Kansas.
I–40	Texas	Arkansas.
I–44	Texas	Missouri.
I–235	Entire length in Oklahoma City.	
I–240	Entire length in Oklahoma City.	
I–244	Entire length in Tulsa..	
I–444	Entire length in Tulsa..	
US 64	Cimarron Turnpike.	I–244/Tulsa.
US 69	Texas	I–44 (Will Rogers Tpk.) Exit 282.
US 75	I–40 Exits 240A-B Henryetta.	I–244 Exit 2 Tulsa.
US 75	I–44 Exits 6A-B Tulsa.	Dewey.
US 81	I–44 (Bailey Tpk.) Exit 80.	South Intersection OK 7 Duncan.
US 270	Indian Nation Tpk. Exit 4.	US 69 McAlester.
US 271	Texas	Indian Nation Tpk. Hugo.
US 412	I–44 Exit 241 Catoosa.	US 69.
OK 3A	OK 3 Oklahoma City.	I–44 Exit 125B Oklahoma City.
OK 11 Tulsa	US 75 Tulsa	I–244 Exit 12B.
OK 51	I–44 Exit 231 Tulsa.	Muskogee Tpk. Broken Arrow.
OK 165	Connecting two sections of the Muskogee Turnpike at Muskogee.	
Cimarron Tpk	I–35 Exit 194	US 64.
Cimarron Tpk. Conn.	US 177 Stillwater.	Cimarron Tpk.
Indian Nation Turnpike.	US 70/271 Hugo.	I–40 Exits 240A–B Henryetta.
Muskogee Tpk.	OK 51 Broken Arrow.	US 62/OK 165 Muskogee.
Muskogee Tpk.	OK 165 Muskogee.	I–40 Exit 286 Webber's Falls.

LEGAL CITATIONS:

Title 47 1981 O.S. 14–101
Title 47 1990 O.S. 14–103, –109, and –116
DPS Size and Weight Permit Manual 595:30.

STATE: OKLAHOMA

COMBINATION: Truck tractor and 3 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 95 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 90,000 pounds

OPERATIONAL CONDITIONS:

WEIGHT and ACCESS: Same as the OK–TT2 combination.

DRIVER: Same as the OK–TT2 combination except that in addition, a driver of a three trailing unit combination must have had at least 2 years of experience driving tractor-trailer combinations.

VEHICLE: All vehicles must meet the requirements of applicable Federal and State statutes, rules, and regulations. Vehicle and load shall not exceed 102 inches in width on the Interstate System and other four-lane divided highways. Maximum unit length of triple trailers is 29 feet. Truck tractors pulling triple trailers must have sufficient horsepower to maintain a minimum speed of 40 miles per hour on the level and 20 miles per hour on grades under normal operation conditions. Heavy-duty fifth wheels, pick-up plates equal in strength to the fifth wheel, solid kingpins, no-slack hitch connections, mud flaps and splash guards, and full-width axles are required on triple trailer combinations. All braking systems must comply with State and Federal requirements.

Multiple trailer combinations must be stable at all times during braking and normal operation. A multiple trailer combination when traveling on a level, smooth paved surface must follow in the path of the towing vehicle without shifting or swerving more than 3 inches to either side when the towing vehicle is moving in a straight line. Heavier trailers are to be placed to the front in multiple trailer combinations.

PERMIT: An annual special authorization permit is required for triple trailer combination vehicles operating on the Interstate System having a gross weight of more than 80,000 pounds. A special vehicle combination permit is required for the operation of triple trailers on the Interstate System and on other four-lane divided primary highways. The permit holder must certify that the driver of a triple trailer combination is qualified. Operators of triples must maintain a 500-foot following distance and must drive in the right lane except when passing or in an emergency.

Speed shall be reduced and extreme caution exercised when operating triples under hazardous conditions such as those caused by snow, wind, ice, sleet, fog, mist, rain, dust, or smoke. When conditions become sufficiently dangerous as determined by the company or driver, operations shall be discontinued and shall not resume until the vehicle can be safely operated. The State may restrict or prohibit operations during periods when, in the State's judgment, traffic, weather, or other safety conditions make such operations unsafe or inadvisable.

Class A and B explosives; Class A poisons; and Class 1, 2, and 3 radioactive material or any other material deemed to be unduly hazardous by the U.S. DOT cannot be transported in triple trailer combinations.

Permit movements are limited to travel from one-half hour before sunrise to one-half hour after sunset, 7 days a week except on specified holidays, beginning at noon the day preceding the

holiday. Specified holidays are: New Year's Day, Memorial Day, Independence Day, Thanksgiving Day, and Christmas Day.

A fee is charged for both the special authorization and triple trailer combination permits.

ROUTES: Same as the OK–TT2 combination.

LEGAL CITATIONS:

Title 47 1981 O.S. 14–101

Title 47 1990 O.S. 14–109, –116, –121

DPS Size and Weight Permit Manual 595:30.

STATE: OREGON

COMBINATION: Truck tractor and 2 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 68 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 105,500 pounds

OPERATIONAL CONDITIONS:

WEIGHT: Maximum allowable weights are as follows: single wheel—10,000 pounds, single axle—20,000 pounds, tandem axle—34,000 pounds Gross vehicle weights over 80,000 pounds must follow the Oregon extended weight table, with a maximum of 105,500 pounds. Weight is also limited to 600 pounds per inch of tire width.

EXTENDED WEIGHT TABLE

Gross weights over 80,000 pounds are authorized only when operating under the authority of a Special Transportation Permit.

MAXIMUM ALLOWABLE WEIGHTS

1. The maximum allowable weights for single axles and tandem axles shall not exceed those specified under ORS 818.010.

2. The maximum allowable weight for groups of axles spaced at 46 feet or less apart shall not exceed those specified under ORS 818.010.

3. The maximum weights for groups of axles spaced at 47 feet or more and the gross combined weight for any combination of vehicles shall not exceed those set forth in the following table:

Axle spacing in feet	Maximum gross weight in pounds on			
	5 Axles	6 Axles	7 Axles	8 or More axles
47	77,500	81,000	81,000	81,000
48	78,000	82,000	82,000	82,000
49	78,500	83,000	83,000	83,000
50	79,000	84,000	84,000	84,000
51	80,000	84,500	85,000	85,000
52	80,500	85,000	86,000	86,000
53	81,000	86,000	87,000	87,000
54	81,500	86,500	88,000	91,000
55	82,500	87,000	89,000	92,000
56	83,000	87,500	90,000	93,000
57	83,500	88,000	91,000	94,000
58	84,000	89,000	92,000	95,000
59	85,000	89,500	93,000	96,000
60	85,500	90,000	94,000	97,000
61	86,000	90,500	95,000	98,000
62	87,000	91,000	96,000	99,000
63	87,500	92,000	97,000	100,000
64	88,000	92,500	97,500	101,000
65	88,500	93,000	98,000	102,000
66	89,000	93,500	98,500	103,000
67	90,000	94,000	99,000	104,000
68	90,000	95,000	99,500	105,000
69	90,000	95,500	100,000	105,500
70	90,000	96,000	101,000	105,500
71	90,000	96,500	101,500	105,000
72	90,000	96,500	102,000	105,500
73	90,000	96,500	102,500	105,500
74	90,000	96,500	103,000	105,500
75	90,000	96,500	104,000	105,500
76	90,000	96,500	104,500	105,500
77	90,000	96,500	105,000	105,500
78	90,000	96,500	105,500	105,500

Distance measured to nearest foot; when exactly one-half foot, take next larger number.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement.

VEHICLE: For a combination which includes a truck tractor and two trailing units, the lead trailing unit (semitrailer) may be up to 40 feet long. The second trailing unit may be up to 35 feet long. However, the primary control is the total cargo-carrying distance which has a maximum length of 68 feet. Any towed vehicles in a combination must be equipped with safety chains or cables to prevent the towbar from dropping to the ground in the event the coupling fails. The chains or cables must have sufficient strength to control the towed vehicle in the event the coupling device fails and must be attached with no more slack than necessary to permit proper turning. However, this requirement does not apply to a fifth-wheel coupling if the upper and lower halves of the fifth wheel must be manually released before they can be separated.

PERMIT: A permit is required for operation if the gross combination

weight exceeds 80,000 pounds. A fee is charged. Permitted movements must have the lighter trailing unit placed to the rear, and use splash and spray devices when operating in rainy weather. Movement is not allowed when road surfaces are hazardous due to ice or snow, or when other atmospheric conditions make travel unsafe.

ACCESS: As allowed by the Oregon DOT.

ROUTES: All NN routes.

LEGAL CITATIONS: ORS 810.010, ORS 810.030 through 810.060, and ORS 818.010 through 818.235.

STATE: OREGON

COMBINATION: Truck tractor and 3 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 96 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 105,500 pounds

OPERATIONAL CONDITIONS:

WEIGHT, DRIVER, PERMIT, and ACCESS: Same as the OR–TT2 combination.

VEHICLE: Trailing units must be of equal length. The overall length of the combination is limited to 105 feet. Any towed vehicles in a combination must be equipped with safety chains or cables to prevent the towbar from dropping to the ground in the event the coupling fails. The chains or cables must have sufficient strength to control the towed vehicle in the event the coupling device fails and must be attached with no more slack than necessary to permit proper turning. However, this requirement does not apply to a fifth-wheel coupling if the upper and lower halves of the fifth wheel must be manually released before they can be separated.

ROUTES: The following NN routes are also open to truck tractor and three trailing unit combinations.

	From	To
I–5	California	Washington.
I–105	Entire length in the Eugene-Springfield area.	
I–205	Jct. I–5	Washington.
I–405	Entire length in Portland.	
I–82	Washington	Jct. I–84.
I–84	Jct. I–5	Idaho.
US 20	Jct OR 22/OR 126.	US 26 Vale Santiam Junction.
US 20	East Jct OR 99E Albany.	I–5 Exit 233.
US 26	US 101 Cannon Beach Junction.	OR 126 Prineville.
US 20/26	Vale	Idaho.
US 30	US 101 Astoria.	I–405 Exit 3 Portland.
US 95	Nevada	Idaho.
SPUR US 95	OR 201	Idaho.
US 97	California	Washington.
US 101	US 30 Astoria.	US 26 Cannon Beach Jct.
US 101	OR 18 Otis	US 20 Newport.
US 101	Bandon	North city limit Coos Bay.
US 197	I–84 Exit 87 The Dalles.	Washington.
US 395	I–82 Exit 1 Umatilla.	I–84 Exit 188 Stanfield.
US 395	US 26 John Day.	OR 140 Lakeview.
US 730	I–84 Exit 168	Washington.
OR 6	US 101 Tillamook.	US 26 near Banks.
OR 8	OR 47 Forest Grove.	OR 217 Beaverton.
OR 11	Washington	Mission Cutoff near Pendleton.
OR 18	US 101 Otis	OR 99W Dayton.
OR 19	I–84 Exit 137	South 2.5 miles.
OR 22	OR 18 near Willamena.	OR 99E Salem.
OR 22	I–5 Exit 253	Jct US 20/OR 126 Santiam Jct.
OR 31	US 97 La Pine.	US 395 Valley Falls.
OR 34	Jct US 20/OR 99W Corvallis.	I–5 Exit 228.
OR 35	I–84 Exit 64	Mt. Hood Hood River.
OR 39	OR 140 East of Klamath Falls.	California.
OR 58	I–5 Exit 188 Goshen.	US 97 near Chemult.
OR 62	OR 99 Medford.	OR 140 White City.
OR 78	Jct US 20/US 395 Burns.	US 95 Burns Junction.
OR 99	I–5 Exit 58 Grants Pass.	I–5 Exit 48 Rogue River.
OR 99	I–5 Exit 192 Eugene.	Jct OR 99E/OR 99W Junction City.
OR 99E	I–5 Exit 307 Portland.	I–205 Exit 9 Oregon City.
OR 99E	I–5 Exit 233 Albany.	Tangent.
OR 99E	OR 228 Halsey.	Harrisburg.
OR 99W	Jct US 20/OR 34 Corvallis.	I–5 Exit 294 Portland.
OR 126	US 20 Sisters	US 26 Prineville.
OR 138	I–5 Exit 136 Sutherlin.	East 2 miles.
OR 140	OR 62 White City.	Jct US 97/OR 66 Klamath Falls.
OR 201	Jct US 20/US 26.	SPUR US 95 Cairo Junction.
OR 207	I–84 Exit 182	OR 74 Lexington.
OR 207/OR 74.	Jct OR 207/OR 74 Lexington.	Jct OR 207/OR 74/OR 206 Heppner.
OR 212	I–205 Exit 12	US 26 Boring.
OR 214	I–5 Exit 271 Woodburn.	OR 99E Woodburn.
OR 217	I–5 Exit 292 Tigard.	US 26 Beaverton.
OR 224	OR 99E Milwaukie.	I–205 Exit 13.

LEGAL CITATIONS: Same as the OR–TT2 combination.

STATE: SOUTH DAKOTA

COMBINATION: Truck tractor and 2 trailing units—LCV

LENGTH OF CARGO-CARRYING UNITS: 100 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 129,000 pounds

OPERATIONAL CONDITIONS:

WEIGHT: For all combinations, the maximum gross weight on two or more consecutive axles is limited by the Federal Bridge Formula but cannot exceed 129,000 pounds. The weight on single axles or tandem axles spaced 40 inches or less apart may not exceed 20,000 pounds. Tandem axles spaced more than 40 inches but 96 inches or less may not exceed 34,000 pounds. Two consecutive sets of tandem axles may carry a gross load of 34,000 pounds each, provided the overall distance between the first and last axles of the tandems is 36 feet or more. The weight on the steering axle may not exceed 600 pounds per inch of tire width.

For combinations with a cargo-carrying length greater than 81.5 feet the following additional regulations also apply. The weight on all axles (other than the steering axle) may not exceed 500 pounds per inch of tire width. Lift axles and belly axles are not considered load-carrying axles and will not count

when determining allowable vehicle weight.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement.

VEHICLE: For all combinations, a semitrailer or trailer may neither be longer than nor weigh 3,000 pounds more than the trailer located immediately in front of it. Towbars longer than 19 feet must be flagged during daylight hours and lighted at night.

For combinations with a cargo-carrying length of 81.5 feet or less, neither trailer may exceed 45 feet, including load overhang. Vehicles may be 12 feet wide when hauling baled feed during daylight hours.

For combinations with a cargo-carrying length over 81.5 feet long, neither trailer may exceed 48 feet, including load overhang. Loading the rear of the trailer heavier than the front is not allowed. All axles except the steering axle require dual tires. Axles spaced 8 feet or less apart must weigh within 500 pounds of each other. The trailer hitch offset may not exceed 6 feet. The maximum effective rear trailer overhang may not exceed 35 percent of the trailer's wheelbase. The power unit must have sufficient power to maintain 40 miles per hour. A "LONG LOAD" sign measuring 18 inches high by 7 feet long with black on yellow lettering 10 inches high is required on the rear. Offtracking is limited to 8.75 feet for a turning radius of 161 feet.

Offtracking Formula = $61-(161^2-L_1^2-L_2^2+L_3^2-L_4^2-L_5^2+L_6^2-L_7^2-L_8^2)^{1/2}$.

Note: L_1 through L_8 are measurements between points of articulation or vehicle pivot points. Squared dimensions to stinger steer points of articulation are negative. For two trailing unit combinations where at least one trailer is 45 feet long or longer, all the dimensions used to calculate offtracking must be written in the "Permit Restriction" area of the permit along with the offtracking value derived from the calculation.

PERMIT: For combinations with a cargo-carrying length of 81.5 feet or less, a single-trip permit is required for movement on the Interstate System if the gross vehicle weight exceeds 80,000 pounds. An annual or single-trip permit is required for hauling baled feed over 102 inches wide.

For combinations with a cargo-carrying length greater than 81.5 feet, a single-trip permit is required for all movements. Operations must be discontinued when roads are slippery due to moisture, visibility must be good, and wind conditions must not cause trailer whip or sway.

For all combinations, a fee is charged for any permit.

ACCESS: For combinations with a cargo-carrying length of 81.5 feet or less, access is Statewide off the NN unless restricted by the South Dakota DOT.

For combinations with a cargo-carrying length greater than 81.5 feet, access to operating routes must be approved by the South Dakota DOT.

ROUTES: Combinations with a cargo-carrying length of 81.5 feet or less may use all NN routes. Combinations with a cargo-carrying length over 81.5 feet, are restricted to the Interstate System and:

	From	To
US 14	W. Jct. US 14 Bypass and US 14 Brookings.	So. Jct. US 14 and US 281.
Bypass US 14	I–29 Exit 133 Brookings.	W. Jct. US 14 Bypass and US 14 Brookings.
US 85	I–90 Exit 10 Spearfish.	North Dakota.
US 281	I–90 Exit 310.	So. Jct. US 14 and US 281.
US 281	8th Ave. Aberdeen.	North Dakota.
SD 50	Burleigh Street Yankton.	I–29 Exit 26.

LEGAL CITATIONS: SDCL 32–22–8.1, –38, –39, –41, –42, and –52; and Administrative Rules 70:03:01:37, :47, :48, and :60 through :70.

STATE: SOUTH DAKOTA

COMBINATION: Truck tractor and 3 trailing units—LCV

LENGTH OF CARGO-CARRYING UNITS: 100 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 129,000 pounds

OPERATIONAL CONDITIONS:

WEIGHT, DRIVER, PERMIT, and ACCESS: Same as the SD–TT2 combination.

VEHICLE: Same as the SD–TT2 combination, except trailer lengths are limited to 28.5 feet, including load overhang, and the overall length cannot exceed 110 feet, including load overhang.

ROUTES: Same as the SD–TT2 combination with a cargo-carrying length over 81.5 feet.

LEGAL CITATIONS: SDCL 32–22–14.14, –38, –39, –42, and –52; and Administrative Rules 70:03:01:60 through :70.

STATE: SOUTH DAKOTA

COMBINATION: Truck-Trailer

LENGTH OF CARGO-CARRYING UNITS: 73 feet

OPERATIONAL CONDITIONS:

WEIGHT: This combination must operate in compliance with State laws and regulations. Because it is not an LCV, it is not subject to the ISTEA freeze as it applies to maximum weight.

DRIVER, and PERMIT: Same as the SD–TT2 combination.

VEHICLE: Same as the SD–TT2 combination except that in addition, the overall length including load overhang is limited to 80 feet. Trailer length is not limited.

ACCESS: Same as the access provisions for the SD–TT2 combination with a cargo-carrying length of 81.5 feet or less.

ROUTES: Same as the route provisions for the SD–TT2 combination with a cargo-carrying length of 81.5 feet or less.

LEGAL CITATIONS: SDCL 32–22–8.1, –38, –39, –41, –42, and –52; and Administrative Rules 70:03:01:37, :47, and :48.

STATE: SOUTH DAKOTA

COMBINATION: Truck-Trailer

LENGTH OF CARGO-CARRYING UNITS: 78 feet

OPERATIONAL CONDITIONS:

WEIGHT: This combination must operate in compliance with State laws and regulations. Because it is not an LCV, it is not subject to the ISTEA freeze as it applies to maximum weight.

DRIVER, and PERMIT: Same as the SD–TT2 combination.

VEHICLE: Same as the SD–TT2 combination with a cargo-carrying length over 81.5 feet, except that in addition, the overall length is limited to 85 feet.

ACCESS: Same as the access provisions for the SD–TT2 combination with a cargo-carrying length greater than 81.5 feet.

ROUTES: Same as the route provisions for the SD–TT2 combination with a cargo-carrying length greater than 81.5 feet.

LEGAL CITATIONS: SDCL 32–22–38, –39, –42, and –52; and Administrative Rules 70:03:01:60 through :70.

STATE: UTAH

COMBINATION: Truck tractor and 2 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 95 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 129,000 pounds

OPERATIONAL CONDITIONS:

WEIGHT: Weight limits are as follows:
Single axle: 20,000 pounds
Tandem axle: 34,000 pounds
Gross weight: 129,000 pounds
Vehicles must comply with the Federal Bridge Formula

Tire loading on vehicles requiring an overweight or oversize permit shall not exceed 500 pounds per inch of tire width for tires 11 inches wide and greater, and 450 pounds per inch of tire width for tires less than 11 inches wide as designated by the tire manufacturer on the side wall of the tire. Tire loading on vehicles not requiring an overweight or oversize permit shall not exceed 600 pounds per inch of tire width as designated by the tire manufacturer on the sidewall.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement. Carriers must certify that their drivers have a safe driving record and have passed a road test administered by a qualified safety supervisor.

VEHICLE: While in transit, no trailer shall be positioned ahead of another trailer which carries an appreciably heavier load. An empty trailer shall not precede a loaded trailer. Vehicles shall be powered to operate on level terrain at speeds compatible with other traffic. They must be able to maintain a minimum speed of 20 miles per hour under normal operating conditions on any grade of 5 percent or less over which the combination is operated and be able to resume a speed of 20 miles per hour after stopping on any such grade, except in extreme weather conditions.

Oversize signs are required on vehicles in excess of 75 feet in length on two-lane highways.

A heavy-duty fifth wheel is required. All fifth wheels must be clean and lubricated with a light-duty grease prior to each trip. The fifth wheel must be located in a position which provides adequate stability. Pick-up plates must be of equal strength to the fifth wheel. The kingpin must be of a solid type and permanently fastened. Screw-out or folding-type kingpins are prohibited.

All hitch connections must be of a no-slack type, preferably a power-actuated ram. Air-actuated hitches which are isolated from the primary air transmission system are recommended.

The drawbar length should be the practical minimum consistent with the clearances required between trailers for turning and backing maneuvers.

Axles must be those designed for the width of the body.

All braking systems must comply with State and Federal requirements. In addition, fast air transmission and release valves must be provided on all semitrailer and converter-dolly axles. A brake force limiting valve, sometimes called a "slippery road" valve, may be provided on the steering axle. Anti-sail type mud flaps are recommended.

The use of single tires on any combination vehicle requiring an overweight or oversize permit shall not be allowed on single axles. A single axle is defined as one having more than 8 feet between it and the nearest axle or group of axles on the vehicle.

When traveling on a level, smooth paved surface, the trailing units must follow in the path of the towing vehicle without shifting or swerving more than 3 inches to either side when the towing vehicle is moving in a straight line. Each combination shall maintain a minimum distance of 500 feet from another commercial vehicle traveling in the same direction on the same highway. Loads shall be securely fastened to the transporter with material and devices of sufficient strength to prevent the load from becoming loose, detached, dangerously displaced, or in any manner a hazard to other highway users. The components of the load shall be reinforced or bound securely in advance of travel to prevent debris from being blown off the unit and endangering the safety of the traveling public. Any debris from the special permit vehicle deposited on the highway shall be removed by the permittee.

Bodily injury and property damage insurance is required before a special Transportation Permit will be issued.

In the event any claim arises against the State of Utah, Utah Department of Transportation, Utah Highway Patrol, or their employees from the operation granted under the permit, the permittee shall agree to indemnify and hold harmless each of them from such claim.

PERMIT: Permits must be purchased. The Utah DOT Motor Carrier Safety Division will, on submission of an LCV permit request, assign an investigator to perform an audit on the carrier, which must have an established safety program that is in compliance with the Federal Motor Carrier Safety Regulations (49 CFR parts 387–399), the Federal Hazardous Materials Regulations (49 CFR parts 171–178), and a "Satisfactory" safety rating. The request must show a travel plan for the operation of the vehicles. Permits are subject to Highway Patrol supervision and permitted vehicles may be subject to temporary delays or removed from the highways when necessary during hazardous road, weather, or traffic conditions. The permit will be cancelled without refund if violated. Expiration dates cannot be extended except for reasons beyond the control of the permittee, including adverse weather. Permits are void if defaced, modified, or obliterated. Lost or destroyed permits cannot be duplicated and are not transferable.

ACCESS: Routes approved by the Utah DOT plus local delivery destination travel on two-lane roads.

ROUTES: All NN routes, except that, in addition, truck tractor and two trailing unit combinations with a cargo-carrying length of more than 85 feet are restricted to:

	From	To
I–15	Arizona	Idaho.
I–70	Jct. I–15	Colorado.
I–80	Nevada	Wyoming.
I–84	Idaho	Jct. I–80.
I–215	Entire length in the Salt Lake City area.	
UT–201	I–80 Exit 102 Lake Point Jct.	300 West Street Salt Lake City.

LEGAL CITATIONS:

Utah Code 27–12–154 and –155; Utah Administrative Code, Section R–909–1.

STATE: UTAH

COMBINATION: Truck tractor and 3 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 95 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 129,000 pounds

OPERATIONAL CONDITIONS: Same as the UT–TT2 combination.

ROUTES: Same as the UT–TT2 combination with a cargo-carrying length greater than 85 feet.

LEGAL CITATIONS: Same as the UT–TT2 combination.

STATE: UTAH

COMBINATION: Truck-trailer

LENGTH OF THE CARGO-CARRYING UNITS: 88 feet

OPERATIONAL CONDITIONS:

WEIGHT: This combination must operate in compliance with State laws

and regulations. Because it is not an LCV, it is not subject to the ISTEA freeze as it applies to maximum weight.

DRIVER, VEHICLE, PERMIT, and ACCESS: Same as the UT–TT2 combination.

ROUTES: All truck-trailers with a cargo-carrying length of 70 feet or less, and truck-trailers used in hauling bulk gasoline or LP gas with a cargo-carrying length of 78 feet or less, may use all NN routes. Truck-trailers with a cargo-carrying length over 70 feet but not over 78 feet, and those used in hauling bulk gasoline or LP gas with a cargo-carrying length over 78 feet but not over 88 feet, are restricted to the same routes listed for the UT–TT2 combination with a cargo-carrying length greater than 85 feet.

LEGAL CITATIONS: Same as the UT–TT2 combination.

STATE: UTAH

COMBINATION: Truck-trailer-trailer

LENGTH OF THE CARGO-CARRYING UNITS: 88 feet

OPERATIONAL CONDITIONS: Same as the Utah truck-trailer combination.

ROUTES: Same as the UT–TT2 combination with a cargo-carrying length greater than 85 feet.

LEGAL CITATIONS: Same as the UT–TT2 combination.

STATE: UTAH

COMBINATION: Automobile transporter

LENGTH OF THE CARGO-CARRYING UNITS: 105 feet

OPERATIONAL CONDITIONS:

WEIGHT, DRIVER, PERMIT, and ACCESS: Same as the Utah truck-trailer combination.

VEHICLE: The cargo-carrying length of automobile transporters that carry vehicles on the power unit is the same as the overall length.

ROUTES: Automobile transporters with a cargo-carrying length of 92 feet or less may use all NN routes. Automobile transporters with a cargo-carrying length over 92 but not more than 105 feet are restricted to the routes listed for the UT–TT2 combination with a cargo-carrying length greater than 85 feet.

LEGAL CITATIONS: Same as the UT–TT2 combination.

STATE: WASHINGTON

COMBINATION: Truck tractor and 2 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 68 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 105,500 pounds

OPERATIONAL CONDITIONS:

WEIGHT: Single axle limit=20,000 pounds; tandem axle limit=34,000 pounds; gross weight must comply with the Federal Bridge Formula.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement.

VEHICLE: Operating conditions are the same for permitted doubles as for STAA of 1982 doubles.

PERMIT: Combinations with a cargo-carrying length over 60 feet in length but not exceeding 68 feet must obtain an annual overlength permit to operate. A fee is charged.

ACCESS: All State routes except SR 410 and SR 123 in or adjacent to Mt. Rainier National Park. In addition, restrictions may be imposed by local governments having maintenance responsibilities for local highways.

ROUTES: All NN routes except SR 410 and SR 123 in the vicinity of Mt. Rainier National Park.

LEGAL CITATIONS:
RCW 46.37, 46.44.030, .037(3), .041, and .0941.

STATE: WASHINGTON

COMBINATION: Truck-trailer

LENGTH OF THE CARGO-CARRYING UNITS: 68 feet

OPERATIONAL CONDITIONS:

WEIGHT: This combination must operate in compliance with State laws and regulations. Because it is not an LCV, it is not subject to the ISTEA freeze as it applies to maximum weight.

DRIVER, PERMIT, and ACCESS: Same as the WA–TT2 combination.

VEHICLE: Overall length limited to 75 feet.

ROUTES: Same as the WA–TT2 combination.

LEGAL CITATIONS: Same as the WA–TT2 combination.

STATE: WYOMING

COMBINATION: Truck tractor and 2 trailing units—LCV

LENGTH OF THE CARGO-CARRYING UNITS: 81 feet

MAXIMUM ALLOWABLE GROSS WEIGHT: 117,000 pounds

OPERATIONAL CONDITIONS:

WEIGHT: No single axle shall carry a load in excess of 20,000 pounds. No tandem axle shall carry a load in excess of 36,000 pounds. No triple axle, consisting of three consecutive load-bearing axles that articulate from an attachment to the vehicle including a connecting mechanism to equalize the load between axles having a spacing between the first and third axle of at least 96 inches and not more than 108 inches, shall carry a load in excess of 42,500 pounds. No vehicles operated on the Interstate System shall exceed the maximum weight allowed by application of Federal Bridge Weight Formula B.

No wheel shall carry a load in excess of 10,000 pounds. No tire on a steering axle shall carry a load in excess of 750 pounds per inch of tire width and no other tire on a vehicle shall carry a load in excess of 600 pounds per inch of tire width. "Tire width" means the width stamped on the tire by the manufacturer.

Dummy axles may not be considered in the determination of allowable weights.

DRIVER: The driver must have a commercial driver's license with the appropriate endorsement.

VEHICLE: The lead semitrailer can be up to 48 feet long with the trailing unit up to 40 feet long. In a truck tractor-semitrailer-trailer combination, the heavier towed vehicle shall be directly behind the truck-tractor and the lighter towed vehicle shall be last if the weight difference between consecutive towed vehicles exceeds 5,000 pounds.

PERMITS: No permits required.

ACCESS: Unlimited access off the NN to terminals.

ROUTES: All NN routes.

LEGAL CITATIONS:
WS 31–5–1001, –1002, –1004, –1008, and WS 31–17–1–1 through 31–17–117.

STATE: WYOMING

COMBINATION: Truck-trailer

LENGTH OF THE CARGO-CARRYING UNITS: 78 feet

OPERATIONAL CONDITIONS:

WEIGHT: This combination must operate in compliance with State laws and regulations. Because it is not an LCV, it is not subject to the ISTEA freeze as it applies to maximum weight.

DRIVER, PERMIT, and ACCESS: Same as the WY–TT2 combination.

VEHICLE: No single vehicle shall exceed 60 feet in length within an overall limit of 85 feet.

ROUTES: Same as the WY–TT2 combination.

LEGAL CITATIONS:
WS 31–5–1002

STATE: WYOMING

COMBINATION: Automobile/Boat Transporter

LENGTH OF CARGO CARRYING UNITS: 85 feet

OPERATIONAL CONDITIONS:

WEIGHT: This combination must operate in compliance with State laws and regulations. Because it is not an LCV, it is not subject to the ISTEA freeze as it applies to maximum weight.

DRIVER, PERMIT, and ACCESS: Same as the WY–TT2 combination.

VEHICLE: The cargo-carrying length of automobile transporters that carry vehicles on the power unit is the same as the overall length. No single vehicle shall exceed 60 feet in length within an overall limit of 85 feet.

ROUTES: Same as the WY–TT2 combination.

LEGAL CITATIONS: Same as the WY–TT2 combination.

STATE: WYOMING

COMBINATION: Saddlemount Combination

LENGTH OF CARGO CARRYING UNITS: 85 feet

WEIGHT: This combination must operate in compliance with State laws and regulations. Because it is not an LCV, it is not subject to the ISTEA freeze as it applies to maximum weight.

DRIVER, PERMIT, and ACCESS: Same as the WY–TT2 combination.

VEHICLE: The cargo-carrying length of saddlemount combinations that carry vehicles on the power unit is the same as the overall length. No single vehicle shall exceed 60 feet in length within an overall limit of 85 feet.

No more than three saddlemounts may be used in any combination, except additional vehicles may be transported when safely loaded upon the frame of a vehicle in a properly assembled saddlemount combination.

Towed vehicles in a triple saddlemount combination shall have brakes acting on all wheels which are in contact with the roadway.

All applicable State and Federal rules on coupling devices shall be observed and complied with.

ROUTES: Same as the WY–TT2 combination.

LEGAL CITATIONS: Same as the WY–TT2 combination.

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Part III

Environmental Protection Agency

40 CFR Parts 280 and 281
Underground Storage Tanks—Lender Liability; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 280 and 281

[FRL-4895-3]

RIN 2050-AD67

Underground Storage Tanks—Lender Liability

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing this rule under the Resource Conservation and Recovery Act (RCRA), Subtitle I—Regulation of Underground Storage Tanks, 42 U.S.C. 6901 *et seq.*, to limit the regulatory obligations of persons maintaining indicia of ownership in a petroleum underground storage tank (UST) or UST system primarily to protect a security interest. The rule is proposed in response to petitions received by the Agency in connection with the rulemaking related to lender liability under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601 *et seq.* (See 57 FR 18349).

The Agency is proposing conditions under which certain security interest holders may be exempted from the RCRA Subtitle I corrective action, technical, and financial responsibility regulatory requirements that apply to an UST owner and operator. (See 40 CFR part 280.)

DATES: Written comments on this proposed rule must be submitted on or before August 12, 1994.

ADDRESSES: Written comments on today's proposal should be addressed to the docket clerk at the following address: U.S. Environmental Protection Agency, OUST Docket (5405), 401 M Street, SW., Washington, DC 20460. The Docket is located at 401 M Street, SW., Room 2616. One original and two copies of comments should be sent and identified by regulatory docket reference number UST 3-16. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Docket materials may be reviewed by appointment by calling (202) 260-9720. Copies of docket materials may be made at a cost of $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For further information about this proposal, contact the RCRA/Superfund Hotline, U.S. Environmental Protection Agency, Washington, DC. 20460, (800) 424-9346 (toll-free) or (703) 412-9810 (local). For the hearing impaired, the number is (300) 553-7672 (toll-free), or (703) 412-3323 (local). For technical information on this proposal, contact Shelley Fudge in the EPA Office of Underground Storage Tanks at (703) 308-8886.

SUPPLEMENTARY INFORMATION: The contents of today's proposed preamble are listed in the following outline:

I. Background
II. Description of the UST Regulatory Program
A. UST Technical Standards
1. Leak Prevention
2. Leak Detection
3. Release Reporting
4. Closure
5. Notification, Reporting, and Recordkeeping
B. Corrective Action Requirements
C. Financial Responsibility Requirements
D. State Program Approval Regulations
E. Scope of the UST Program
III. The UST Security Interest Exemption and Intent of Today's Proposed Rule
A. Overview
B. Legal Authority
C. Liability of a Holder as an Owner of an Underground Storage Tank or Underground Storage Tank System
1. Petroleum Production, Refining, and Marketing
2. Indicia of Ownership
3. Primarily to Protect a Security Interest
4. "Holder" of Ownership Indicia
5. Participating in Management
D. Liability of a Holder as an Operator of an Underground Storage Tank or Underground Storage Tank System
1. Pre-Foreclosure Operation
2. Post-Foreclosure Operation
3. Lenders in Foreclosure Upon the Effective Date of the Rule
4. Release Reporting Requirements Following Foreclosure
E. Actions Taken to Protect Human Health and the Environment
IV. Financial Responsibility Requirements
V. State Program Approval
VI. Economic Analysis
VII. Regulatory Assessment Requirements
A. Executive Order 12866
B. Regulatory Flexibility Act
C. Paperwork Reduction Act

I. Background

EPA is proposing to establish regulatory criteria specifying which RCRA Subtitle I requirements are applicable to a secured creditor. Section 9003(h)(9) of RCRA exempts from the definition of "owner," for purposes of section 9003(h)—*EPA Response Program for Petroleum*, those persons who, without participating in the management of the UST or UST system, and who are not otherwise engaged in petroleum production, refining, and marketing, maintain indicia of ownership in an UST or UST system primarily to protect a security interest. Those most affected by this "security interest exemption" include private lending institutions or other persons that guarantee loans secured by real estate containing an UST or UST system, or that acquire title to, or other indicia of ownership in, a contaminated UST or UST system.[1] However, the security interest exemption is not limited solely to lending institutions; it potentially applies to any person whose indicia of ownership in an UST or UST system is maintained primarily to protect a security interest.

The RCRA subtitle I security interest exemption not only affects secured creditors but also UST and UST system owners who seek capital through the private lending market. Today's proposed rule will provide a regulatory exemption from corrective action regulatory requirements for those persons who provide secured financing to UST and UST system owners. EPA expects this rule, in conjunction with the statutory exemption in section section 9003(h)(9), to encourage the extension of credit to credit-worthy UST owners. At present, EPA believes that concerns over environmental liability are making a significant number of lenders reluctant to make loans to otherwise credit-worthy owners and operators of USTs. The free flow of credit to UST owners (many of whom are small entities that may rely on secured financing mechanisms for capital) is expected to assist UST owners in meeting their obligations to upgrade, maintain, or otherwise comply with RCRA subtitle I and other environmental requirements. Conversely, the lack of such capital may adversely affect the ability of an UST owner to meet its obligations under Subtitle I, with concomitant adverse environmental impacts from USTs and UST systems that are out of compliance due to the lack of financing for the UST owner and operator. (For a more detailed discussion, please refer to the *Regulatory Background Document* for this proposed rule, located in the OUST Docket at 401 M Street, SW., room 2616, Washington, DC 20460.)

The Agency is also concerned that if otherwise credit-worthy UST owners and operators are unable to obtain financing to perform leak detection tests, or to upgrade or replace deficient tanks, the market for UST equipment could be adversely affected, thereby limiting the availability and/or affecting

[1] Under the laws of some states, an interest in real property may include an interest in USTs or UST systems located on that property. See *Sunnybrook Realty Co. Inc. v. State of New York, Kesbec, Inc. v. State of New York*, Claim Nos. 32844, 33125; 15 Misc. 2d 739; 182 N.Y.S. 2d 983. Of course, the loan documents may specifically include or exclude USTs as collateral securing the obligation.

the cost of such equipment. In addition, a lack of adequate capital could produce a ripple effect which would cut across other portions of the UST-related industrial sector. Based on letters received from UST equipment manufacturers, EPA believes that this sector has suffered as a direct result of the capital squeeze on UST owners and operators. The Agency is further concerned that many UST equipment manufacturers may find it increasingly difficult to sustain their production of UST equipment. Unnecessary constrictions on the free flow of capital for UST compliance and improvements could force companies to abandon their production of UST equipment or to close altogether, and it may have adverse impacts on the environment by making the investment or development of new UST technological innovations more difficult.

The preamble to this proposed rule is structured as follows: The following section briefly describes the UST program. This section is followed by a discussion of this proposed rule, which includes a description of the various options lenders may exercise both pre- and post-foreclosure with respect to regulatory compliance for a secured UST or UST system. Proposed regulatory text concludes this proposed rule.

II. Description of the UST Regulatory Program

Based on the Agency's study of the banking community's lending practices and discussions with representatives of both lenders and borrowers, EPA believes that the lending community in general is not particularly familiar with the UST statutory scheme and regulatory program. Because UST and UST systems are likely to be used as collateral in securing loans to borrowers, the Agency believes that it is appropriate and useful to briefly describe the UST program in the preamble of this proposed rule. The following discussion is general in nature and is intended to provide a framework for lenders or others to better understand the scope and intent of the program; it is not intended to be a substitute for the regulations themselves.

Under the Hazardous and Solid Waste Amendments of 1984, Congress responded to the increasing threat to groundwater posed by leaking underground storage tanks by adding subtitle I to the Resource Conservation and Recovery Act. Subtitle I required EPA to develop a comprehensive regulatory program for USTs storing petroleum or hazardous substances. Congress directed the Agency to publish regulations that would require owners and operators of new tanks and tanks already in the ground to prevent and detect leaks, cleanup leaks, and demonstrate that they are financially capable of cleaning up leaks and compensating third parties for resulting damages.

EPA's UST regulations, 40 CFR parts 280 and 281, apply to any person who owns or operates an UST or UST system. The term "owner" is defined in the statute generally to mean any person who owns an UST used for the storage, use, or dispensing of substances regulated under subtitle I of RCRA (which includes both petroleum and hazardous substances) (section 9001(3), 42 U.S.C. 6991(3)). Owners are responsible for complying with the "technical requirements," "financial responsibility requirements," and "corrective action requirements" specified in the statute and regulations. These requirements are intended to ensure that USTs are managed and maintained safely, so that they will not leak or otherwise cause harm to human health and the environment. In addition, should a leak occur, the requirements provide that the owner is responsible for addressing the problem.

These same requirements apply to any person who "operates" an UST system. The term "operator" is very broad and means "any person in control of, or having responsibility for, the daily operation of the underground storage tank" (section 9001(4), 42 U.S.C. 6991(4)). As with owners, there may be more than one operator of a tank at a given time. Each owner and operator has obligations under the statute and regulations. In this respect, it is important to understand that a person may have obligations under subtitle I either as an owner or as an operator, or both.

The following subsections describe briefly each of the major components of the UST regulatory program applicable to persons who own or operate USTs and UST systems.

A. UST Technical Standards

The technical standards of 40 CFR part 280 referred to here include: Subpart B—UST systems: Design, Construction, Installation, and Notification (including performance standards for new UST systems, upgrading of existing UST systems, and notification requirements); Subpart C—General Operating Requirements (including spill and overfill control, corrosion protection, reporting and recordkeeping); Subpart D—Release Detection; § 280.50 (reporting of suspected releases) of Subpart E—Release Reporting, Investigation, and Confirmation; and Subpart G—Out of Service UST Systems (including temporary and permanent closure). These regulations impose obligations upon UST owners and operators, separate from the subtitle I corrective action requirements discussed in Section II. B of this preamble.

1. Leak Prevention

Before EPA regulations were issued, most tanks were constructed of bare steel and were not equipped with release prevention or detection features. 40 CFR 280.21 requires UST owners and operators to ensure that their tanks are protected against corrosion and equipped with devices that prevent spills and overfills no later than December 22, 1998. Tanks installed before December 22, 1988 must be replaced or upgraded by fitting them with corrosion protection and spill and overfill prevention devices to bring them up to new-tank standards. USTs installed after December 22, 1988 must be fiberglass-reinforced plastic, corrosion-protected steel, a composite of these materials, or determined by the implementing agency to be no less protective of human health and the environment and must be designed, constructed, and installed in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory. Piping installed after December 22, 1988 generally must be protected against corrosion in accordance with a national code of practice. All owners and operators must also ensure that releases due to spilling or overfilling do not occur during product transfer and that all steel systems with corrosion protection are maintained, inspected, and tested in accordance with § 280.31.

2. Leak Detection

In addition to meeting the leak prevention requirements, owners and operators of USTs must use a method listed in §§ 280.43 through 280.44 for detecting leaks from portions of both tanks and piping that routinely contain product. Deadlines for compliance with the leak detection requirements have been phased in based on the tank's age: The oldest tanks, which are most likely to leak, had the earliest compliance deadlines.

3. Release Reporting

UST owners and operators must, in accordance with § 280.50, report to the implementing agency within 24 hours, or another reasonable time period specified by the implementing agency,

the discovery of any released regulated UST substances, or any suspected release. Unusual operating conditions or monitoring results indicating a release must also be reported to the implementing agency.

4. Closure

Owners or operators who would like to take tanks out of operation must either temporarily or permanently close them in accordance with 40 CFR part 280, subpart G—Out-of-Service UST Systems and Closure. When UST systems are temporarily closed, owners and operators must continue operation and maintenance of corrosion protection and, unless all USTs have been emptied, release detection. If temporarily closed for three months or more, the UST system's vent lines must be left open and functioning, and all other lines, pumps, manways, and ancillary equipment must be capped and secured. After 12 months, tanks that do not meet either the performance standards for new UST systems or the upgrading requirements (excluding spill and overfill device requirements) must be permanently closed, unless a site assessment is performed by the owner or operator and an extension is obtained from the implementing agency. To close a tank permanently, an owner or operator generally must: Notify the regulatory authority 30 days before closing (or another reasonable time period determined by the implementing agency); determine if the tank has leaked and, if so, take appropriate notification and corrective action; empty and clean the UST; and either remove the UST from the ground or leave it in the ground filled with an inert, solid material.

5. Notification, Reporting, and Recordkeeping

UST owners who bring an UST system into use after May 8, 1986 must notify state or local authorities of the existence of the UST and certify compliance with certain technical and other requirements, as specified in § 280.22. Owners and operators must also notify the implementing agency at least 30 days (or another reasonable time period determined by the implementing agency) prior to the permanent closure of an UST. In addition, owners and operators must keep records of testing results for the cathodic protection system, if one is used; leak detection performance and upkeep; repairs; and site assessment results at permanent closure (which must be kept for at least three years).

B. Corrective Action Requirements

Owners and operators of UST systems containing petroleum or hazardous substances must investigate, confirm, and respond to confirmed releases, as specified in §§ 280.51 through 280.67. These requirements include, where appropriate: Performing a release investigation when a release is suspected or to determine if the UST system is the source of an off-site impact (investigation and confirmation steps include conducting tests to determine if a leak exists in the UST or UST system and conducting a site check if tests indicate that a leak does not exist but contamination is present); notifying the appropriate agencies of the release within a specified period of time; taking immediate action to prevent any further release (such as removing product from the UST system); containing and immediately cleaning up spills or overfills; monitoring and preventing the spread of contamination into the soil and/or groundwater; assembling detailed information about the site and the nature of the release; removing free product to the maximum extent practicable; investigating soil and groundwater contamination; and, in some cases, outlining and implementing a detailed corrective action plan for remediation.

C. Financial Responsibility Requirements

The financial responsibility regulations (40 CFR part 280, subpart H) require that UST owners or operators demonstrate the ability to pay the costs of corrective action and to compensate third parties for injuries or damages resulting from the release of petroleum from USTs. The regulations require all owners or operators of petroleum USTs to maintain an annual aggregate of financial assurance of $1 million or $2 million, depending on the number of USTs owned. Financial assurance options available to owners and operators include: Purchasing commercial environmental impairment liability insurance; demonstrating self-insurance; obtaining guarantees, surety bonds, or letters of credit; placing the required amount into a trust fund administered by a third party; or relying on coverage provided by a state assurance fund.

D. State Program Approval Regulations

Subtitle I of RCRA allows state UST programs approved by EPA to operate in lieu of the federal program. EPA's state program approval regulations under 40 CFR part 281 set standards for state programs to meet.

E. Scope of the UST Program

There are certain types or classes of tanks that are exempt from all or part of subtitle I's requirements. Specifically excluded by statute are: Farm and residential tanks of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes; tanks used for storing heating oil for consumptive use on the premises where stored; tanks stored on or above the floor of underground areas (such as basements or tunnels); septic tanks; systems for collecting stormwater or wastewater; flow-through process tanks; emergency spill and overfill tanks that are expeditiously emptied after use; and tanks holding 110 gallons or less (42 U.S.C. 6991(1)).

In addition, and of particular importance to today's proposal, the statute excludes one type of potential "owner" from the corrective action requirements applicable to owners. Specifically, the statute excludes from the definition of owner any person "who, without participating in the management of an UST, and otherwise not engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect the owner's security interest in the tank" (RCRA section 9003(h)(9), 42 U.S.C. 6991b(h)(9)). This statutory provision is intended to exempt from cleanup responsibility a person whose only connection with a tank is as the holder of a security interest; i.e., a bank or other secured creditor who has extended credit to a borrower (commonly the tank's owner) and who has in return secured the loan or other obligation by taking a security interest in the tank. EPA has promulgated regulations governing corrective action under subtitle I. (See 40 CFR part 280, §§ 280.51 through 280.67.) The regulation proposed today addresses the requirements of subtitle I that are applicable to a person who holds a security interest in a tank (a "security holder" or merely "holder") from the time that the person extends the credit up through and including foreclosure and re-sale. As described in this proposed rule, a holder may face obligations either as an owner or as an operator, depending upon the specific activities undertaken by the holder.

III. The UST Security Interest Exemption and Intent of Today's Proposed Rule

A. Overview

The security interest exemption under subtitle I, section 9003(h)(9) of RCRA, 42 U.S.C. 6991b(h)(9), provides:

As used in this subsection, the term "owner" does not include any person who, without participating in the management of an underground storage tank and otherwise not engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect the owner's security interest in the tank.

Limited legislative history exists concerning the RCRA subtitle I security interest exemption. No guidance or other indication is available concerning the types of activities that Congress considered to be consistent with the subtitle I security interest exemption, or about the types of activities that Congress considered to be impermissible participation in an UST or UST system's management.

The statutory exemption is limited to liability for corrective action at petroleum-contaminated sites. Since the subtitle I security interest exemption applies only to the corrective action requirements for petroleum—Part 280 Subpart F and portions of subpart E, one interpretation of the statute could hold that the holder is not exempt from complying with other portions of the statute and regulations applicable to an "owner" of a tank. These other parts include 40 CFR part 280, subparts B, C, D, E (§ 280.50 only), and G (hereafter referred to as the "UST technical standards" for purposes of this rule), and Subpart H—Financial Responsibility. However, the statute is silent with respect to a holder's liability for these requirements solely as a consequence of having ownership rights in a tank primarily to protect a security interest. The Agency does not believe that these limited ownership rights rise to the level of full "ownership" sufficient to make the holder an "owner" of the tank, as that term is used in section 9001(3) of RCRA subtitle I. Therefore, EPA is proposing, under its broad rulemaking authority in section 9003, that a holder who meets the criteria specified in this proposed rule (i.e., whose only connection with the tank is as the bona fide holder of a security interest in the UST or UST system) is not subject to the UST technical standards and financial responsibility requirements otherwise applicable to a tank owner. EPA believes that this is both appropriate under the Agency's rulemaking authority and consistent with Congressional intent in providing the section 9003(h)(9) exemption for those persons who provide only financing to owners of a tank. Accordingly, a qualifying holder will not be required to comply with the full panoply of EPA regulations implementing subtitle I that apply to tank owners prior to or following foreclosure, provided that the requirements of today's proposed rule are satisfied.

With respect to a holder's potential to be an "operator" of a tank prior to foreclosure, consistent with the provisions of this proposed rule, the holder typically will not be involved in the day-to-day operations of the tank, and will therefore not incur liability as an "operator."[2] By foreclosing, however, the holder takes affirmative action with respect to the tank and displaces the borrower; therefore, by necessity, the holder has taken "control of . . . [and] responsibility for . . ." the tank, and is therefore a tank operator under the definition at 42 U.S.C. 6991(4). However, under today's proposed rule, a foreclosing holder's responsibility for corrective action as an operator is limited in certain circumstances: In general, a holder's obligations would be limited under the provisions of this rule where the foreclosed-on tank is no longer storing petroleum, or where the holder itself empties the tank within a certain time period. In these circumstances, while a holder is an operator and therefore subject to the UST program's technical requirements and other obligations, a holder may remain exempt from the corrective action requirements and satisfy the technical requirements by exercising one of the options for compliance described in Section III. D. 2 of this preamble. These options allow a holder to satisfy its regulatory obligations as an "operator" by undertaking specified minimally burdensome and environmentally protective actions to secure and protect the UST or UST system. On the other hand, a holder who operates a tank by, for example, storing or dispensing product following foreclosure will be subject to the full range of requirements applicable to any person operating a tank (including corrective action requirements).

In developing today's proposal, EPA examined the potential obligations under subtitle I of government entities that act as conservators or receivers of assets acquired from failed lending and depository institutions, such as the Federal Deposit Insurance Corporation (FDIC) and Resolution Trust Corporation (RTC). Where a government entity or its designee is acting as a conservator or receiver, EPA interprets the security interest exemption in RCRA subtitle I section 9003(h)(9) to preclude the imposition of the insolvent estate's liabilities against the government entity acting as the conservator or receiver, and considers the liabilities of the institution being administered to be limited to the institution's assets. The situation of a conservator or receiver of a failed or insolvent lending institution is analogous to that of a trustee (particularly a trustee in bankruptcy) that is administering an insolvent's estate and, in accordance with those principles, the insolvent's liabilities are to be satisfied from the estate being administered and not from the assets of the conservator or receiver. Therefore, satisfaction of an estate's debts or liabilities would not reach the general assets of the FDIC, the RTC, those of any other government entity acting in a similar capacity, or those of a private person acting on behalf of the government conservator or receiver.

B. Legal Authority

The legal basis for this proposed rule is the Agency's broad authority to issue regulations interpreting and implementing the provisions of RCRA subtitle I at issue in this proposal. Section 9003(b), 42 U.S.C. 6991b(b) provides EPA with authority to "promulgate release detection, prevention, and correction regulations applicable to all owners and operators of underground storage tanks, as may be necessary to protect human health and the environment."[3]

The Agency is proposing to define the regulatory terms under which a secured creditor may, consistent with the statutory exemption, avoid responsibility for corrective action as an owner and operator of an underground storage tank, as well as proposing an exemption from certain financial responsibility requirements. As discussed elsewhere in this preamble (*See* Section III.D), the statutory exemption from corrective action

[2] Of course, a lender which has control of or responsibility for the daily operation of a tank would be an "operator" under section 9001(4), and therefore subject to all requirements applicable to an operator of a tank, including corrective action. Similarly, such acts may also constitute "participation in the management" of the tank, which would void the section 9003(h)(9) exemption and obligate the lender to comply with these same technical, financial, and corrective action requirements as an owner.

[3] The recent decision by the U.S. Court of Appeals for the D.C. Circuit in *Kelley, et al.* v. *EPA*, No. 93-1312 (Feb. 4, 1994) does not apply to or affect the rule the Agency is proposing today. The *Kelley* decision vacated the Agency's rule on lender liability under CERCLA, which interpreted a statutory exemption under CERCLA which is similar to that under RCRA Subtitle I, because "EPA lack[ed] statutory authority to restrict by regulation private rights of action arising under the statute. . . ." *Kelley*, slip op. at 3. As noted above, § 9003 expressly confers upon EPA a broad rulemaking authority; to the extent that the grants of rulemaking authority were not sufficiently explicit under CERCLA, such is not the case under RCRA Subtitle I.

liability addresses only *owners* of underground storage tanks, while the statute and EPA's implementing regulations extend liability to both owners and operators. The Agency believes that without promulgating a rule under EPA's broad grant of rulemaking authority applying the protection found in the statutory security interest exemption to operators as well as owners, the statutory exemption may be rendered virtually meaningless, since an owner of an UST is also typically an UST operator. EPA does not believe that Congress, in creating section 9003(h)(9), intended for an otherwise exempt holder of a security interest to nonetheless fall subject to corrective action obligations as an operator. As such, EPA's exercise of its rulemaking authority in the proposed rule is appropriate and, perhaps, needed to fully effectuate the purpose of the statute.

In addition, the Agency has explicit rulemaking authority to, in its discretion, exempt certain classes of owners and operators from corrective action obligations (*i.e.*, holders of security interests as described in this proposal). Section 9003(b) permits the Agency, in promulgating regulations under subtitle I, to make distinctions in its UST regulations between types or classes of tanks, based upon, *inter alia*, "the technical capability of the owners and operators." Because security interest holders are typically not as a general matter engaged in the operation and maintenance of USTs (and thus do not possess the technical capacity of most UST owners and operators), EPA does not believe that requiring them to comply with highly detailed technical requirements is appropriate where requiring them to do so is not necessary for protection of human health and the environment. Furthermore, the Agency believes an exemption from these regulatory requirements is appropriate in the context of this proposed rule, where an exemption will serve, albeit indirectly, to advance the goals of subtitle I by making credit more available and thus aiding in the implementation of tank upgrade requirements.

However, this authority is not open-ended, as section 9003(a) requires EPA to promulgate regulations that are protective of human health and the environment. Without compromising the level of protectiveness established by the UST program, EPA previously relied on its section 9003(b) authority when it excluded a group of owners and operators from RCRA subtitle I requirements in the final Financial Responsibility Rule (53 FR 43322, Oct. 26, 1988). (In relevant part, the preamble to the final Financial Responsibility Rule states: "The Agency does not interpret the Congressional intent of subtitle I to preclude exempting any class of USTs from otherwise applicable requirements when the Agency has determined that such requirements are not necessary to protect human health or the environment.") That rule exempted states and the federal government from the UST financial responsibility requirements since those entities were, as a class, able to satisfy the purpose of the financial responsibility requirements in the absence of regulation.

Similarly, for purposes of this proposal, EPA believes that it is reasonable, in light of the purposes behind this proposal, to exempt a holder from RCRA subtitle I corrective action requirements as an operator if its USTs are empty and secure (as would be required under today's proposal) or if the holder chooses to also engage in environmentally beneficial activities (as discussed in Section III. E of this preamble). Because of the requirements a holder must meet before enjoying this proposed exemption, EPA's UST regulations will satisfy the statutory requirement that they be protective of human health and the environment.

C. Liability of a Holder as an Owner of an Underground Storage Tank or Underground Storage Tank System

The following sections describe the key terms used in this proposed rule. For the most part, these are also terms used in the section 9003(h)(9) security interest exemption. This section specifies the activities that are not "participating in the management" of a tank and which a holder may under today's proposal, engage in consistent with subtitle I regulatory requirements.

1. Petroleum Production, Refining, and Marketing

"Production of petroleum" includes, but is not limited to, activities involved in the production of crude oil or other forms of petroleum, as well as the production of petroleum products from purchased materials, either domestically or abroad. "Refining" includes the processes of cracking, distillation, separation, conversion, upgrading, and finishing of refined petroleum or petroleum products. "Marketing" includes the distribution, transfer, or sale of petroleum or petroleum products for wholesale or retail purposes. A holder who stores petroleum products in USTs for on-site consumption only, such as to provide heat to an office building or to refuel its own vehicles, is not considered to be engaged in petroleum production, refining, or marketing for the purposes of the UST regulatory program.

2. Indicia of Ownership

EPA is proposing that "indicia of ownership" means ownership or evidence of an ownership interest in a petroleum UST or UST system. EPA is not proposing to limit or qualify type, quality, or quantity of ownership indicia that may be held by a person for the purpose of the regulatory exemption. The nature of the ownership interest may vary according to the type of secured transaction and the nature of the holder's relationship (such as that of a guarantor or surety). Accordingly, indicia of ownership may be evidence of any ownership interest or right to an UST or UST system, such as a security interest, an interest in a security interest, or any other interest in an UST or UST system. For purposes of this proposed rule, examples of such indicia include, but are not limited to, a mortgage, deed of trust, or legal or equitable title obtained pursuant to foreclosure or its equivalents, a surety bond, guarantee of an obligation, or an assignment, lien, pledge, or other right to or form of encumbrance against an UST or UST system. Accordingly, it is not necessary for a person to hold actual title or a security interest in order to maintain some indicia or evidence of ownership in an UST or UST system.

3. Primarily To Protect a Security Interest

EPA is proposing that the term "primarily to protect a security interest" as used in this proposed regulation means a holder's indicia of ownership are held primarily for the purpose of securing payment or performance of an obligation. EPA intends this phrase to require that the ownership interest be maintained primarily for the purpose of, or primarily in connection with, securing payment or performance of a loan or other obligation (a security interest), and not an interest in the UST or UST system held for some other reason.

A security interest may arise pursuant to a variety of statutory or common law financing transactions. While a security interest is ordinarily created by mutual consent, such as a secured transaction within the scope of Article 9 of the Uniform Commercial Code, there are other means by which a security interest may be created, some of which may or may not be the result of a consensual arrangement between the parties to the transaction. In general, a transaction

that gives rise to a security interest within the ambit of this proposed rule is one that provides the holder with recourse against an UST or UST system of the person pledging the security; the purpose of the interest is to secure the repayment of money, the performance of a duty, or of some other obligation. *See generally* J. White & R. Summers, *Handbook on the Uniform Commercial Code* § 22 (2d Ed. 1980); *Restatement of Security* (1941).

As a matter of general law, security interests may arise from transactions in which an interest in an UST or UST system is created or established for the purpose of securing a loan or other obligation, and includes mortgages, deeds of trust, liens, and title held pursuant to lease financing transactions. Security interests may also arise from transactions such as sale-and-leasebacks, conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements or accounts receivable financing agreements, consignments, among others, provided that the transaction creates or establishes an interest in an UST or UST system for the purpose of securing a loan or other obligation.

In contrast, "indicia of ownership" held "primarily to protect [a] security interest" do not include evidence of interests in the nature of an *investment* in the UST or UST system, or an ownership interest held primarily for any reason other than as protection for a security interest. The person holding ownership indicia to protect a security interest may have additional, secondary reasons for maintaining the indicia in addition to protecting a security interest; maintaining indicia for reasons in addition to protecting a security interest may be consistent with the exemption and this proposed rule. However, any such additional reasons must be secondary to protecting a security interest in the secured UST or UST system. EPA recognizes that lending institutions have revenue interests in the loan transactions that create security interests; such revenue interests are not considered to be investment interests, but are considered secured transactions falling within the proposed security interest regulatory exemption.

4. "Holder" of Ownership Indicia

A "holder" as used in this proposed regulation is a person who maintains ownership indicia primarily to protect a security interest, however acquired or held. The term "holder" includes the initial holder (such as the loan originator) and any subsequent holder, such as a successor-in-interest, subsequent purchaser on the secondary market, loan guarantor, surety, or other person who maintains indicia of ownership primarily to protect a security interest. The term also includes any person acting on behalf of or for the benefit of the holder, such as a court-appointed receiver or a holder's agent, employee, or representative.

Finally, it should be noted that lending institutions, which typically hold a large number of security interests, may also act in some trustee, fiduciary, or other capacity with respect to an UST or UST system. However, this rule does not address circumstances in which a lending institution or any person acts as a trustee, or in a non-lending capacity, or has any interest in an UST or UST system other than as provided in this rule. Because this proposed regulation, as well as the exemption in section 9003(h)(9), addresses only persons who maintain a "security interest," any discussion of persons with other interests or involvement in an UST or UST system is beyond the scope of this proposed rule. Of course, a trustee or other fiduciary with respect to an UST or UST system (or any person who independent of the status as trustee or fiduciary) who holds indicia of ownership in the UST or UST system primarily to protect a security interest may fall within this proposed security interest regulatory exemption.

5. Participating in Management

EPA proposes that, as used in this proposed rule, "participation in the management of an UST or UST system" means the actual involvement in the management or control of decisionmaking related to the UST or UST system by the holder. Participation in management does not include the mere capacity or unexercised right or ability to influence UST or UST system operations. This proposal contains a list of activities that is not all-inclusive, but which generally describes activities that are not considered to be evidence that a holder is participating in the management of an UST or UST system. In addition, to address those other activities not specifically listed, a general test of management participation is proposed. The general test specifies that a holder is considered to be participating in management, within the scope of this proposed regulatory exemption, when it exercises decisionmaking control over the borrower's UST or UST system, or where the holder assumes overall management responsibility encompassing decisionmaking authority over the enterprise that includes day-to-day operation of the UST or UST system.

Under the proposed rule, activities that are evidence that a holder is participating in the management of an UST or UST system, and thus acting outside the scope of this proposed regulatory exemption, include: Exercising management control or decisionmaking authority over operational aspects of an UST or UST system, or securing a lease agreement, contractual arrangement, or employee relationship with any other person to manage or operate the UST or UST system. Such activities indicate that a holder is involved in or exercising decisionmaking control of operations of the UST or UST system in which the holder has a security interest.

For purposes of this proposed rule, a holder performing the functions of a plant manager, operations manager, chief operating officer, chief executive officer, and the like, of the facility or business at which the UST is located is considered to be exercising management control or decisionmaking authority over the operational aspects of the UST or UST system and therefore, participating in management, unless the responsibilities for the position specifically exclude all UST responsibilities. Control over the operational aspects of management should not be confused, however, with those activities which constitute administrative or financial management or involvement in non-operational activities. Such activities may be engaged in by a holder in the course of managing a loan portfolio and do not exceed the boundaries of the security interest exemption. Such activities may include providing financial or other assistance, environmental investigations or monitoring of the borrower's business and collateral, engaging in "loan work out" activities, foreclosing on a secured UST or UST system, winding down operations following foreclosure or its equivalents, or divesting itself of the foreclosed-on property containing an UST or UST system. These, as well as other actions related to a holder's financial and administrative obligations, are discussed in more detail in the following section.

a. *General Test of Management Participation.* It is not possible to specifically cover in this proposed rule or any regulation every conceivable situation in which a holder might act, or to make specific provisions for every action that a holder might undertake that might make it ineligible for the protection of the proposed security interest regulatory exemption, voiding

the security interest exemption. A general test or standard of participation in an UST or UST system's management has therefore been formulated to provide a framework within which to assess the consistency of a holder's actions with the limitations of the proposed regulatory exemption.

This proposal's two-prong test or standard of management participation provides that while the borrower is still in possession of an UST or UST system (i.e., pre-foreclosure), a holder participates in the management of an UST or UST system only where the holder either exercises decisionmaking control over the UST or UST system, or where the holder's actions manifest or assume responsibility for the overall management of the UST or UST system's day-to-day operations. The general test adopts a functional approach which focuses on the holder's actual decisionmaking involvement in the operational (as opposed to the financial or administrative) affairs of the borrower's UST or UST system. The first prong looks to whether the holder has exercised decisionmaking control over the borrower's environmental compliance. If so, the holder is "participating in the management" of the UST or UST system as defined in the proposed rule. Similarly, the second prong looks to where the holder is functioning as the overall manager by exercising management at a level encompassing the borrower's environmental obligations, or over all or substantially all of the operational aspects of the borrower's enterprise, regardless of whether decisionmaking control over compliance with the regulations governing the UST or UST system has been explicitly assumed or not. This level of actual involvement in the management of the UST or UST system is sufficient to constitute management participation for purposes of this proposed regulatory exemption.

Under the first prong of the general test, a holder cannot remain within the scope of the exemption if it controls the borrower's environmental compliance activities associated with the UST or UST system. Under the second prong of the general test, the ability to carve out environmental compliance responsibilities from other operational aspects of the borrower's business or enterprise demonstrates that the holder has manifested or assumed operational responsibility at a management level that includes environmental matters, and in doing so is considered to be participating in the UST or UST system's management.

However, management participation does not include the unexercised right to become involved in operational UST or UST system decisionmaking. In other words, if the holder does not exercise its rights to participate in the management of the UST or UST system, it still may qualify for the security interest exemption. Whether the exercise of rights that a holder might have—whether under contract or other agreement (if any) or otherwise, including the enforcement of loan terms and covenants or other rights—rises to the level of participation in the UST or UST system's management is measured by reference to the general test.

b. *Actions that are not participation in management.* Participation in the following activities will not exclusively, in themselves, exceed the bounds of this proposed regulatory exemption: Policing the loan, undertaking financial work out with a borrower where the obligation is in default or in threat of default, undertaking foreclosing and winding up operations (as described later in this proposal), or preparing the UST or UST system for sale or liquidation. In addition, the holder is not considered to be participating in the management of the UST or UST system by monitoring the borrower's business; by requiring or conducting on-site investigations, including site assessments, inspections, and audits, of the environmental condition of the UST or UST system or the borrower's financial condition; by monitoring other aspects of the UST or UST system considered relevant or necessary by the holder; by requiring certification of financial information or compliance with applicable duties, laws, or regulations, or by requiring other similar actions, provided that the holder does not otherwise participate in the management or operation of the UST or UST system, as provided in this proposed regulation. Such oversight and obligations of compliance imposed by the holder are not considered part of the management of an UST or UST system. Although such requirements and oversight may inform and perhaps strongly influence the borrower's management of an UST or UST system, the holder is not considered to be participating in management where the borrower continues to make operational decisions concerning the UST or UST system.

The protected activities of a holder that are specifically identified in this rule are consistent with the language of RCRA section 9003(h)(9) and the overall purpose of subtitle I. Judicial decisions construing the substantially similar language of CERCLA section 101(20)(A) have addressed the issue of the appropriate degree of a holder's involvement at a facility in which it held a security interest (i.e., the standard of "participation in management"). Although the cases articulated the CERCLA standard using different language, these cases generally held that the exemption is abrogated once a holder has divested the borrower or debtor of its management authority prior to foreclosure, such as when the holder becomes involved in the facility's day-to-day operations, where it becomes overly entangled in the affairs of the facility, or where its involvement otherwise affects a facility's hazardous waste practices. See *United States* v. *Maryland Bank & Trust Co.*, 632 F. Supp. 573 (D. Md. 1986); *United States* v. *Mirabile*, 15 Envtl. L. Rep. (Envtl. L. Inst.) 20994 (E.D. Pa. 1985) (participation in financial management insufficient to void the security interest exception to owner liability); *United States* v. *Fleet Factors Corp.*, 901 F.2d 1550 (11th Cir. 1990), cert. denied, 111 S.Ct. 752 (1991).

Other cases interpreting the provisions of CERCLA established that a holder's involvement in financially related matters—such as periodic monitoring or inspections of secured property, loan refinancing and restructuring, financial advice, and similar activities—will not void the exemption. See *Guidice* v. *BFG Electroplating and Manufacturing Co.*, 732 F. Supp. 556 (W.D. Pa. 1989); *United States* v. *Nicolet*, 29 Envtl. Rep. Cas. (BNA) 1851 (E.D. Pa. 1989); *United States* v. *Mirabile*, 15 Envtl. L. Rep. (Envtl. L. Inst.) 20994 (E.D. Pa. 1985) (participation in financial management insufficient to void the security interest exception to owner liability). The variations in the courts' articulations of the standard, however, left unclear the precise degree of involvement that could be undertaken without voiding the CERCLA exemption. See, e.g., *Fleet Factors Corp.*, 901 F.2d at 1557 (secured creditor may incur CERCLA liability by participating in the financial management of a facility to a degree indicating a capacity to influence the corporation's treatment of hazardous waste); In *re Bergsoe Metal Corp.*, 910 F.2d 668 (9th Cir. 1990) ("there must be some actual management of the facility before a secured creditor will fall outside the exception [found in CERCLA section 101(20)(A)]"). However, more recent cases under CERCLA have articulated a standard of management participation that is substantially similar to that in this proposed rule. See *United States* v. *McLamb*, 5 F. 3d 69 (4th Cir. 1993); *Waterville Industries, Inc.* v. *Finance*

Authority of Maine, 984 F 2d. 549 (1st Cir. 1993).

While the cases listed above describe particular activities and draw a line between the actions of a holder that are and are not evidence of management participation for purposes of CERCLA, there remains uncertainty about the effect of activities commonly or routinely undertaken by a holder in the course of managing a loan secured by an UST or UST system. EPA believes that the uncertainty created for holders examining their potential for liability under CERCLA also exist when holders assess their potential obligations under RCRA subtitle I. Therefore, this proposed rule is intended to specify the compliance obligations for lenders when conducting normal business activities and to define with greater precision the point at which a holder's actions pass from loan oversight and advice to actual UST or UST system management.

The following sections discuss and describe the specific activities of a holder that the proposed rule defines as either activities that indicate the holder's participation in the management of an UST or UST system or those that are *not* instances of participation in the management of an UST or UST system by a person holding indicia of ownership primarily to protect a security interest in the UST or UST system.

It bears repeating, however, that the activities identified in this proposed rule do not specify the only activities that may be undertaken by a holder without losing the protection of the proposed security interest regulatory exemption, and one should not infer that activities not specifically mentioned in this rule are automatically considered evidence of participation in an UST or UST system's management—those must be addressed on a case-by-case basis based on the general test provided in this rule.

(1) *Actions at the inception of the loan or other transaction giving rise to a security interest.* Actions undertaken by a holder prior to the inception of a transaction in which indicia of ownership are held primarily to protect a security interest are irrelevant with respect to the general test of participation in management, and thus are not considered evidence of participation in the management of the UST or UST system. Thus, consultation and negotiation concerning the structure and terms of the loan or other obligation, the payment of interest, the payment period, and specific or general financial or other advice, suggestions, counseling, guidance, or other actions at or prior to the time that indicia of ownership are first held are not considered evidence of participation in the management of the UST or UST system for purposes of this proposed rule. Activities that take place *prior* to holding indicia of ownership are not relevant for determining whether the holder has participated in the management of the UST or UST system *after* the time that the holder acquires indicia of ownership.

In addition to such pre-loan involvement, a holder may determine (whether for risk management or any other business purpose) to undertake or require an environmental investigation (which could include a site assessment, inspection, and/or audit) of an UST or UST system securing the loan or other obligation. Such environmental investigation may be undertaken by the holder, for example, or the holder may require one to be conducted by another party (such as the borrower) as a condition of the loan or other transaction. Neither RCRA Subtitle I nor this proposed rule require that such an environmental investigation be undertaken to qualify for the security interest exemption, and the obligations of a holder seeking to avail itself of the exemption cannot be based on or affected by the holder's not conducting or not requiring an environmental investigation in connection with the security interest. Similarly, a holder is not engaged in management participation solely as a result of undertaking or requiring an environmental investigation, and nothing in this proposed rule should be understood to discourage a holder from undertaking or requiring such an environmental investigation in circumstances deemed appropriate by the holder. Because lender-conducted or -required investigations of a borrower's business or collateral are information-gathering in nature, such activities cannot, alone, be considered to be management participation by a holder.

In the event that a pre-loan environmental investigation of a UST or UST system reveals contamination, the holder may undertake any one of a variety of responses that it deems appropriate: For example, the holder may refuse to extend credit or to follow through with the transaction or instead maintain indicia of ownership in other, non-contaminated property as protection for the security interest. Alternatively, a holder may determine that the risk of default is sufficiently slight (or that the extent of contamination is minimal and does not significantly affect the value of the UST or UST system as collateral) to proceed to extend credit and maintain indicia of ownership in the UST or UST system. Additionally, the holder may require the borrower to clean up the contamination as a condition for extending the loan. Such activities are not considered participation in the UST or UST system's management, and a holder that knowingly takes a security interest in contaminated collateral is not subject to compliance with the RCRA Subtitle I corrective action regulatory program solely on this basis.

(2) *Policing the security interest or loan.* A holder may undertake actions that are consistent with holding ownership indicia primarily to protect a security interest which include, but are not limited to, a requirement that the borrower clean up a release from the UST or UST system which may have occurred prior to or during the life of the loan or security interest (as described in the last section); a requirement of assurance of the borrower's compliance with applicable federal, state, and local environmental or other laws and regulations during the life of the loan or security interest; securing authority or permission for the holder to periodically or regularly monitor or inspect the UST or UST system in which the holder possesses indicia of ownership, or the borrower's business or financial condition, or both; or to comply with legal requirements to which the holder is subject; or other requirements or conditions by which the holder is able to police adequately the loan or security interest, provided that the exercise by the holder of such other loan policing activities are not considered evidence of management participation as provided in the proposed rule's "general test" of management participation.

The authority for the holder to take such actions may be contained in contractual (e.g., loan) documents or other relevant documents specifying requirements for financial, environmental, and other warranties, covenants, and representations or promises from the borrower. While the regulatory exemption in this proposed rule requires that the actions undertaken by a holder in overseeing or managing the loan or other obligation be consistent with those of a person whose indicia of ownership in an UST or UST system is held primarily to protect a security interest, a holder is not expected to be an insurer or guarantor of environmental safety or quality at a secured UST or UST system. The inclusion of environmental warranties and covenants is not considered to be evidence of a holder's acting as an insurer or guarantor, and a finding of

"management participation" cannot be premised solely on the existence of such terms or upon the holder's actions that ensure that the UST or UST system is managed in an environmentally sound manner. Since these actions are consistent with holding indicia of ownership primarily to protect a security interest, they are not considered to be participation in management in this proposed rule.

(3) *Loan work out.* The holder may determine that actions need to be taken with respect to the UST or UST system to safeguard the security interest from loss. These actions may be necessary when, for example, a loan is in default or threat of default, and are commonly referred to as "loan work out" activities. "Loan work out" is largely an undefined term but is generally understood in the financial community to mean those activities undertaken to prevent, mitigate, or cure a default by the obligor or to preserve or prevent the diminution of the value of the security. Loan work out activities are recognized by EPA as a common lender undertaking and, as such, these actions will not take a holder outside of the scope of the security interest exemption provided for in this proposed rule, provided that such actions are consistent with the proposed general test of management participation.

When the holder undertakes loan work out activities, provides financial or other advice, or similar support to a financially distressed borrower, the holder will remain within the scope of the proposed security interest regulatory exemption only so long as the holder does not participate in management as provided by this proposed rule's general test. Loan work out actions that are not evidence of "participation in management" include, but are not limited to: Restructuring or renegotiating the terms of the security interest; requiring payment of additional rent or interest; exercising forbearance with regard to the security interest; requiring or exercising rights pursuant to an assignment of accounts or other amounts owing to an obligor; requiring or exercising rights pursuant to an escrow agreement pertaining to amounts owing to an obligor; providing specific or general financial or other advice, suggestions, counseling, or guidance; and exercising any right or remedy the holder is entitled to by law or under any warranties, covenants, conditions, representations, or promises from the borrower.

(4) *Foreclosure and sale or liquidation.* Foreclosure and possession of property for purposes of sale or liquidation are often the only remedy the holder may have to secure performance of an obligation. The process of foreclosure and sale or liquidation of a foreclosed-on UST or UST system often results in the exclusive possession of the UST or UST system by the holder and may require or result in the holder's taking record title to the UST or UST system under the laws of some states. For purposes of this proposed rule, the term "foreclosure or its equivalents" includes foreclosure, purchase at foreclosure sale, acquisition or assignment of title in lieu of foreclosure, acquisition of a right to possession or title, or other agreement in settlement of the loan obligation, or any other formal or informal manner by which the holder acquires possession of the borrower's collateral for subsequent disposition in partial or full satisfaction of the underlying obligation. These actions are considered to fall within the scope of the proposed regulatory exemption as necessary incidents to holding ownership indicia primarily to protect a security interest. However, a holder is under the coverage of the proposed rule and is not considered an "owner" of a UST or UST system only so long as the holder's acquisition pursuant to foreclosure is reasonably necessary to ensure satisfaction or performance of the obligation, is temporary in nature, and occurs while the holder is actively seeking to sell or otherwise divest the foreclosed-on UST or UST system.

To meet the requirements of the proposed rule's exemption from regulatory compliance as an "owner" following foreclosure, a holder must be acting consistently with the security interest exemption's requirement that the ownership indicia maintained by the holder continue to be held primarily to protect the security interest. Where a holder's actions indicate that it is not seeking to sell or liquidate the secured assets, the exemption is voided because such actions are akin to holding the asset for investment purposes. This proposed regulation describes circumstances under which a holder may avoid being considered an "owner" of property on which it forecloses for purposes of certain Subtitle I regulations. It is only by complying with the provisions of this proposed rule that the limited ownership rights of a security holder do not rise to the level of full "ownership" sufficient to make the security holder an "owner" of the tank, as that term is used in EPA's UST regulations. The proposed rule first provides a set of general criteria for offering an UST or UST system for sale, and when and under what circumstances an offer of purchase may or may not be rejected. In addition, even though a holder is permitted to use whatever means are appropriate and available to sell or otherwise divest itself of foreclosed-on property, as a measure of certainty this proposed rule contains an objective test that, if followed by a holder, establishes that the holder is meeting the general obligation to divest itself of a foreclosed-on UST or UST system in a reasonably expeditious manner. EPA believes that this aspect of the proposed rule is consistent with the RCRA Subtitle I security interest exemption.

In general, under this proposal, a foreclosing holder must, in order to maintain consistency with the security interest exemption, seek to sell or otherwise divest itself of foreclosed-on property in a reasonably expeditious manner using whatever commercially reasonable means are available or appropriate, taking all facts and circumstances into account. A holder cannot, under the terms of the proposed rule, reject or refuse offers for the property that represent fair consideration for the asset and remain within the proposed regulatory exemption. A holder that outbids or refuses offers from parties offering fair consideration for the property establishes that the property is no longer being held primarily to protect a security interest. The terms of the bid are relevant for this purpose, and a holder is not required to accept offers that would require it to breach duties owed to other holders, the borrower, or other persons with interests in the property that are owed a legal duty. In addition, the term "fair consideration" refers to an all cash offer, which is intended to ensure that this proposed rule would not require a holder to accept a bid that contains unacceptable conditions, such as requirements for indemnification agreements, non-cash offers, "bundled" offers, etc. This proposed provision should not be read to require that a holder may accept only cash offers, however; a holder is always free to accept any offer satisfactory to the holder. The exact requirement that would be imposed by this proposed regulation is that a holder may not reject a cash offer of fair consideration for the foreclosed-on property. If it does, or if it outbids others offering fair consideration, then the holder would, under today's proposal, be considered to be an owner of the UST or UST system in the same manner as any other purchaser.

This proposed rule's provisions defining "fair consideration" and specifying when the foreclosing holder

may reject or outbid offers for the property are formulated to reflect the amount that the holder may bid at the foreclosure sale, or not reject during the foreclosure sale or thereafter, in order to recover on its loan or other obligation. In addition, there may be multiple security interests in a borrower's property held by secured creditors, which the definition of "fair consideration" must account for. Therefore, for a senior creditor, the term "fair consideration" is proposed to mean a cash amount that represents a value equal to or greater than the outstanding obligation owed to the holder (including the fees, penalties, and other charges incurred by the holder in connection with the property). "Fair consideration" is further proposed to indicate that the amount that will recover the holder's "security interest" in the property may vary depending on the seniority of the loan or other obligation that is being foreclosed upon. Specifically, a junior creditor may be required to outbid senior creditors in order to recover the value of its loan or other obligation. The definition of fair consideration therefore distinguishes between what junior or senior creditors may bid or not reject for purposes of maintaining the exemption. In addition, in order to avoid liability under law (for example, to the borrower), the foreclosing holder may be required to seek an amount at the foreclosure sale that is greater than the outstanding obligation owed to the foreclosing holder, or to sell the property in a different manner; therefore, the proposed rule does not require a holder to accept an offer of "fair consideration" if to do so would subject the holder to liability under federal or state law.

In this way the proposed rule's provisions with respect to the sale or disposition of property will not conflict with the manner in which such sales are required to be conducted under general principles of law applicable to the holder and the disposition of the property including the UST. For purposes of this proposed rule, the definition of "fair consideration" is an objective, "bright-line" test to determine whether the foreclosing holder has an investment or other interest in the property that is not within the exemption, or whether the holder's post-foreclosure activities indicate that it continues to maintain its ownership indicia in the property primarily to protect a security interest, and is therefore within the protective ambit of the proposed rule.

While a holder may use whatever means are reasonable and appropriate for marketing foreclosed-on property to establish that it is seeking to divest itself of property in an expeditious manner, this proposed rule also provides a mechanism by which a holder can definitely establish that it continues to hold indicia of ownership primarily to protect a security interest and is not an "owner," for purposes of complying with the UST regulatory program, of foreclosed-on property. This mechanism is intended to act as another "bright line" to provide clear and unambiguous evidence that a holder is not the UST or UST system's "owner" following foreclosure: A holder choosing to avail itself of this bright line test must, within 12 months following the acquisition of marketable title, list the property with a broker, dealer, or agent who deals with the type of property in question, or advertise the property as being for sale or disposition on at least a monthly basis in either a real estate publication or a trade or other publication suitable for the property in question, or a newspaper of general circulation (defined as one with a circulation over 10,000, or one suitable under any applicable federal, state, or local rules of court for publication required by court order or rules of civil procedure) covering the area where the property is located. If the holder satisfies these criteria, the holder is considered to have complied with the requirement in the proposed rule that it is seeking to sell or otherwise divest the property in an expeditious manner.

EPA also recognizes that market conditions, the condition of the property, and other factors may mean that despite reasonable efforts to expeditiously sell or divest foreclosed-on property, the property may not be quickly sold. Therefore, this regulation does not impose a time requirement for the ultimate disposition of foreclosed-on property. Provided that the property is being actively offered for sale by the holder and no offers of fair consideration are ignored, outbid, or rejected, foreclosed-on property may continue to be held by the holder without the holder being considered an "owner" of the UST or UST system for purposes of complying with the UST regulatory program, as detailed in this proposed rule.

Regardless of the manner in which the foreclosing holder chooses to market the property, if at any time after six months following the acquisition of marketable title the holder rejects, or does not act upon within 90 days of receipt of, a written, *bona fide*, firm offer of fair consideration for the property, the holder will lose the protection of the proposed rule. Under this proposal, a "written, *bona fide*, firm offer" is a legally enforceable, commercially reasonable, offer, including all material terms of the transaction, from a ready, willing, and able purchaser who demonstrates to the holder's satisfaction the ability to perform. Where a holder outbids, rejects, or fails to act upon an offer of fair consideration, the holder is considered, for the purpose of the proposed regulatory exemption, to be maintaining its indicia of ownership in the property as protection for investment purposes, and not as security for the obligation.

The proposed exemption from regulatory compliance would also permit a foreclosing holder to undertake actions with respect to the UST or UST system to protect or preserve the value of the secured asset. For example, a holder may determine that it needs to take certain actions with respect to an UST or UST system's operations in order to preserve the value of the foreclosed-on assets or to prevent a future release (such as by the removal of an UST or UST system's contents as described below), or to otherwise prepare property for safe public access incident to sale or liquidation of assets. Precisely because a holder in charge of an UST or UST system may need to take affirmative action with respect to the UST or UST system incident to foreclosure and with respect to any petroleum products that are known to be present, the proposal provides that such actions of dominion and control over the UST or UST system are considered necessary components of holding ownership indicia primarily to protect a security interest, provided such actions are undertaken to protect the asset's value and are not undertaken for investment purposes. Therefore, under this proposed rule, such mitigative or preventative measures are considered to be actions that are consistent with holding ownership indicia primarily to protect the security interest in the UST or UST system.

(5) Winding up operations after foreclosure. In addition, in the post-foreclosure context, this proposed rule provides that a holder that forecloses on an UST or UST system with ongoing operations may wind up the UST or UST system's operations without also being considered to be participating in management. Winding up is considered a protected activity by a foreclosing holder because, without such protection, foreclosure would not be possible where practical or commercial necessity dictates that the foreclosing holder undertake such actions. "Winding up" in the post-foreclosure context includes those actions that are necessary to close down an UST or UST

system's operations, secure the site, and otherwise protect the value of the foreclosed assets for subsequent sale or liquidation. In winding up an UST or UST system, a holder may undertake all necessary security measures or take other actions that protect and preserve an UST or UST system's assets, including steps taken to prevent or minimize the risk of a release or threat of release of the UST or UST system's contents.

D. Liability of a Holder as an Operator of an Underground Storage Tank or Underground Storage Tank System

Although this proposed rule would be promulgated under authority to write regulations governing UST activities, EPA intends that it be consistent with and further the purposes of the statutory security interest exemption found at Section 9003(h)(9). One critical aspect of the RCRA subtitle I statutory security interest exemption is that while it excludes a holder from the definition of "owner" for corrective action purposes, the statute does not explicitly address a holder's responsibilities as an UST or UST system "operator." [4] The absence of explicit language in the statute regarding operators creates a potential problem for holders, since EPA's UST corrective action regulations (as described in Section II. B of this preamble) apply to both owners and operators of underground storage tanks. Thus, although RCRA subtitle I clearly exempts holders from corrective action liability as "owners" of USTs, the statute does not address whether such otherwise exempt persons face correction action liability as "operators" of USTs. Without clear protection from corrective action liability as potential operators of USTs, EPA believes that lenders will continue to be reluctant to make loans to UST-related businesses due to continued uncertainty about their potential liability for corrective action. This regulatory proposal therefore addresses a holder's potential liability for RCRA subtitle I corrective action as an "operator" of an UST or UST system.

1. Pre-Foreclosure Operation

Prior to foreclosure, a holder who is in control of, or has responsibility for, the daily operation of an UST or UST system is subject to the full range of requirements applicable to operators of USTs. In addition, a holder may also forfeit the protection of the proposed regulatory security interest exemption from compliance with the UST regulatory program as an owner if the holder participates in the management of an UST or UST system as defined in this proposal.

However, a holder will not, as a general matter, have control of, or responsibility for, the daily operation of an UST or UST system prior to foreclosure in its capacity as a secured creditor who holds indicia of ownership primarily to protect a security interest. Prior to foreclosure, a holder is permitted to conduct those activities related to its financial and administrative obligations of managing a loan portfolio. The holder in this position will not lose its ability to take advantage of the proposed regulatory exemption exclusively as a result of engaging in these activities. See Section III.C.5 of this preamble for a more complete discussion of this issue.

2. Post-Foreclosure Operation

If a borrower defaults on its loan obligation and the holder, primarily to protect its security interest, forecloses on the borrower's UST or UST system, the holder is faced with the decision to continue or suspend the storage or dispensing of product from the UST. As with activities prior to foreclosure, a holder who operates an UST following foreclosure (in any manner other than placing the UST in temporary or permanent closure as specified in this proposal) would, under the current regulatory scheme, be an "operator" and subject to all subtitle I requirements. If the holder complies with the requirements of this rule for placing a tank into temporary or permanent closure, a holder, although nevertheless an operator, would be exempt from the subtitle I corrective action regulatory requirements otherwise applicable to operators.

The strategies for complying with the UST technical standards described in this proposal include emptying tanks, leaving vent lines open and functioning, capping and securing lines within 15 days after foreclosure, and performing either temporary or permanent closure of the UST or UST system. Conversely, a foreclosing security holder who exercises some other strategy for complying with the subtitle I technical requirements (or who fails to comply) could be an "operator" under the subtitle I regulations and would therefore be subject to the full panoply of subtitle I regulatory obligations applicable to all operators of tanks including the corrective action regulations.

As long as an UST or UST system continues to store product, future releases are possible. Consequently, EPA believes that the best way to ensure that a holder's tanks will not contribute to contamination after the holder has taken possession of the UST or UST system (particularly if the holder is exempted from EPA's corrective action regulations) is to require the holder to empty its tanks of all petroleum product. An UST or UST system is empty—in accordance with § 280.70—when all materials have been removed using commonly employed practices so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight, of the total capacity of the UST system, remain in the system. To ensure that the UST system has been adequately secured, vent lines must be left open and functioning, and all other lines, pumps, manways, and ancillary equipment must be capped and secured (§ 280.70). Under today's proposal, holders who engage in these activities within 15 days after foreclosure will be exempted from the corrective action requirements applicable to "operators." This is a reasonable condition on which to base this exemption since the threat of future contamination will have been effectively abated for the temporary period of time that the property remains in foreclosure by emptying the tank and complying with the other requirements of 40 CFR part 280, as described in this proposed rule. Compliance with these requirements will also satisfy the technical requirements applicable to foreclosing holders as "operators" under the rule proposed today.

EPA is proposing that 15 days be allowed to empty the tank, and cap and secure all lines and equipment based on its familiarity with companies that specialize in providing UST technical services and on the Agency's knowledge of the steps required to properly complete these tasks. Based on this, EPA proposes that 15 days is a reasonable and adequate time frame that limits the period of time during which a tank containing petroleum product may be left largely unattended. However, the Agency is interested in receiving comments from any holders who feel that a 15-day time frame would be inadequate for a holder to arrange for the completion of these tasks. EPA requests comments and data about the adequacy of a 15-day time frame and information supporting an alternative time frame. Information supporting EPA's proposed time frame is available

[4] Under RCRA Subtitle I, being an "operator" is not synonymous with "participating in the management" of an UST or UST system. Section 9001(3)—Definitions and Exemptions—defines the term "operator" to mean "any person in control of, or having responsibility for, the daily operation of the UST system." A person may, without being an "operator" of an UST or UST system, be sufficiently involved so as to be participating in the management (as that term is defined elsewhere in this proposal) of an UST or UST system.

from the Agency OUST docket, reference number UST 3–16.

In addition to emptying and securing the UST or UST system, a holder who wishes to take advantage of the proposed exemption from subtitle I corrective action regulatory requirements as an operator must comply with the subtitle I requirements for either temporary or permanent closure. A holder who chooses to permanently close its UST or UST system, must do so in accordance with §§ 280.71 through 280.74, Subpart G—Out of Service UST Systems and Closure. A holder who chooses to temporarily close its tanks is required, throughout the first 12 months following foreclosure, to maintain corrosion protection and report any known or suspected releases from the UST system. In accordance with § 280.70, release detection is not required as long as the UST system is empty.

If, after 12 months in temporary closure status, the holder possesses an UST or UST system that does not meet either the performance standards in § 280.20 for new UST systems or the upgrading requirements in § 280.21 (excluding the spill and overfill equipment requirements), and the holder has not successfully disposed of the UST or UST system, the holder must either permanently close the UST system in accordance with §§ 280.71 through 280.74 or perform a site assessment in accordance with § 280.72(a) and apply for an extension through the appropriate implementing agency.

A holder will only need to perform a site assessment if it has failed to sell or otherwise divest of its UST or UST system property within 12 months after entering temporary closure and only if the tanks it has acquired have not been upgraded or replaced to meet the requirements of § 280.20 for new UST systems or § 280.21 for upgraded systems. (UST systems that are adequately protected from corrosion and equipped with leak detection devices pose a significantly lower threat to human health and the environment than do substandard tanks.) The site assessment requirement can also be satisfied if one of the external release detection methods allowed in § 280.43(e) or (f) is operating at the end of the 12-month period, and the release detection method operating indicates that no release has occurred. For those who are still in possession of tanks 12 months after foreclosure, many are expected to possess upgraded or replaced tanks since much of the credit that is expected to be extended subsequent to this rule should be used for upgrading or replacing substandard tanks. Under these circumstances, the holder would be allowed to remain in temporary closure indefinitely. Therefore, EPA believes that few situations should call for a site assessment while the holder is in temporary closure. For those cases in which a holder will find it necessary to perform a site assessment and apply for a temporary closure extension, EPA does not believe that such a requirement will pose a significant additional burden upon the holder, since it is increasingly a standard business practice for a site assessment to be conducted upon most transfers of commercial property. (See Guidelines for an Environmental Risk Program, Federal Deposit Insurance Corporation, February 25, 1993.) While in some cases the requirement may oblige a holder to perform a site assessment sooner (within 12 months after foreclosure) rather than later (upon the date of sale or disposition of the UST or UST system), EPA expects that in most cases a site assessment will, in all probability, be performed before the UST or UST system is transferred to a subsequent purchaser.

The purpose of the provision that requires an UST owner and operator to perform a site assessment in order to apply for an extension 12 months after entering temporary closure (if a substandard UST or UST system has not been replaced or upgraded) was to allow a variance mechanism for UST owners to avoid permanent closure of tanks, on a case-by-case basis. The reason for requiring the site assessment before applying for an extension was based on EPA's concerns that prior contamination could have occurred and could continue to spread from a temporarily closed UST system. Although a holder would not be required to comply with EPA's UST corrective action regulations if contamination is discovered (provided, of course, the holder satisfies the requirements of this proposed rule), it would be required to report evidence of the contamination to the implementing agency (as discussed in the following subsection), who can then decide on the appropriate course of action.

Of course, a holder may choose to continue to operate the UST by storing or dispensing product after foreclosure, or otherwise not exercise either of the options described above. The holder may determine that its interests will be best served by forgoing the security interest exemption, continuing operation of the UST system, and perhaps realizing a greater return of capital on the security interest by selling the property with the UST system as a going concern. In such cases, the tank would be regulated in the same manner as a tank operated by any other person, and the holder would be fully responsible as an operator for compliance with RCRA subtitle I regulations, including corrective action, the UST technical standards, and financial responsibility requirements.

EPA believes that the environment is adequately protected where a holder chooses either of the post-foreclosure options described above for complying with the technical requirements of Subtitle I. Where the tank is removed from service and emptied of its contents, the threat of an unknown or undetected leak resulting in environmental contamination is abated; accordingly, the Agency believes it is appropriate to exempt a foreclosing holder from UST corrective action regulatory requirements under these circumstances.

3. Lenders in Foreclosure Upon the Effective Date of the Rule

The Agency recognizes that some lenders may already hold UST properties through foreclosure or its equivalents at the time the final rule is promulgated. Although EPA is primarily concerned about the future availability of capital to UST owners and operators, rather than loans that have already been extended, the Agency recognizes that holders may be concerned about their potential liability associated with current holdings acquired through foreclosure or its equivalents affecting the extension of future UST loans. A holder who possesses an UST property at the time the rule is promulgated may have tanks that still store product. It would be difficult to determine whether or not contamination caused by a release from such tanks had occurred during the time that the holder had possession of the UST property. A holder, therefore, could potentially be held liable as an UST operator if he has possession of a tank at the time the final rule is promulgated.

EPA requests comments on this aspect of today's proposal. We are interested in collecting data that will clarify whether future UST loan decisions would be negatively affected if the security interest exemption is not extended to holders possessing UST properties through foreclosure or its equivalents upon promulgation of this rule. In addition, EPA is interested in comments addressing whether and how an exemption from the UST regulatory requirements could be structured for holders of such tanks. Finally, we are also interested in receiving comments addressing the extent to which such a

regulatory exemption could impact human health and the environment.

4. Release Reporting Requirements Following Foreclosure

Under today's proposal, upon foreclosure, a holder taking advantage of the proposed exemption from corrective action regulations must nevertheless comply with the requirement in § 280.50 that the discovery of any releases from the UST be reported to the implementing agency. Only the reporting requirement must be followed; the holder need not comply with § 280.52, despite the reference to that provision in § 280.50. The release reporting requirement of § 280.50 is part of Subpart E, which details the obligations for reporting known or suspected releases, investigating off-site impacts, confirming that a release has occurred, and cleaning up spills and overfills. While subpart E generally implements Subtitle I's corrective action and site investigation requirements, from which a holder may be excluded under today's proposed rule, § 280.50 has historically been viewed by EPA as part of the UST technical standards.

A holder is responsible, following foreclosure or its equivalents, for reporting to the implementing agency, any discovery of released regulated substances, or any suspected release at an UST site or in the surrounding area. Such reporting is considered necessary to ensure protection of human health and the environment. By informing the implementing agency of a release, the implementing agency can then determine the appropriate response action, if any.

In the absence of today's proposed rule, a holder would have to perform release investigation and confirmation in accordance with §§ 280.51 through 280.53. Under today's proposal, a holder who chooses to take the tank(s) out of service as described in this proposal is required to follow the procedures established in § 280.50 but is not subject to the release investigation and confirmation requirements in §§ 280.51 through 280.53. A holder who elects to keep the tank(s) in operation is obligated to comply with all of the Subpart E requirements, including those related to release investigation and confirmation, and corrective action.

E. Actions Taken to Protect Human Health and the Environment

Because of the special position and role played by bona fide holders, as has been recognized by Congress in creating the statutory exemption from corrective action liability, the Agency believes that it is appropriate to include within the scope of protected UST or UST system activities certain lender actions which protect human health and the environment. EPA believes that there are a number of activities in which a holder may engage after foreclosure which can contribute to the protection of human health and the environment and in which the holder may engage and still meet the terms of the proposed rule's exemption from regulatory requirements. Such activities include: Release response and corrective action for UST systems, permanent or temporary closure of an UST or UST system, tank upgrades or replacements, environmental investigations, maintenance of corrosion protection, and release reporting. The Agency believes that protection of human health and the environment can be advanced by allowing a holder to participate in activities associated with environmental compliance either prior to or following foreclosure on an UST or UST system. Environmental compliance activities are generally considered to be integral to the daily operations of an UST or UST system, and a person who participates in those activities would typically be considered an operator. However, a reasonable holder may also undertake such activities in the course of maintaining its indicia of ownership in the tank to protect its security interest. Therefore, the Agency believes that it is appropriate to propose that environmental compliance activities, if undertaken by a holder, will nevertheless allow the holder to take advantage of the proposed exemption from regulatory requirements. The Agency is not proposing that these activities be required of a holder as a condition for obtaining the security interest exemption as an UST owner, but that holders be able to participate in these activities without losing the protection of the proposed exemption.

Prior to foreclosure, therefore, and where the holder is otherwise permitted,[5] a holder may require the borrower to comply, or itself undertake to ensure compliance, with the subtitle I regulations applicable to the tank owner and operator (typically, the borrower), without being deemed an "operator" under the provisions of this proposed rule. EPA believes that a holder who is ensuring that a tank is operated as specified in 40 CFR part 280 (even if the holder is itself performing the activities authorized or required by part 280) is acting both to preserve the collateral (and therefore acting consistent with its capacity as a security interest holder) and to protect human health and the environment. It is appropriate for a holder to intervene in such circumstances in which human health and the environment are threatened by an UST owner or operator's improper management or operation of its tank(s). However, undertaking activities that bring the tank(s) into compliance (i.e., regulatory compliance actions such as tank testing, leak detection, upgrading, etc.) will not exempt a holder from complying with the UST corrective action regulatory requirements if the holder is otherwise involved in the day-to-day operation of the tank(s). All other acts of operation undertaken by a holder (such as filling the tank(s) with product, selling and/or dispensing tank product, performing overall management functions, etc.) are not shielded activities under this proposed rule because by doing so the holder displaces the borrower as the primary operator of the tank(s).

Furthermore, following foreclosure, where the holder chooses to take advantage of the conditional exemption from the corrective action regulations by emptying and removing the tank from operation, as specified above, the Agency proposes that the holder may—without losing the protection of the proposed rule—undertake cleanup activities consistent with the corrective action requirements of 40 CFR part 280, subpart F at or in connection with the UST or UST system. EPA specifically requests comments on this aspect of today's proposal.

IV. Financial Responsibility Requirements

RCRA section 9003(d), as implemented by EPA at 40 CFR part 280, subpart H—Financial Responsibility, requires owners or operators of petroleum USTs to demonstrate financial responsibility for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental UST releases. As discussed earlier under Section III. A of this proposal, EPA is defining, for purposes of its Subtitle I corrective action and technical requirements, the term "owner" to mean that a holder who maintains ownership rights in an UST or UST system primarily to protect a security interest does not rise to level of a full "owner," and therefore is not subject to compliance with those regulatory requirements. As described earlier, this proposed revision of EPA's corrective action regulatory program is consistent with the Subtitle I statutory security interest exemption. Similarly,

[5] For example, where the lender is permitted pursuant to the loan document or under applicable state laws.

the Agency believes that a holder is not subject to the financial responsibility requirements as an UST owner. The Agency is also proposing to exempt a holder as an UST operator from the financial responsibility requirements.

Before a holder takes possession of an UST or UST system, a holder is not considered an UST operator, for purposes of EPA's technical and financial responsibility regulations, if it is acting merely as a holder and is not in control of the daily operation of the UST or UST system. Therefore, a holder typically is not subject to the UST financial responsibility requirements of 40 CFR part 280, subpart H as an operator prior to foreclosure. EPA is today proposing that a holder be exempted from corrective action as an operator after foreclosure if it ensures that its tanks no longer store petroleum and it complies with the temporary or permanent closure requirements specified in this rule. (See Section III. D. 2 of this preamble). In these situations, where the tanks are empty and pose little threat of release, it would serve no useful purpose to require a holder to demonstrate compliance with the financial responsibility requirements for corrective action. Therefore, the Agency is proposing to exempt holders who satisfy all the other requirements in this proposed rule from demonstrating Subtitle I financial responsibility for UST corrective action.

A holder's responsibility for demonstrating UST financial responsibility for third-party bodily injury and property damage compensation poses a different issue. While RCRA Subtitle I does not include provisions that actually impose third-party liability upon UST owners and operators, it does require UST owners and operators to demonstrate their ability to compensate third parties for bodily injury and property damage caused by accidental releases arising from the operation of an UST or UST system. The Agency believes that a holder who complies with all the conditions set forth in today's proposal should not be required to comply with any of the UST financial responsibility requirements as an owner or operator, including those for both corrective action and third-party liability coverage. EPA has chosen to propose this exemption based on the statutory authority provided in section 9003. The proposed exemption is consistent with the interpretation of that language adopted in the preamble to the UST financial responsibility final rule (53 FR 43323). In that rule, EPA exempted tanks taken out of operation prior to the effective date of the rule from UST financial responsibility compliance. In the preamble to the final rule, EPA recognized that "insurance providers would be extremely reluctant to assure tanks taken out of operation because of the perceived greater uncertainty associated with them" (53 FR 43327). In particular, insurers have indicated that in the case of foreclosed USTs, they would be concerned about vandalism and other threats to USTs at non-operational, unattended gas stations or similar locations with public access. The preamble also states that "even if providers of assurance would assure these tanks, it is unlikely that they would cover leaks which occurred before the effective date of the policy" (53 FR 43327).

A similar situation exists for holders who empty their tanks and enter temporary or permanent closure after foreclosure. EPA has discovered that it is practically impossible to obtain third-party environmental insurance coverage for a new owner of empty tanks. Providers of financial assurance are very reluctant to provide any coverage for tanks that no longer store petroleum product. Further, providers are reluctant to provide coverage for damages that occur after the effective date of the policy for releases that might have occurred prior to the effective date of the policy. Under this proposed rule a holder is required to empty its tanks in order to be exempt from corrective action regulatory requirements. Since providers are unlikely to provide any coverage for empty tanks at non-operational facilities or for releases that occurred prior to foreclosure, and since third-party damages would be extremely unlikely to stem from releases occurring after the holder forecloses on and empties its tanks, the Agency believes it is unnecessary to require third-party liability coverage for such tanks.

RCRA section 9003(c)(6) supports this proposed exemption. That provision emphasizes the connection between the UST financial responsibility requirement and a tank's operational status: "The regulations promulgated pursuant to this section shall include: . . . (6) requirements for maintaining evidence of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from *operating* an underground storage tank." [emphasis added.] The Agency believes that since a holder must demonstrate that its tanks are empty and that it is complying with the UST temporary or permanent closure requirements in order to avoid corrective action liability as an operator, there should be no need for a holder who meets these requirements to demonstrate financial responsibility for corrective action or third-party damages. By requiring the holder to empty the tank in order to be exempt from corrective action requirements, EPA is ensuring that damages caused by future releases from that tank will be minimized if not avoided altogether. As a result, EPA is proposing that holders who act in accordance with the requirements described in this proposed rule be exempt from all subtitle I financial responsibility requirements.

V. State Program Approval

RCRA subtitle I section 9004, as implemented by 40 CFR part 281, provides states the ability to operate an UST regulatory program in lieu of the federal program if they first submit the program for review and receive approval from EPA. EPA approval of a state program means that the requirements in the state's laws and regulations will be in effect rather than the federal requirements. Program approval ensures that a single set of requirements (the state's) will be enforced in that state, thus eliminating the duplication and confusion that can result from having separate state and federal requirements. EPA considers state program approval to be an integral part of the UST regulatory program.

EPA's approval review focuses primarily on the basic state authorities (laws and regulations) needed to achieve the underlying objectives of the federal regulations covering the UST technical standards, corrective action, and financial responsibility requirements. The UST state program approval process is also based upon a performance-oriented approach. The statutory test for an approvable state program is that it be "no less stringent" than the federal requirements and include as many categories of UST systems (or be as broad in scope) as the federal requirements. EPA reviews the state's specific statutory and regulatory provisions as well as their interpretation by the attorney general of the state.

Today's proposed rule is not intended to present a barrier for states to receive state program approval. A state is not required to have enacted a security interest exemption in order to receive approval of its program from EPA, since failure to have such a provision would merely make the state program broader in scope than the federal one. However, EPA encourages states to adopt statutory and/or regulatory provisions comparable to the final federal UST lender liability rule so that credit-

worthy UST owners and operators will have access to funds to upgrade or replace their tanks.

If a state program includes an UST security interest exemption, EPA will evaluate it against the criteria in § 281.39, as proposed in this notice. These criteria stem from the key components contained in this proposed rule. A state program that exempts a holder from UST corrective action, financial responsibility, and technical requirements as an owner may be approved if: The holder is maintaining indicia of ownership primarily to protect a security interest in a petroleum UST or UST system; the holder does not participate in the management of the UST or UST system; and the holder does not engage in petroleum production, refining, and marketing. In addition, a state program may be approved if it exempts a holder from corrective action and financial responsibility as an operator and if, in addition to the three previous criteria, it requires the holder to demonstrate that its tanks have been emptied and secured, and that it has either permanently or temporarily closed the UST or UST system.

The state's program application should address the issue of UST lender liability in the "Scope" section of its state program description, under § 281.21(a)(3) of the State Program Approval regulations.

VI. Economic Analysis

As discussed elsewhere in this proposal, EPA believes that concerns over environmental liability are making a significant number of lenders reluctant to make loans to otherwise credit-worthy owners and operators of USTs. A more analytical approach to describing the current lending climate and the potential effects associated with today's proposal is through a discussion of lending rates that UST owners are currently faced with, in comparison to those that may prevail after promulgation of a final rule.

In analytical terms, prior to final promulgation of today's proposed rule, the rate that lenders charge now when considering making an UST-related loan can be described as:

$r_{market} - i = r_b + r_e$

where:

r_{market}=Prevailing interest rate on UST-related loans

i=Risk-free rate of return

r_b=Risk premium banks charge for loans to small businesses. (This factor includes the financial risk for a business with certain assets that is unable to repay its loan.)

r_e=Risk premium charged for UST owners. (This factor includes the financial risk that a lender may have to pay for contamination, or uncertainty regarding the true value of collateral, in the event of contamination.)

Due to the current uncertainty regarding a holder's obligations to comply with the UST regulatory requirements, the risk premium "r_e" that banks have to charge in order to be adequately compensated for their risk in an UST-related loan may often be so high that it effectively precludes lenders from making loans at this level. A related barrier to lending is that since all UST owners bear a systematic risk imposed by government regulations, lenders cannot diversify to substantially reduce or eliminate the UST-related risk premium, r_e, by holding a portfolio of UST-related loans with different characteristics and risks. Since most UST owners and operators are small businesses that cannot self finance, they will either forego or delay UST facility improvements. While many UST-related loans are expected to be used for financing tank upgrades or replacements, these loans may also be used to provide additional services at the facility (e.g., an expanded area for food items at a convenience store). If lenders are precluded from making UST-related loans, both environmental protection and economic growth may suffer.

By providing the exemption for holders from UST regulatory requirements contained in this proposed rule and thus reducing the uncertainty associated with making an UST-related loan, the risk premium is expected to be significantly reduced. The interest rate relationship after final promulgation of today's proposed rule can be described as:

r_{market} (post rule)=$i+r_b+r_e$ (post rule)

where:

r_{market} (post rule)=Prevailing interest on UST-related loans after final promulgation of today's proposed rule

r_e (post rule)=Risk premium charged for UST owners after final promulgation of today's proposed rule

Although r_e (post rule) will still exist, it is expected to be significantly less than r_e. The result would be the reduction of the prevailing interest rate on UST-related loans to a level, r_{market} (post rule), that is both adequate to compensate lenders for their perceived risk and at the same time affordable for credit-worthy UST owners.

There are social costs associated with owners' and operators' inability to use the least costly financial mechanism to comply with the existing UST regulations. By reducing the risk premium to a level at which lenders are both willing and able to make UST-related loans, this proposed regulation is expected to increase the ability of UST owners and operators to comply with subtitle I regulations, thereby reducing these social costs. To the extent that loans are made for environmental compliance purposes, social costs would also be reduced by decreasing the number and severity of releases from old USTs that might otherwise occur in the absence of upgrading or replacing tanks.

The Agency is interested in obtaining comments on how this proposed rule might allow UST owners and operators to use less costly financial mechanisms to comply with UST regulations. Specifically, the Agency requests information from lenders on the current interest rate charged for loans when property with one or more USTs is used as collateral. The Agency also requests information from lenders regarding the extent to which credit might have been extended to UST owners and operators in the past had this proposed rule been in effect.

Further information and a more detailed discussion of the costs and benefits associated with today's proposal is contained in the "Regulatory Background Document" for this proposed rule, located in the OUST Docket at 401 M Street, SW.; room 2616; Washington, DC 20460.

VII. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51,735 (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to review by the U.S. Office of Management and Budget (OMB) 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 the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this proposed rule is a "significant regulatory action" because it raises policy issues. 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.

B. Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act of 1980, agencies must evaluate the effects of a regulation on small entities. If the rule is likely to have a "significant impact on a substantial number of small entities," then a Regulatory Flexibility Analysis must be performed. Because this proposed rule may actually result in cost savings for small entities that hold security interests in USTs or UST systems, EPA certifies that today's proposed rule would not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

This proposed rule does not contain any new information collection requirements under the provision of the *Paperwork Reduction Act*, 44 USC 3501 *et seq.*

To the extent that this proposed rule discusses any information collection requirements imposed under existing underground storage tank regulations, those requirements have been approved by the OMB under the *Paperwork Reduction Act* and have been assigned control number 2050–0068 (ICR no. 1360).

List of Subjects in 40 CFR Parts 280 and 281

Environmental liability, Financial institutions, Ground water, Lender liability, Oil pollution, Petroleum, State program approval, Underground storage tanks, Water pollution control.

Dated: June 3, 1994.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, chapter I, title I of the Code of Federal Regulations is proposed to be amended as follows:

PART 280—TECHNICAL STANDARDS AND CORRECTIVE ACTION REQUIREMENTS FOR OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS (USTs)

1. The authority citation for part 280 continues to read as follows:

Authority: 42 U.S.C. 6912, 6991a, 6991b, 6991c, 6991d, 6991e, 6991f, 6991h.

2. Part 280 is proposed to be amended by adding subpart I consisting of §§ 280.200 through 280.250 to read as follows:

Subpart I—Lender Liability

Sec.
280.200 Definitions.
280.210 Participation in management.
280.220 Ownership of an underground storage tank or underground storage tank system.
280.230 Operating an underground storage tank or underground storage tank system.
280.240 Actions taken to protect human health and the environment under 40 CFR part 180.
280.250 Financial responsibility.

Subpart I—Lender Liability

§ 280.200 Definitions.

(a) *UST technical standards*, as used in this subpart, refers to the UST preventative and operating requirements under 40 CFR part 280, subparts B, C, D, G, and § 280.50 of subpart E.

(b) *Petroleum production, refining, and marketing.*—(1) *Petroleum production* means the production of crude oil or other forms of petroleum (as defined in § 280.12) as well as the production of petroleum products from purchased materials.

(2) *Petroleum refining* means the cracking, distillation, separation, conversion, upgrading, and finishing of refined petroleum or petroleum products.

(3) *Petroleum marketing* means the distribution, transfer, or sale of petroleum or petroleum products for wholesale or retail purposes.

(c) *Indicia of ownership* means evidence of a secured interest, evidence of an interest in a security interest, or evidence of an interest in real or personal property securing a loan or other obligation, including any legal or equitable title to real or personal property acquired incident to foreclosure or its equivalents. Evidence of such interests include, but are not limited to, mortgages, deeds of trust, liens, surety bonds and guarantees of obligations, title held pursuant to a lease financing transaction in which the lessor does not select initially the leased property (hereinafter "lease financing transaction"), legal or equitable title obtained pursuant to foreclosure, and their equivalents. Evidence of such interests also includes assignments, pledges, or other rights to or other forms of encumbrance against property that are held primarily to protect a security interest. A person is not required to hold title or a security interest in order to maintain indicia of ownership.

(d) *A holder* is a person who maintains indicia of ownership (as defined in § 280.200(c)) primarily to protect a security interest (as defined in § 280.200(f)(1)) in a petroleum UST or UST system. A holder includes the initial holder (such as a loan originator); any subsequent holder (such as a successor-in-interest or subsequent purchaser of the security interest on the secondary market); a guarantor of an obligation, surety, or any other person who holds ownership indicia primarily to protect a security interest; or a receiver or other person who acts on behalf or for the benefit of a holder.

(e) *A borrower, debtor, or obligor* is a person whose UST or UST system is encumbered by a security interest. These terms may be used interchangeably.

(f) *Primarily to protect a security interest* means that the holder's indicia of ownership are held primarily for the purpose of securing payment or performance of an obligation.

(1) *Security interest* means an interest in a petroleum UST or UST system or in the facility or property on which the UST or UST system is located, created, or established for the purpose of securing a loan or other obligation. Security interests include but are not limited to mortgages, deeds of trusts, liens, and title pursuant to lease financing transactions. Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements, accounts receivable financing arrangements, and consignments, if the transaction creates or establishes an interest in an UST or UST system or in the facility or property on which the UST or UST system is located, for the purpose of securing a loan or other obligation.

(2) *Primarily to protect a security interest*, as used in this subpart, does not include indicia of ownership held primarily for investment purposes, nor ownership indicia held primarily for purposes other than as protection for a security interest. A holder may have other, secondary reasons for maintaining indicia of ownership, but the primary reason why any ownership

indicia are held must be as protection for a security interest.

§ 280.210 Participation in management.

The term *participating in the management of an UST or UST system* means that the holder is engaging in acts of petroleum UST or UST system management, as defined herein.

(a) *Actions that are participation in management pre-foreclosure.* Participation in the management of an UST or UST system means, for purposes of this subpart, actual participation in the management or control of decisionmaking related to the UST or UST system by the holder and does not include the mere capacity or ability to influence or the unexercised right to control UST or UST system operations. A holder is participating in management, while the borrower is still in possession of the UST or UST system encumbered by the security interest, only if the holder either:

(1) Exercises decisionmaking control over the borrower's environmental compliance, such that the holder has undertaken responsibility for the borrower's UST or UST system management; or

(2) Exercises control at a level comparable to that of a manager of the borrower's enterprise, such that the holder has assumed or manifested responsibility for the overall management of the enterprise encompassing the day-to-day decisionmaking of the enterprise with respect to:

(i) Environmental compliance; or

(ii) All, or substantially all, of the operational (as opposed to financial or administrative) aspects of the enterprise other than environmental compliance. Operational aspects of the enterprise include functions such as that of facility or plant manager, operations manager, chief operating officer, or chief executive officer. Financial or administrative aspects include functions such as that of credit manager, accounts payable/receivable manager, personnel manager, controller, chief financial officer, or similar functions.

(b) *Actions that are not participation in management pre-foreclosure.*

(1) *Actions at the inception of the loan or other transaction.* No act or omission prior to the time that indicia of ownership are held primarily to protect a security interest constitutes evidence of participation in management within the meaning of this Subpart. A prospective holder who undertakes or requires an environmental investigation (which could include a site assessment, inspection, and/or audit) of the UST or UST system in which indicia of ownership are to be held or requires a prospective borrower to clean up contamination from the UST or UST system or to comply or come into compliance (whether prior or subsequent to the time that indicia of ownership are held primarily to protect a security interest) with any applicable law or regulation is not by such action considered to be participating in the UST's or UST system's management.

(2) *Loan policing and workout.* Actions that are consistent with holding ownership indicia primarily to protect a security interest do not constitute participation in management for purposes of this subpart. The authority for the holder to take such actions may, but need not, be contained in contractual or other documents specifying requirements for financial, environmental, and other warranties, covenants, conditions, representations or promises from the borrower. Loan policing and workout activities cover and include all such activities up to foreclosure or its equivalents, exclusive of any activities that constitute participation in management.

(i) *Policing the security interest or loan.* A holder who engages in policing activities prior to foreclosure will remain within the exemption provided that the holder does not by such actions participate in the management of the UST or UST system as provided in § 280.210(a). Such actions include, but are not limited to, requiring the borrower to clean up contamination from the UST or UST system during the term of the security interest; requiring the borrower to comply or come into compliance with applicable federal, state, and local environmental and other laws, rules, and regulations during the term of the security interest; securing or exercising authority to monitor or inspect the UST or UST system (including on-site inspections) in which indicia of ownership are maintained, or the borrower's business or financial condition during the term of the security interest; or taking other actions to adequately police the loan or security interest (such as requiring a borrower to comply with any warranties, covenants, conditions, representations, or promises from the borrower).

(ii) *Loan work out.* A holder who engages in work out activities prior to foreclosure or its equivalents will remain within the exemption provided that the holder does not by such action participate in the management of the UST or UST system as provided in § 280.210(a). For purposes of this rule, *work out* refers to those actions by which a holder, at any time prior to foreclosure or its equivalents, seeks to prevent, cure, or mitigate a default by the borrower or obligor; or to preserve, or prevent the diminution of, the value of the security. Work out activities include, but are not limited to, restructuring or renegotiating the terms of the security interest; requiring payment of additional rent or interest; exercising forbearance; requiring or exercising rights pursuant to an assignment of accounts or other amounts owing to an obligor; requiring or exercising rights pursuant to an escrow agreement pertaining to amounts owing to an obligor; providing specific or general financial or other advice, suggestions, counseling, or guidance; and exercising any right or remedy the holder is entitled to by law or under any warranties, covenants, conditions, representations, or promises from the borrower.

(c) *Foreclosure on an UST or UST system and participation in management activities post-foreclosure—(1) Foreclosure.* Indicia of ownership that are held primarily to protect a security interest include legal or equitable title acquired through or incident to foreclosure or its equivalents. For purposes of this subpart, the term *foreclosure or its equivalents* includes purchase at foreclosure sale; acquisition or assignment of title in lieu of foreclosure; termination of a lease or other repossession; acquisition of a right to title or possession; an agreement in satisfaction of the obligation; or any other formal or informal manner (whether pursuant to law or under warranties, covenants, conditions, representations, or promises from the borrower) by which the holder acquires title to or possession of the secured UST or UST system. The indicia of ownership held after foreclosure continue to be maintained primarily as protection for a security interest provided that the holder undertakes to sell, re-lease an UST or UST system held pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), or otherwise divest itself of the UST or UST system in a reasonably expeditious manner, using whatever commercially reasonable means are relevant or appropriate with respect to the UST or UST system, taking all facts and circumstances into consideration, and provided that the holder did not participate in management (as defined in § 280.210(a)) prior to foreclosure or its equivalents. For purposes of establishing that a holder is seeking to sell, re-lease an UST or UST system held pursuant to a lease financing

transaction (whether by a new lease financing transaction or substitution of the lessee), or divest an UST or UST system in a reasonably expeditious manner, the holder may use whatever commercially reasonable means as are relevant or appropriate with respect to the UST or UST system, or may employ the means specified in § 280.210(c)(2). A holder that outbids, rejects, or fails to act upon a written *bona fide*, firm offer of fair consideration for the UST or UST system, as provided in § 280.210(c)(2), is not considered to hold indicia of ownership primarily to protect a security interest.

(2) *Holding foreclosed property for disposition and liquidation.* A holder, who did not participate in management prior to foreclosure or its equivalents, may sell, re-lease an UST or UST system held pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee), liquidate, wind up operations, and take measures to preserve, protect, or prepare the secured UST or UST system prior to sale or other disposition. The holder may conduct these activities without voiding the exemption, subject to the requirements of this subpart.

(i) A holder establishes that the ownership indicia maintained following foreclosure or its equivalents continue to be held primarily to protect a security interest by, within 12 months following foreclosure, listing the UST or UST system or the facility or property on which the UST or UST system is located, with a broker, dealer, or agent who deals with the type of property in question, or by advertising the UST or UST system as being for sale or disposition on at least a monthly basis in either a real estate publication or a trade or other publication suitable for the UST or UST system in question, or a newspaper of general circulation (defined as one with a circulation over 10,000, or one suitable under any applicable federal, state, or local rules of court for publication required by court order or rules of civil procedure) covering the area where the UST or UST system is located. For purposes of this provision, the 12-month period begins to run from the time that the holder acquires marketable title, provided that the holder, after the expiration of any redemption or other waiting period provided by law, was acting diligently to acquire marketable title. If the holder fails to act diligently to acquire marketable title, the 12-month period begins to run on the date of foreclosure or its equivalents.

(ii) A holder that outbids, rejects, or fails to act upon an offer of fair consideration for the UST or UST system or the facility or property on which the UST or UST system is located establishes by such outbidding, rejection, or failure to act, that the ownership indicia in the secured UST or UST system are not held primarily to protect the security interest, unless the holder is required, in order to avoid liability under federal or state law, to make a higher bid, to obtain a higher offer, or to seek or obtain an offer in a different manner.

(A) *Fair consideration*, in the case of a holder maintaining indicia of ownership primarily to protect a senior security interest in the UST or UST system, is the value of the security interest as defined in this section. The value of the security interest is calculated as an amount equal to or in excess of the sum of the outstanding principal (or comparable amount in the case of a lease that constitutes a security interest) owed to the holder immediately preceding the acquisition of full title (or possession in the case of an UST or UST system subject to a lease financing transaction) pursuant to foreclosure or its equivalents, plus any unpaid interest, rent, or penalties (whether arising before or after foreclosure or its equivalents), plus all reasonable and necessary costs, fees, or other charges incurred by the holder incident to work out, foreclosure or its equivalents, retention, preserving, protecting, and preparing the UST or UST system prior to sale, re-lease of an UST or UST system held pursuant to a lease financing transaction (whether by a new lease financing transaction or substitution of the lessee) or other disposition, plus environmental investigation and corrective action costs incurred under §§ 280.51 through 280.67; less any amounts received by the holder in connection with any partial disposition of the property and any amounts paid by the borrower subsequent to the acquisition of full title (or possession in the case of an UST or UST system subject to a lease financing transaction) pursuant to foreclosure or its equivalents. In the case of a holder maintaining indicia of ownership primarily to protect a junior security interest, fair consideration is the value of all outstanding higher priority security interests plus the value of the security interest held by the junior holder, each calculated as set forth in the preceding sentence.

(B) *Outbids, rejects, or fails to act upon an offer of fair consideration* means that the holder outbids, rejects, or fails to act upon within 90 days of receipt of a written, *bona fide*, firm offer of fair consideration for the UST or UST system received at any time after six months following foreclosure or its equivalents. A "written, *bona fide*, firm offer" means a legally enforceable, commercially reasonable, cash offer solely for the foreclosed UST or UST system, including all material terms of the transaction, from a ready, willing, and able purchaser who demonstrates to the holder's satisfaction the ability to perform. For purposes of this provision, the six-month period begins to run from the time that the holder acquires marketable title, provided that the holder, after the expiration of any redemption or other waiting period provided by law, was acting diligently to acquire marketable title. If the holder fails to act diligently to acquire marketable title, the six-month period begins to run on the date of foreclosure or its equivalents.

§ 280.220 Ownership of an underground storage tank or underground storage tank system.

(a) *Ownership of an UST or UST system for purposes of corrective action.* A holder is not an "owner" of a petroleum UST or UST system for purposes of compliance with corrective action requirements under §§ 280.51 through 280.67, provided the person:

(1) Does not participate in the management of the UST or UST system as defined in § 280.210; and

(2) Does not engage in petroleum production, refining, and marketing.

(b) *Ownership of an UST or UST system for purposes of the UST technical standards.* A holder is not an "owner" of a petroleum UST or UST system for purposes of the UST technical standards provided that the holder:

(1) Does not participate in the management of the UST or UST system as defined in § 280.210; and

(2) Does not engage in petroleum production, refining, and marketing.

§ 280.230 Operating an underground storage tank or underground storage tank system.

(a) *Operating an UST or UST system prior to foreclosure.* A holder, prior to foreclosure or its equivalents, is not an "operator" of a petroleum UST or UST system for purposes of compliance with the corrective action requirements of §§ 280.51 through 280.67 and the UST technical standards, provided the holder is not in control of or does not have responsibility for the daily operation of the UST or UST system.

(b) *Operating an UST or UST system after foreclosure.*

(1) A holder who has not participated in management prior to foreclosure and

who acquires a petroleum UST or UST system through foreclosure or its equivalents is not an "operator" of the UST or UST system for purposes of compliance with the corrective action requirements under §§ 280.51 through 280.67, provided that the holder within 15 days following foreclosure or its equivalents, empties all of its USTs and UST systems so that no more than 2.5 centimeters (one inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remains in the system; leaves vent lines open and functioning; and caps and secures all other lines, pumps, manways, and ancillary equipment.

(2) In addition, the holder must either:

(i) *Permanently close the UST or UST system* in accordance with §§ 280.71 through 280.74, except § 280.72(b); or

(ii) *Temporarily close the UST or UST system* in accordance with the applicable provisions of § 280.70 as follows:

(A) A holder may remain in temporary closure for up to 12 months by:

(*1*) Continuing operation and maintenance of corrosion protection in accordance with § 280.31; and

(*2*) Reporting suspected releases to the implementing agency.

(B) If the UST system is temporarily closed for more than 12 months, the holder must permanently close the UST system if it does not meet either the performance standards in § 280.20 for new UST systems or the upgrading requirements in § 280.21 except that the spill and overfill equipment requirements do not have to be met. A substandard UST system must be permanently closed in accordance with §§ 280.71 through 280.74, except § 280.72(b), unless the implementing agency provides an extension of the 12-month temporary closure period. The holder must complete a site assessment in accordance with § 280.72(a) before such an extension can be applied for.

(3) A holder who acquires a petroleum UST or UST system through foreclosure or its equivalents is not an "operator" of the UST or UST system for purposes of 40 CFR part 280, subparts B, C, and D of the technical standards for the first 15 days following foreclosure or its equivalents, provided the holder complies with § 280.230(b).

§ 280.240 Actions taken to protect human health and the environment under 40 CFR part 280.

A holder is not considered to be an operator of an UST or UST system or to be participating in the management of an UST or UST system solely on the basis of undertaking actions under 40 CFR part 280, subparts B through H, provided that the holder does not otherwise participate in the management or daily operation of the UST or UST system. Such actions include, but are not limited to, release reporting, release response and corrective action, temporary or permanent closure of an UST or UST system, UST upgrading or replacement, and maintenance of corrosion protection. A holder who undertakes these actions must do so in compliance with the applicable requirements in 40 CFR part 280.

§ 280.250 Financial responsibility.

A holder is exempt from the requirement to demonstrate financial responsibility under subpart H—Financial Responsibility, provided the holder:

(a) Does not participate in the management of the UST or UST system as defined in § 280.210;

(b) Does not engage in petroleum production, refining, and marketing as defined in § 280.200(b); and

(c) Complies with the requirements of § 280.230.

PART 281—APPROVAL OF STATE UNDERGROUND STORAGE TANK PROGRAMS

1. The authority citation for part 281 continues to read as follows:

Authority: Sections 2002, 9004, 9005, 9006 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6912, 6991 (c), (d), (e)).

Subpart C—[Amended]

2. Section 281.39 to added to subpart C to read as follows:

§ 281.39 Lender liability.

(a) A state is not required to have a security interest exemption to obtain or maintain RCRA Subtitle I program approval. If a state enacts a security interest exemption provision, it does not have to be as extensive as the security interest exemption provided for in 40 CFR part 280, subpart I, as defined in §§ 280.200 through 280.250, to obtain or maintain RCRA subtitle I program approval. However, a state's security interest exemption cannot be broader in scope or less stringent than the security interest exemption provided for in 40 CFR part 280, subpart I.

(b) A state program will be considered to be no less stringent than, and as broad in scope as, the federal program provided that the state provision:

(1) Mirrors the security interest exemption provided for in 40 CFR part 280, subpart I; or

(2) Achieves the same effect as provided by the following key criteria:

(i) A holder, meaning a person who maintains indicia of ownership primarily to protect a security interest in a petroleum UST or UST system, who does not participate in the management of the UST or UST system as defined under § 280.210 and who does not engage in petroleum production, refining, and marketing as defined under § 280.200(a) is not:

(A) An "owner" of a petroleum UST or UST system for purposes of compliance with 40 CFR part 280 requirements;

(B) An "operator" of a petroleum UST or UST system for purposes of compliance with 40 CFR part 280 requirements *prior to foreclosure or its equivalents*, provided the holder is not in control of or does not have responsibility for the daily operation of the UST or UST system;

(C) An "operator" of a petroleum UST or UST system for purposes of compliance with 40 CFR part 280 corrective action and financial responsibility requirements *after* foreclosure or its equivalents, provided the holder complies with the requirements of § 280.230(b).

(ii) [Reserved]

[FR Doc. 94–14173 Filed 6–10–94; 8:45 am]

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federal register

Monday
June 13, 1994

Part IV

Department of Justice

Bureau of Prisons

28 CFR Part 552

Use of Force and Application of Restraints; Final Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 552

RIN 1120–AA13

Use of Force and Application of Restraints

AGENCY: Bureau of Prisons, Justice.

ACTION: Finalization of interim rule.

SUMMARY: In this document, the Bureau of Prisons is finalizing its interim rule on Use of Force and Application of Restraints. These amendments take note of public comment received and include clarification on confrontation avoidance procedures, provisions for the use of soft restraints and ambulatory restraints, updated provisions for the documentation of incidents, provisions on the role of medical staff, and various editorial amendments. In updating procedures to follow in situations which require the use of force or application of restraints, these amendments are intended to provide for the security of the institution and for the well-being of inmates and staff.

EFFECTIVE DATE: June 13, 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 finalizing its interim rule on Use of Force and Application of Restraints, which was published in the **Federal Register** May 17, 1989 (54 FR 21394). A summary of the public comment and agency response follows.

The Bureau received comment regarding paragraphs (c), (e), (f), (g), and (j) of § 552.21, and on §§ 552.22 and 552.23. With respect to § 552.21(c), the commenter stated that there was a lack of specificity as to which institutional regulations could be enforced by the use of restraints and/or force. The Bureau believes, however, that the general guidelines and statement of purpose in revised § 552.20 (discussed below) and the governing principles contained in newly designated § 552.22 adequately acknowledge the serious nature of conditions which authorize the use of force and/or restraints.

With respect to § 552.21(e), the commenter stated that the lifting and carrying of an inmate in restraints could expose the inmate to both malicious and unintentional physical harm by those prison staff carrying the inmate. The commenter further stated that such lifting might also expose staff to injury, and stated that no prisoners should be dragged nor should inmates be enlisted for the purpose of lifting or carrying a restrained inmate because they have not had appropriate training. The Bureau believes that newly designated § 552.22(h) clearly prohibits the infliction of malicious harm. In addition, appropriate training on the use of force and/or restraints and on the lifting and carrying of an inmate in restraints is provided to Bureau staff. The Bureau believes that this training is sufficient to address the commenter's concerns on minimizing the risk of unintentional physical harm to either inmate or staff. Finally, the Bureau wishes to note that its regulations on the use of force and/or restraints are implemented by staff and not by inmates.

With respect to § 552.21(f), the commenter objected to the absence of any reference to maximum time length allowed on the use of restraints. The commenter further noted that medical staff should be consulted when the inmate "is unable to regain his or her self-control within a normal time" and for determining whether continued use of restraints is necessary. The Bureau believes that adequate provision for medical review and/or continuing care is contained in newly designated § 552.26. As noted below, the Bureau is making further amendment to its provisions for the role of medical staff in use of force and application of restraints incidents.

With respect to § 552.21(g), the commenter questioned the use of restraints on an inmate in administrative detention or disciplinary segregation. The Bureau notes that this paragraph (now designated as § 552.22(g)) states that, except when the immediate use of restraints is required for the control of the inmate, application or continued application of restraints on an inmate in administrative detention or disciplinary segregation requires the approval of Warden or designee. The Bureau wishes to note that such application would not be routine, and it believes that requiring approval at this level is sufficient to ensure that such application does accomplish legitimate penological objectives. As noted below, the Bureau is making further amendments to this section.

With respect to § 552.21(j), the commenter noted a discrepancy in that this paragraph provided that all significant incidents involving use of force and application of restraints require documentation, while § 522.26 stated that all incidents involving use of force or restraints be documented. As noted below, newly designated § 552.22(j) is being amended to remove this unintentional discrepancy.

With respect to § 552.22, the commenter objected to exception being made by the Director for use of confrontation avoidance procedures in specific institutions or housing units. As noted below, this section (now designated as § 552.23) is being revised to remove stated exceptions.

With respect to § 552.23, the commenter stated that with the exception of preventing inmate self-injury, it is never necessary to implement four-point restraints. The commenter noted particular objection to paragraph (e), stating that it allows prison staff to deny the inmate in four-point restraints an opportunity to use the toilet if he or she continued to resist or became violent while being released. The commenter believed that any self-destructive behavior exhibited by an inmate in four-point restraint should be reported to medical staff and that control over the use of four-point restraint by medical personnel is essential. The Bureau believes that this section contains sufficient safeguards. As noted below, however, this section (now designated as § 552.24) is being further amended for editorial purposes. The Bureau believes that the editorial restatement of the introductory text clarifies that four-point restraints are to be used when it is determined that they are the only means available to obtain and maintain control over an inmate. The provisions in paragraph (e) are intended to guarantee that the inmate's access to toilet facilities are controlled by the inmate's behavior. The Bureau believes that newly designated §§ 552.24(f) and 552.26 adequately provide for medical review and responsibility.

After due consideration of the comments received, and based upon the experience gained from application of the previously revised regulations, the Bureau makes the following further amendments. For the sake of clarity, the provisions in former § 552.20 are being revised into two separate sections, and former §§ 552.21 through 552.26 are redesignated as §§ 552.22 through 552.27 in order to accommodate the new section. Paragraph codification and cross references in the revised regulations have been adjusted as necessary. In § 552.20, the introductory text (formerly paragraph (a)) is further amended to include a statement that staff are authorized to use force only as a last alternative after all other

reasonable efforts to resolve a situation have failed. Paragraphs (a) and (b) of this section (formerly paragraphs (a) (1) and (2)) are amended for editorial purposes. In paragraph (d) (formerly paragraph (a)(4)) the word "wounds" is revised to read "injury" to describe more accurately conditions which may lead to authorized use of restraints by staff. Because an injury may be of such a nature that it would not by strict definition be considered a wound, the Bureau believes it reasonable to use the broader word "injury." In new § 552.21 on types of force, section headings were added to paragraphs (c) and (d) for the sake of editorial consistency. In addition, paragraph (c) (formerly § 552.20(d)) is amended to include reference to soft and ambulatory (leg) restraints. The use of soft restraints and ambulatory restraints is intended to allow for graduated procedures in applying restraints.

In newly designated § 552.22, paragraph (a) is amended to remove an obsolete cross reference, and paragraph (g) is amended to include reference to graduated procedures in applying restraints. In paragraph (h), introductory text is amended to include an example of restraint equipment, and paragraph (h)(2) is amended to clarify specific situations to help avoid physical problems of an inmate under restraints. Paragraph (j) is amended to remove any inconsistency with the provisions of newly designated § 522.27.

Newly designated § 552.23 is revised to broaden the use of confrontation avoidance procedures. To this effect, paragraph (b), which contained provisions for exception, is removed.

In newly designated § 552.24, introductory text is amended to further clarify when four-point restraints may be used. In paragraph (a), "vinyl" is substituted for "leather." Additional editorial amendments to this section make no change in the intent of the regulation.

Newly designated § 552.25 is amended for editorial purposes. There is no change in the intent of the regulation.

Newly designated § 552.26 is revised to specify the role of medical staff in calculated use of force situations. Paragraph (a) is also amended to include provisions specifically applicable to pregnant inmates.

Newly designated § 552.27 is reworded, although its intent is unchanged.

The Bureau believes that the changes to the interim rule discussed above do not impose additional restrictions on inmates and are necessary in order to provide for the continued protection of inmates, staff, and property. The Bureau therefore finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of further proposed rulemaking, the opportunity for public comment, and delay in effective date for these additional changes.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866; this rule was reviewed by the Office of Management and Budget pursuant to E.O. 12866. 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 Part 552

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), the interim rule amending 28 CFR part 552 which was published at 54 FR 21394 on May 17, 1989, is adopted as a final rule with the following change:

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 552—CUSTODY

1. The authority citation for 28 CFR part 552 continues to read as follows:

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), 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.

§§ 552.21 through 552.26 [Redesignated as §§ 552.22 through 552.27]

2. Sections 552.21 through 552.26 are redesignated as §§ 552.22 through 552.27.

3. Section 552.20 is revised to read as follows:

§ 552.20 Purpose and scope.

The Bureau of Prisons authorizes staff to use force only as a last alternative after all other reasonable efforts to resolve a situation have failed. When authorized, staff must use only that amount of force necessary to gain control of the inmate, to protect and ensure the safety of inmates, staff, and others, to prevent serious property damage and to ensure institution security and good order. Staff are authorized to apply physical restraints necessary to gain control of an inmate who appears to be dangerous because:

(a) The inmate assaults another individual;

(b) The inmate destroys government property;

(c) The inmate attempts suicide;

(d) The inmate inflicts injury upon self; or

(e) The inmate becomes violent or displays signs of imminent violence.

This rule on application of restraints does not restrict the use of restraints in situations requiring precautionary restraints, particularly in the movement or transfer of inmates (e.g., the use of handcuffs in moving inmates to and from a cell in detention, escorting an inmate to a Special Housing Unit pending investigation, etc.).

4. A new § 552.21 is added to read as follows:

§ 552.21 Types of force.

(a) *Immediate use of force.* Staff may immediately use force and/or apply restraints when the behavior described in § 552.20 constitutes an immediate, serious threat to the inmate, staff, others, property, or to institution security and good order.

(b) *Calculated use of force and/or application of restraints.* This occurs in situations where an inmate is in an area that can be isolated (e.g., a locked cell, a range) and where there is no immediate, direct threat to the inmate or others. When there is time for the calculated use of force or application of restraints, staff must first determine if the situation can be resolved without resorting to force (see § 552.23).

(c) *Use of Force Team Technique.* If use of force is determined to be necessary, and other means of gaining control of an inmate are deemed inappropriate or ineffective, then the Use of Force Team Technique shall be used to control the inmate and to apply soft restraints, to include ambulatory leg restraints. The Use of Force Team Technique ordinarily involves trained staff, clothed in protective gear, who enter the inmate's area in tandem, each with a coordinated responsibility for helping achieve immediate control of the inmate.

(d) *Exceptions.* Any exception to this rule is prohibited, except where the facts and circumstances known to the staff member would warrant a person with correctional experience to reasonably believe other action is necessary (as a last resort) to prevent serious physical injury, or serious property damage which would

immediately endanger the safety of staff, inmates, or others.

5. In newly designated § 552.22, paragraphs (a), (g), (h) introductory text, (h)(2), (h)(4), and (j) are revised to read as follows:

§ 552.22 Principles governing the use of force and application of restraints.

(a) Staff ordinarily shall first attempt to gain the inmate's voluntary cooperation before using force.

* * * * *

(g) Except where the immediate use of restraints is required for control of the inmate, staff may apply restraints to, or continue the use of progressive restraints on, an inmate while in a cell in administrative detention or disciplinary segregation only with approval of the Warden or designee.

(h) Restraint equipment or devices (e.g., handcuffs) may not be used in any of the following ways:

* * * * *

(2) About an inmate's neck or face, or in any manner which restricts blood circulation or obstructs the inmate's airways.

* * * * *

(4) To secure an inmate to a fixed object, such as a cell door or cell grill, except as provided in § 552.24.

* * * * *

(j) All incidents involving the use of force and the application of restraints (as specified in § 552.27) must be carefully documented.

6. Newly designated § 552.23 is revised to read as follows:

§ 552.23 Confrontation avoidance procedures.

Prior to any calculated use of force, the ranking custodial official (ordinarily the Captain or shift Lieutenant), a designated mental health professional, and others shall confer and gather pertinent information about the inmate and the immediate situation. Based on their assessment of that information, they shall identify a staff member(s) to attempt to obtain the inmate's voluntary cooperation and, using the knowledge they have gained about the inmate and the incident, determine if use of force is necessary.

7. In newly designated § 552.24, the introductory text and paragraph (a) are revised, and paragraph (e) is amended by revising the first sentence to read as follows:

§ 552.24 Use of four-point restraints.

When it is determined that four-point restraints are the only means available to obtain and maintain control over an inmate, the following procedures must be followed:

(a) Soft restraints (e.g., vinyl) must be used to restrain an inmate, unless such restraints previously have proven ineffective with respect to that inmate, or proven ineffective during the initial application procedure.

* * * * *

(e) A review of the inmate's placement in four-point restraints shall be made by a Lieutenant every two hours to determine if the use of restraints has had the required calming effect and so that the inmate may be released from these restraints (completely or to lesser restraints) as soon as possible. * * *

8. Newly designated § 552.25 is amended by revising the introductory text and paragraph (a) to read as follows:

§ 552.25 Use of chemical agents or non-lethal weapons.

The Warden may authorize the use of chemical agents or non-lethal weapons only when the situation is such that the inmate:

(a) Is armed and/or barricaded; or

* * * * *

9. Newly designated § 552.26 is revised to read as follows:

§ 552.26 Medical attention in use of force and application of restraints incidents.

(a) In immediate use of force situations, staff shall seek the assistance of mental health or medical staff upon gaining physical control of the inmate. When possible, staff shall seek such assistance at the onset of the violent behavior. In calculated use of force situations, guidance of medical staff (based on a review of the inmate's medical record) will be sought by the use of force team leader to identify physical or mental problems. When mental health or medical staff determine that an inmate requires continuing care, and particularly when the inmate to be restrained is pregnant, the deciding staff shall assume responsibility for care of the inmate, to include possible admission to the institution hospital or, in the case of a pregnant inmate, restraining her in other than a face down four-point position.

(b) After any use of force or forcible application of restraints, the inmate shall be examined by a member of the medical staff, and any injuries noted, immediately treated.

10. Newly designated § 552.27 is revised to read as follows:

§ 552.27 Documentation of use of force and application of restraints incidents.

Staff shall appropriately document all incidents involving the use of force, chemical agents, or non-lethal weapons. Staff shall also document, in writing, the use of restraints on an inmate who becomes violent or displays signs of imminent violence. A copy of the report shall be placed in the inmate's central file.

[FR Doc. 94–14242 Filed 6–10–94; 8:45 am]

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federal register

Monday
June 13, 1994

Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 968

Vacancy Reduction Program; Final Rule and Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 968

[Docket No. R-94-1659; FR-3398-F-02]

RIN 2577-AB26

Vacancy Reduction Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: The Department is issuing regulations to implement the Vacancy Reduction Program. The Notice of Funding Availability (NOFA) for the program is published elsewhere in today's **Federal Register**. Under this program, certain Public Housing Agencies (PHAs) are required to develop and submit a plan regarding vacancies in units owned or operated by the PHA. Each plan will be required to include the elements specified in the statute and this rule. In addition, assessment teams have conducted on-site assessments of the vacancy situations of known eligible PHAs and may provide assistance to PHAs in developing their plans. The assistance available under this program is intended to supplement other initiatives of the PHA that will reduce the rate of addressable vacancies in a PHA's inventory.

EFFECTIVE DATE: July 13, 1994.

FOR FURTHER INFORMATION CONTACT: MaryAnn Russ, Director, Office of Assisted Housing, Public and Indian Housing, room 4204, U.S. Department of Housing and Urban Development, 451 Seventh Street SW., Washington DC 20410, telephone (202) 708-1380. Individuals with hearing or speech impairments may call HUD's TDD number: (202) 708-0850. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Statement

The information collection requirements contained in this final rule have been approved by the Office of Management and Budget, under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), and assigned OMB control number 2577-0181.

Background

On May 21, 1993, the Department published a proposed rule to implement the Vacancy Reduction Program (program). The program was authorized when section 510 of the Cranston-Gonzales National Affordable Housing Act added a new section 14(p) to the United States Housing Act of 1937 (42 U.S.C. 14371) (1937 Act). Recently section 14(p) was amended by section 115 of the Housing and Community Development Act of 1992 (Pub. L. 102-550, approved October 28, 1992) (1992 Act), and funding was made available for the first time for the program.

Section 14(p) requires any public housing agency (PHA) to participate in the program if the PHA has a vacancy rate that exceeds twice the national average, is designated as troubled under section 6(j) of the 1937 Act, or has been placed under a receiver pursuant to section 6(j)(3) of the 1937 Act. Each PHA participating in the program will be required to develop a vacancy reduction plan that identifies vacant dwelling units in its inventory and the reasons for the vacancies, and describes actions to be taken by the PHA for the following five years to eliminate the vacancies.

In addition, the vacancy situations of every participating PHA will be reviewed on-site by assessment teams consisting of representatives of the Department, independent experts knowledgeable about vacancy problems and management issues relating to public housing, and PHA officials. The assessment teams will submit recommendations to HUD and the PHA, and, at the request of the PHA, may assist the PHA in preparing its vacancy reduction plan.

The plans will be the basis for selecting those PHAs that will receive assistance under the program. For troubled PHAs, funding of vacancy reduction activities will be contingent upon the PHA either making or providing reasonable assurances of substantial progress in remedying any management deficiencies.

Use of Survey to Determine FY 1993 NOFA Threshold Factors

As discussed in the proposed rule, all PHAs where existing data indicated the PHA met the statutory criteria for mandatory participation in the program were surveyed. The results of the survey have been used to define the threshold factors for the NOFA published elsewhere in today's **Federal Register** and are discussed in greater detail in that NOFA. In addition, the Department has conducted assessments at PHAs that the Department believes meet the threshold factors for the NOFA that is published elsewhere in today's **Federal Register**. As explained in the NOFA, any PHA that meets the threshold factors and has not already been assessed should immediately request an assessment by contacting the Department.

Comments on Proposed Rule

Six sets of comments were submitted to the Department on the proposed rule: two from public housing authority (PHA) industry groups and four from local housing authorities. Comments were received from the:

—Council of Large Public Housing Authorities (CLPHA);
—Public Housing Authorities Directors Association (PHADA);
—Chicago Housing Authority (CHA);
—Morgan County (Illinois) Housing Authority (MCHA);
—Los Angeles County Housing Authority (LACHA); and
—Atlanta (Georgia) Housing Authority (AHA).

Discussion of the comments is organized according to the following topics: Eligibility requirements; development of the vacancy reduction plan; assessments; funding of vacancy reduction activities; sanctions; use of NOFAs to convey significant program information; the relationship of the Vacancy Reduction Program to other HUD programs; and miscellaneous comments.

Eligibility Requirements

(1) The rule states that a PHA must participate in the program if a receiver has been appointed for the PHA. The term "receiver" should be clarified, in that HUD has taken actions against PHAs that have resulted in takeovers of programs or operations from PHAs without necessarily having a court-appointed receiver. (CLPHA)

Response: The term is statutory and refers to a receiver appointed by a Federal or State court under section 6(j)(3) of the United States Housing Act of 1937; the term does not include other arrangements.

(2) Benefits of the program should be available to a PHA that does not have a vacancy rate of twice the national average only if the PHA fails the Public Housing Management Assessment Program (PHMAP) standard for vacancies (see 24 CFR part 901). (PHADA) Similarly, program participation should be optional for troubled authorities that do not have a vacancy rate twice the national average. (CHA)

Response: As the commenter noted, using the PHMAP standard would require congressional action because the current statute requires participation by PHAs that are troubled or for which receivers have been appointed.

(3) In defining the term "vacant unit", reference is made to an effective lease, which is defined in terms of an eligible family being charged rent. However, because of utility allowances or zero income, many residents do not pay rent for the units they occupy. (CLPHA)

Response: The definition requires that the family have a right to possession of the unit, in addition to being charged rent. The calculation of the rent to be charged by a PHA takes into account income and any utility allowance. As noted by the commenter, as a result of this calculation of rent, the PHA might not actually collect any money from the family having the right to possess a unit (e.g., when the utility allowance equals or exceeds the total tenant payment). However, the lease still obligates the tenant and includes a rental charge that, at least in part, is based on income. Therefore, the elements of the definition are met, even though the actual amount collected by the PHA from the tenant is $0.

(4) A PHA is required to participate in the program if it has a vacancy rate that is twice the national average, regardless of the number of units in the PHA's inventory. Because the vacancy problems of small PHAs, especially, may be due to lack of demand, participation in the program should be optional for PHAs with less than 250 units. (PHADA) For the first year, program participation should be limited to PHAs with 500 or more units. (CHA)

Response: The statute does not discriminate among the causes of vacancies in establishing the participation requirements. However, the extent of participation may be limited to providing documentation of lack of demand or proposals to deprogram units. In awarding funding, the Department will concentrate on PHAs where there is a demand for housing, as reflected in the terms of the NOFA published elsewhere in today's **Federal Register**. Furthermore, because smaller PHAs dependent on CIAP funding often have fewer resources to solve a vacancy problem, these PHAs could realize substantial improvement of their vacancy statistics with a minimal increment of funding. Thus, their selection for funding would serve the statutory purposes of the program, and their exclusion from the initial round of funding could not be justified.

(5) Program participation should be available to any PHA that needs help in addressing its vacancy situation. (MCHA, CHA)

Response: Because current program funding is limited, the Department is concentrating on PHAs that are required to participate.

(6) In the definition of "vacant unit," the proposed rule does not specify a timeframe for determining the existence of a vacancy. Similarly, in calculating a PHA's vacancy rate for purposes of determining program eligibility, the proposed rule does not recognize any normal turnover time, such as the 20-day transition period allowed under PHMAP Indicator 5. (LACHA)

Response: The Department recognizes that the vacancy rate of a PHA is fluid. However, for the purpose of determining eligibility for the program, the Department has decided to use a snapshot approach, i.e., the number of units vacant at the PHA on the appropriate date.

Development of the Vacancy Reduction Plan

(1) The proposed rule provides a number of examples of project-specific activities to eliminate vacancies that a PHA might include in its vacancy reduction plan. The number of examples should be expanded to include such activities as unit redesign or conversion, site reconfiguration, security improvements, and density reductions. These additional examples will serve to give a better idea of the range of acceptable activities. (CLPHA, CHA) Similarly, examples of specific management improvements that should be encouraged include tenant screening, evictions, and marketing and leasing efforts. (CHA)

Response: A number of these examples have been included in § 968.407(b)(3)(i) of the final rule.

(2) If demolition or disposition are selected activities, HUD's review and approval process and replacement housing requirements will make it very difficult for a PHA to provide the required schedule that forecasts when the selected activities would be accomplished. (CLPHA, PHADA (similar comment for other HUD actions)) In addition, participating PHAs need to be able to change their schedules for eliminating vacancies to reflect actual funding. (PHADA)

Response: Sections 968.407(b)(3)(ii) and 968.407(b)(8) have been revised to include language providing that, in developing the required schedule, PHAs should specify action within *x* days from HUD approval or other action, when progress is dependent on HUD action. In addition, a schedule may be revised to reflect the adequacy of funding for proposed activities.

(3) If a PHA needs help in preparing the vacancy reduction plan, the assessment team should be required to assist in the plan development, if requested by the PHA. The proposed rule does not make this assistance mandatory. (PHADA)

Response: Section 968.410(d) has been changed to clarify that, if requested by the PHA, HUD will assist a PHA in preparing its vacancy reduction plan.

(4) The final rule should clarify that participating PHAs do not have to address each single vacant unit separately, but should be permitted to group together vacant units by the cause of vacancy. (PHADA)

Response: In accordance with the statutory requirements, each vacant dwelling unit must be identified. However, vacant units may be grouped together for purposes of explaining the reasons for the vacancies and proposed actions for eliminating the vacancies.

(5) The vacancy reduction plan should include information on turnover problems. (PHADA, AHA) The information should include the number of units vacated and reoccupied during a defined period and any indication of whether the turnover rate is changing. (CHA)

Response: A new paragraph has been added to § 968.407(b) to require that a vacancy reduction plan include certain information on a PHA's turnover rate.

(6) A complete strategy needs to be developed that includes not just rehabilitation work, but tenant screening, eviction, property management, and security measures, as well. (CHA)

Response: The Department and the statute contemplate a complete strategy. A PHA's vacancy reduction plan should include any action to remove the unit from the PHA's inventory of vacant units, including management improvements in each of the specific areas mentioned by the commenter.

Assessments

(1) If funding will be on a "first-come, first served" basis, the sequence of assessment team visits should be by public drawing in order to avoid charges of favoritism. (PHADA)

Response: For the NOFA published today, the Department has decided upon an approach that should provide some funding to all PHAs that meet the eligibility criteria. Each eligible PHA that is a Comprehensive Improvement Assistance Program (CIAP) agency will be funded fully for all eligible units and approved activities, because smaller PHAs dependent on CIAP funding often have fewer resources to solve a vacancy problem. If sufficient funds are available, each PHA that is a Comprehensive Grant Program (CGP) agency will be funded fully; however, if there are not sufficient funds remaining, each CGP agency will be awarded a pro

rata share of the available funding. This pro rata share will be calculated by a method, to be determined by HUD and announced in the NOFA, that will provide funding equitably to those agencies.

(2) When the PHA already is required under PHMAP to have developed a plan to address its vacancy problem, the primary purpose of the Vacancy Reduction Program assessment team should be a validation or critique of the PHA's existing plan, rather than an independent assessment. The intent of the program is to encourage action, not further studies. (PHADA)

Response: The statute requires an on-site assessment of the vacancy situation of each participating PHA, and specifies what is to be included in the PHA's vacancy reduction plan. To the extent that a PHA is able, the Department encourages the PHA to use work that has been done in accordance with PHMAP requirements to comply with the requirements of this program.

(3) PHAs that lend a staff person to an assessment team should be reimbursed for the staff person's salary and benefits during that assignment. (PHADA)

Response: The Department agrees that the statutory provision allowing program funds to be used for travel and administrative expenses of assessment teams, extends to PHA staff. Therefore, PHAs will be reimbursed for the salary and benefits for any staff person that serves on an assessment team. However, this does not apply to staff members of the PHA that is being assessed.

(4) Because the need for these funds is great, the Department should speed up the scheduling of assessments. (MCHA, PHADA)

Response: The Department has assessed all known eligible PHAs.

Funding of Vacancy Reduction Activities

(1) HUD needs to clarify its position regarding the use of program funds for security improvements. (CLPHA)

Response: Where units are vacant because of security problems, HUD will provide funding for physical security improvements, such as improved locks, security screens, additional lighting, and site improvement. As part of management improvements, HUD also will provide funding for security activities over a limited duration, if HUD determines that such funding is likely to result in the reoccupancy and continued occupancy of vacant units. Examples of security activities that could be funded as part of management improvements include:

- Hiring of additional staff to coordinate the provision, by local government or other public and private entities, of appropriate social services, such as drug education and treatment referral programs;
- Hiring of security guards, through individual employment contracts, or guard services, using competitive proposal or small purchase procurement procedures, or contracting with a local police force for security that is in addition to that required under the Cooperation Agreement. As a condition of employment, these security personnel shall be required to meet all relevant State insurance, training, licensing, and other similar requirements;
- Development and implementation of improved screening procedures for prospective residents;
- Development of more timely and effective management techniques for dealing with disruptive residents and drug-related crime;
- Organization and training of unarmed voluntary resident patrols to work cooperatively with the local law enforcement agencies;
- Development and implementation of improved communication and coordination with local law enforcement agencies; and
- Hiring of investigators to investigate drug-related crime in and around the developments or to provide evidence relating to any such crime in any administrative or judicial proceedings.

(2) The minimum housing standards that should be imposed for capital improvements funded under this program are the modernization standards, not the Housing Quality Standards (HQS). Units renovated to the HQS often still need modernization. (CLPHA) In addition, the minimum housing standards should be applied only to the inside of units improved under the program, rather than to common areas and major structural items. (CHA)

Response: Each work item funded under this program must be performed in compliance with modernization standards. However, the vacancy reduction program is an occupancy program, and HQS is a minimum occupancy standard. The goal of the individual work items (performed to modernization standards) is to bring the vacant units into an occupiable condition. Section 968.435 of this rule requires certification that affected vacant units will be brought into compliance with the HQS. As applied in Section I.F(1)(b) of today's NOFA, only aspects of the HQS that pertain to the vacant unit directly are required.

(3) The decision on how to target the initial funding available under this program should be based on the survey responses only and not on any existing data mentioned in the preamble of the proposed rule. (PHADA)

Response: The survey responses were used to determine which PHAs surveyed have vacancy problems and the nature of their problems. Eligibility and final decisions on funding will be based on submitted applications, including the vacancy reduction plans, the number of eligible units, and the assessments.

(4) Funding should not be on a "first-come, first-served" basis, which rewards those able to act the quickest, but should be awarded using a more traditional competitive approach. Criteria that should be used to make awards include: PHA capacity and ability to use the funds effectively and likelihood that additional funds will improve vacancy situation. Severely distressed properties should not be a priority, and funding should be targeted for entire developments, rather than scattered units. (PHADA)

Response: Because the Department would like to fund all PHAs that meet the requirements of the NOFA, it has decided not to include the first-come, first-served limitation. The immediate goal of the Department is to promote the occupancy of the greatest number of units; the problems of severely distressed developments are targeted more directly through other programs and are not priorities of the vacancy reduction program. Similarly, because of funding limitations, the Department believes the program purposes will be promoted best by targeting the elimination of vacant units, rather than the upgrading of entire developments that include occupied units.

(5) Under some circumstances, a PHA may be made eligible for program funds, but restricted in spending the funds until an assessment is performed. If this assessment is not done within 45 days of the fund award, then the PHA should be allowed to expend the funds. (PHADA, CHA)

Response: The Department has already conducted assessments of known eligible PHAs and will complete all assessments in advance of funding decisions. In order to ensure fairness, in the NOFA published elsewhere in today's **Federal Register**, the Department has provided that a PHA for which an assessment has not been conducted but that considers itself eligible under the NOFA, should notify the Department within 15 days of its request for an immediate assessment. In addition, when an approvable plan submitted in response to the NOFA needs improvement or supplementation, the Department will assist the PHA in

revising its plan prior to the execution of the amendment to the Annual Contributions Contract (ACC). Because very few, if any, eligible PHAs will not have had assessments by today's publication of the NOFA, the Department believes that all assessments will be completed on a timely basis in this funding cycle.

(6) Activities that will decrease unit turnover in occupied units (e.g., replacement of appliances) also should be considered eligible for funding under this program. (CHA)

Response: Although the Department recognizes the relationship between turnover and vacancy rates and is sympathetic to this reasonable suggestion, current funding for the vacancy reduction program is limited. Therefore, the Department intends to target funding of unit improvements for currently vacant units or units to become vacant for reconfiguration purposes, where reconfiguration is necessary to reduce the current number of vacancies.

(7) Funding should be guaranteed for a minimum of a three-year period following HUD approval of a five-year vacancy reduction plan, subject to the PHA's continued progress on and adherence to its vacancy reduction plan. (CHA, MCHA)

Response: The Department cannot guarantee funds that have not been appropriated by Congress. Therefore, a PHA's five-year plan should reflect a realistic projection of the actions that can be taken with available or potential resources.

(8) If funded activities require compliance with Housing Quality Standards, the amount of funds may not be sufficient to address problems in areas outside the unit (e.g., hallways, stairways, fire protection systems). HQS standards should apply only to unit interiors. (CHA)

Response: The Department recognizes that current funding available under the Vacancy Reduction Program will not be sufficient to address all problems areas relating to excess vacancies, and it expects to be guided in its funding decisions by the assessment team reports. The vacancy reduction plans and the recommendations of the assessment teams should include all work inside the units, in the hallways, in common areas, on the site, and to the exterior of the buildings necessary to make the units marketable; providing plans and funding for only the interiors of vacant units may not make those units marketable. Individual work items funded under this program must comply with modernization standards and must result in the targeted unit meeting the HQS.

(9) Program funds should not be directed at PHAs that have vacancy problems due primarily to marketing problems or lack of demand. (CHA)

Response: The Department agrees that the limited program funds should be focused on those PHAs whose vacancy situations can actually be improved by additional funding. This factor is accounted for in § 968.413(d)(2) of the rule ("extent to which the proposed activities will improve the PHA's vacancy problem") and in the definition of "eligible unit" set out in the NOFA published elsewhere in today's **Federal Register**.

Sanctions

In the proposed rule, the Department reported that, at this time, it does not intend to implement section 14(p)(3) of the statute, which provides sanctions for the failure to make progress under a plan. However, commenters were invited to submit suggestions on how this portion of the statute could be implemented in the future. Several commenters submitted remarks on this aspect of the current statutory program, as follows: (1) If a withholding action seems likely after 18 months, an assessment team should be sent to the PHA to perform a review and prepare a report. (PHADA) (2) If there is withholding, consideration should be given to forcing a receiver to be used so that the funds can be used. (PHADA, CHA) (3) Withholding of subsidy because of a failure to make progress is contrary to the approach of rewarding PHAs for solving problems. (MCHA)

Response: This final rule does not include provisions implementing the sanctions mandated by section 14(p)(3) of the 1937 Act. However, the Department is continuing to work on those provisions, and will take into consideration the remarks provided by commenters in response to the proposed rule. The Department will comply with the requirements within the applicable statutory timeframe.

Use of NOFAs

(1) HUD is proposing to use NOFAs as the vehicle to convey significant program information to interested PHAs, which defeats the intent of notice-and-comment rulemaking. The proposed rule does not provide sufficient detail on how program funds will be targeted, the format of the vacancy reduction plans, and criteria for determining a PHA's capacity to implement the plan in a timely and effective manner. Use of NOFAs will lead PHAs to try to second-guess HUD on selection criteria and lead to a hit or miss approach on solving the vacancy problem. (CLPHA)

Response: The Department disagrees with this comment. The rule provides the framework for the program and meets or exceeds the requirements of the Administrative Procedure Act and the Department's regulations. The preamble to the proposed rule elaborates on the Department's expectations for targeting funds made available for the program.

The Department views the program as a dynamic tool in the effort to reduce unnecessary vacancies in public housing. Experience with the program and elimination of certain root causes of vacancies will guide the Department in selecting the optimal criteria for any subsequent targeting of program funds. This targeting would be done in compliance with the statutory parameters of the program.

The Department intends to undertake the vacancy reduction effort by providing funding for those vacant units most likely to be turned around quickly, targeting the majority of the funding for units averaging a cost of $8,000 or less, with some funds targeted for units for which a CGP agency can provide the additional funding necessary.

Furthermore, the report of the assessment team is expected to address the capacity of a PHA to implement vacancy reduction activities in a timely and efficient manner. The Department reiterates that the intent of the requirement that participating PHAs submit vacancy reduction plans is to assist in the development of a comprehensive approach to vacancy reduction. As demonstrated by its efforts to solicit the input of industry and PHA representatives during the development of the proposed rule and the initial NOFA, the Department is committed to implementing this program in a constructive way that responds to the needs of PHAs with remediable vacancy problems.

(2) Before the NOFA is published, there should be a meeting with industry groups. The meeting should be used to share survey results and exchange viewpoints. (PHADA)

Response: The Department solicited the input of representatives of the industry, PHAs, and resident organizations during the development of the proposed rule and the initial NOFA. Meetings were held with these representatives on January 28 and July 9, 1993. The Department believes these meetings have been valuable in helping to develop the program, but does not believe that it is necessary to schedule any additional meetings at this time.

The discussions at the previous meetings, along with the written comments received in response to the proposed rule, have provided the Department with a foundation for the policy decisions it has made regarding how to operate this program within the parameters established by Congress. Furthermore, in the NOFA published elsewhere in today's **Federal Register**, the Department discusses the results of the survey, in the context of both general results and specific implications for the program decisionmaking process.

(3) The proposed rule seems to imply that more than one NOFA might be published in a single fiscal year. Only one NOFA should be issued and it should coincide with the Comprehensive Grant Program planning process. (PHADA, CHA)

Response: The language that referred to "periodic" NOFAs in the proposed rule was intended simply to verify that separate NOFAs would be published for any money that is appropriated for the program in subsequent years. This is the common practice of the Department, as established in the HUD Reform Act, but the actual timing of a subsequent NOFA in any fiscal year cannot be predicted. The Department appreciates the commenters' point about the coordination of capital planning programs.

Relationship of the Vacancy Reduction Program to Other HUD Programs

(1) HUD should integrate the approach of the Vacancy Reduction Program into an overall effort to draft a new vacancy rule. The Vacancy Reduction Program itself is insufficient to address problems faced by PHAs with expired Comprehensive Occupancy Plans (COPs); these PHAs still need operating funds to keep vacant units in shape until money is available to make necessary improvements. (CLPHA)

Response: Any new vacancy rule would require substantial time for development and implementation. Meanwhile, the Department is committed to providing assistance currently available under the vacancy reduction program to PHAs with vacancy problems. Changes to the determination of operating subsidy eligibility as proposed by the commentor are outside the scope of this rule.

(2) The Vacancy Reduction Program may duplicate planning requirements of other programs, such as PHMAP and the Comprehensive Grant Program, that also address vacancy problems. (PHADA, CHA)

Response: As noted above, the Department appreciates the commenters' point about the coordination of capital planning programs and will endeavor to integrate the vacancy reduction program with other related programs.

(3) The same format used for the vacancy reduction plan should be used for developing an Improvement Plan under PHMAP if the PHA fails the PHMAP vacancy standard. (PHADA)

Response: The Department intends to coordinate the formats of these plans, to the extent possible.

(4) The restrictions placed on assistance to troubled authorities (see § 968.413(b)) should be made consistent with the language of HOPE VI. (PHADA)

Response: The restrictions are prescribed by the authorizing statute for the program. However, in recognition of the comments requesting coordination of the Department's capital planning programs, the final rule includes new language that cross-references PHMAP indicators and clarifies the evaluation of the progress of troubled PHAs.

(5) If a PHA presents a vacancy reduction plan that HUD approves, the PHA should receive operating subsidy based on its actual occupancy rate, rather than on the current formula rate. (CHA, AHA) How does the Department view this program in the context of the Performance Funding System (PFS) funding of vacant units? (PHADA)

Response: The vacancy reduction program is not intended as a substitute for the vacancy rule or to provide relief for PHAs that do not meet established goals under COPs. However, the vacancy reduction program should improve the revenue situations of participating PHAs in two ways: First, through direct funding of portions of the plans; second, through the increased operating subsidies and rent collections that will result from reoccupancy of those vacant units.

Miscellaneous

(1) The survey results and data developed from analyzing the vacancy reduction plans should be released publicly. (PHADA)

Response: The Department is releasing data from the survey as part of the NOFA published elsewhere in today's **Federal Register**. In addition, the Department intends to develop a report based on data and information provided by the assessment teams in their reports.

(2) The Vacancy Reduction Program should be separately funded, instead of using amounts set aside from regular modernization funding. (PHADA, CHA)

Response: As recognized by the commenters, Congress has authority over the mechanism used for funding the program.

(3) Funding decisions under the program should recognize when a PHA has used existing resources to address its vacancy problem. For example, although a commitment to use a large portion of CGP funds to address vacancies will reduce the need for additional vacancy reduction funds, those CGP funds could have been used to fund other substantial needs of the PHA. (AHA)

Response: When PHAs have other modernization needs that cannot be met by current funding, Vacancy Reduction Program funds may be used instead of CGP funding committed but not yet under contract for vacancy reduction.

Section-by-Section Analysis

The Department is establishing the Vacancy Reduction Program as new subpart D in 24 CFR part 968, with conforming amendments made as necessary in other sections of title 24 of the Code of Federal Regulations. The following discussion is a section-by-section description of the rule.

Section 968.103 addresses the allocation of funds under section 14 of the 1937 Act. The Department is amending paragraph (c) to account for the new set-aside for the Vacancy Reduction Program. The new language repeats the statutory scheme for setting aside four percent of the section 14 funds remaining after deducting amounts for emergencies and natural and other disasters. Paragraph (c)(1) provides that 20 percent of these funds will be available for activities under section 6(j) of the 1937 Act, while the remaining 80 percent will be available for the Vacancy Reduction Program, as implemented by this rule. Section 968.103 also is amended to clarify that the Vacancy Reduction Program does not apply to Indian Housing Authorities (IHAs).

Subpart D of part 968, encompassing §§ 968.401–968.425, is added to implement the Vacancy Reduction Program.

Section 968.401 states the policy of the Department with respect to achieving high occupancy rates in public housing, in order to ensure maximum use of available housing resources.

Section 968.403 repeats the statutory definition of PHAs to which the Vacancy Reduction Program is applicable, but clarifies that units not eligible for funding under section 14 of the 1937 Act are excluded from this set-aside program, as well.

Section 968.405 defines terms that are used in subpart D to the extent these

terms are not applicable to the remainder of part 968.

Section 968.407 establishes the requirement that eligible PHAs submit a five-year vacancy reduction plan, and specifies the contents of the plan. For purposes of identifying components of a plan that may be identified as eligible for funding, within the limits of appropriated amounts, each submitted plan must be organized in a manner that facilitates review by the Department. For each action proposed to eliminate vacancies, the plan must include a schedule that shows the number of vacancies that the PHA expects to eliminate by the end of each 12-month period during the five years of the plan.

When components of a plan involve capital improvements to dwelling units, the PHA must ensure that, after the improvements, the units themselves would meet or exceed the Housing Quality Standards set forth in 24 CFR 882.109, as amended by regulatory requirements concerning lead-based paint hazards.

Section 968.410 explains the requirement for an on-site assessment of a participating PHA's vacancy situation, including the composition and responsibilities of the assessment teams and the purpose of the assessments.

Section 968.413 establishes eligible uses and limitations on the use of funds available for the Vacancy Reduction Program. Paragraphs (a), (b), and (c) echo the statute establishing the program, but paragraph (b) includes clarifying language that cross-references PHMAP indicators in measuring the progress required under the statute for troubled PHAs. Paragraph (d) establishes that funding decisions would be through a publicly announced process, on the basis of priorities to be established by the Department.

Section 968.416 provides that the PHA must comply with HUD requirements in requesting funds against the approved modernization budget.

Section 968.419 requires the grantee to be responsible for assuring the quality of work performed using program funds.

Section 968.422 establishes periodic reporting requirements for grantees until activities funded under the vacancy reduction program are completed. This section also specifies a schedule for completion of funded activities.

Section 968.425 details the process for notifying a PHA of any deficiencies in its compliance with program requirements and specifies the nature of the changes and sanctions that may be pursued by HUD.

Section 968.428 establishes requirements to be applied in auditing the grantee's use of funds upon completion of activities funded under the program.

Section 968.435 lists program requirements that apply to the Vacancy Reduction Program in addition to the requirements specified in other sections of subpart D and § 968.110.

Other Matters

Environmental Review

At the time of publication of the proposed rule, a finding of no significant impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The proposed rule is adopted by this final rule without significant change. Accordingly, the initial finding of no significant impact remains applicable, and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the office of the Rules Docket Clerk at the above address.

Executive Order 12866

This rule has been reviewed by the Office of Management and Budget under Executive Order 12866. Any changes made in the rule as a result of this review are identified in the docket file of the rule maintained by the Department and available for review at the above address.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule implements a statutory program that provides funding to PHAs for limited activities designed to reduce the number of vacant dwelling units in their inventories.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule do not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. As a result, the rule is not subject to review under the Order. The rule merely implements a statutory program that provides funding to PHAs for limited activities designed to reduce the number of vacant dwelling units in their inventories.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. No significant change in existing HUD policies or programs result from promulgation of this rule, as those policies and programs relate to family concerns.

Regulatory Agenda

This rule was listed as Item 1688 in the Department's Semiannual Agenda of Regulations published on April 25, 1994 (59 FR 20424, 20470), in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 968

Grant programs—housing and community development, Indians, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, part 968 of title 24 of the Code of Federal Regulations is amended as follows.

PART 968—PUBLIC HOUSING MODERNIZATION

1. The authority citation for part 968 continues to read as follows:

Authority: 42 U.S.C. 1437d, 14371 and 3535(d).

2. Section 968.103 is amended by revising paragraph (c) to read as follows:

§ 968.103 Allocation of funds under section 14.

* * * * *

(c) *Set-asides.* After deducting amounts for the reserve for natural and other disasters and for emergencies under paragraph (b) of this section, HUD shall set aside from the funds remaining:

(1) *Regarding vacancy reduction,* an amount equal to 4 percent of those funds, to be further allocated as follows:

(i) Twenty percent of this four percent shall be available only for carrying out activities under section (6)(j) of the United States Housing Act of 1937; and

(ii) Eighty percent of this four percent shall be available under the vacancy reduction program (see subpart D of 24 CFR part 968).

(2) *Regarding the comprehensive grant program,* no more than five

percent for the purpose of providing credits to PHAs that were formerly designated as mod troubled agencies under the Public Housing Management Assessment Program (PHMAP) (see 24 CFR part 901). The purpose of this set-aside is to compensate these PHAs for amounts not allocated by HUD because of a PHA's prior designation as a mod troubled agency.

(3) *Nonapplicability to IHAs.* The Vacancy Reduction Program in subpart D of this part does not apply to IHAs. In addition, because the PHMAP performance indicators under 24 CFR part 901 do not apply to IHAs, these agencies cannot be deemed "mod troubled" for purposes of the CGP and are not eligible for funding under paragraph (c)(1)(i) of this section. Hence, IHAs are not subject to any reduction in funding under section 14(k)(5)(A) of the Act, and IHAs do not participate in the set-aside credits established under paragraph (c)(2) of this section.

* * * * *

3. A new subpart D, consisting of §§ 968.401 through 968.425, is added to read as follows:

Subpart D—Vacancy Reduction Program

Sec.
968.401 Purpose.
968.403 Applicability.
968.405 Definitions.
968.407 Vacancy reduction plan.
968.410 Assessments.
968.413 Funding.
968.416 Fund requisitions.
968.419 Grantee's oversight responsibilities.
968.422 Progress reports and completion schedule.
968.425 HUD review of grantee performance.
968.428 Program closeout.
968.425 Other program requirements.

§ 968.401 Purpose.

Section 14(p) of the United States Housing Act of 1937 establishes the Vacancy Reduction Program, in conjunction with statutory provisions on public and Indian housing modernization. It is the policy of the Department that public housing agencies should maximize the use of housing resources, using every reasonable means to achieve and maintain high levels of occupancy by eligible families in PHA-owned or -operated housing.

§ 968.403 Applicability.

(a) *Participation.* A PHA shall participate in the vacancy reduction program under this subpart if:

(1) The PHA has a vacancy rate among dwelling units owned or operated by the PHA that exceeds twice the average vacancy rate among all public housing agencies;

(2) The PHA is designated as a troubled or mod troubled agency under section 6(j) of the Act; or

(3) A receiver has been appointed for the PHA pursuant to section 6(j)(3) of the Act.

(b) *Exclusions.* Units owned or operated by a PHA that are not eligible for funding under section 14 of the Act are excluded from coverage under this subpart and shall not be used to calculate the eligibility of a PHA under this subpart.

(c) *Examples of eligibility.* The following are specific examples of eligibility under this program:

(1) All units in the Federal Low-Rent Public Housing Program are eligible;

(2) In the Section 23 program, only those units that are in projects that are bond-financed and for which the PHA would receive clear title at the end of the lease term will be eligible; and

(3) Section 8 projects are not eligible.

§ 968.405 Definitions.

In addition to the definitions applicable under § 968.105, the following definitions apply to this subpart:

Average vacancy rate means the average vacancy rate for all public housing agencies.

NOFA means Notice of Funding Availability. NOFAs announcing available funding under the program will be published in the **Federal Register**, and will set out the application requirements and applicable selection criteria.

Operating subsidy means the annual contribution for operating subsidy made to the PHA by HUD, which is determined in accordance with part 990 of this chapter.

PHA means public housing agency. For purposes of this subpart, the term excludes Indian Housing Authorities.

PHMAP means the Public Housing Management Assessment Program, authorized in 42 U.S.C. 1437d(j) and implemented in 24 CFR part 901, which is designed to allow HUD and the PHA to identify PHA management capabilities and deficiencies and to lead to better overall management of the public housing.

Receiver means a person or entity appointed by a court pursuant to section 6(j)(3) of the United States Housing Act of 1937 to be responsible for the day-to-day operation of a PHA.

Troubled PHA means a public housing agency that has been designated as a troubled agency (including mod troubled) under section 6(j) of the United States Housing Act of 1937.

Vacancy or *vacant unit* means a dwelling unit that is not under an effective lease to an eligible family. An effective lease is a lease under which an eligible family has a right to possession of the unit and is being charged rent, even if the amount of any utility allowance equals or exceeds the amount of a total tenant payment that is based on income and, as a result, the amount paid by the family to the PHA is zero.

Vacancy reduction plan means a plan developed and submitted by a PHA to HUD, regarding vacancies in units owned or operated by the PHA. The plan must meet the criteria established in § 968.407.

§ 968.407 Vacancy Reduction Plan.

(a) *Submission of plan.* Each PHA to which this subpart applies, in accordance with § 968.403, shall submit a vacancy reduction plan. The plan shall contain the elements identified in paragraph (b) of this section, and shall be organized so that each of the elements can be identified, reviewed, and funded separately.

(b) *Contents of plan.* The format of a plan submitted for funding under this program will be defined in NOFAs to be published periodically in the **Federal Register**. Each vacancy reduction plan submitted by a PHA under paragraph (a) of this section shall include statements:

(1) Identifying all vacant dwelling units administered by the PHA, including unmarketable units, and explaining the reasons for the vacancies. Units may be grouped together when explaining the reasons for the vacancies;

(2) A description of the turnover rate of units for the past two years, including the number of units vacated and reoccupied per development per year and the average number of days required to return a unit to occupancy. If the turnover rate is increasing, the plan should identify each cause of the increase.

(3) Describing the actions to be taken by the PHA during the following five years to eliminate the vacancies. The PHA shall:

(i) State project-specific actions that it is taking or intends to take that will eliminate vacancies, such as modernization, demolition, unit redesign or conversion, density reduction, disposition, modification of occupancy policies, site and security improvements, and other physical or management improvements; and

(ii) For each project identified, set out a schedule for completing the actions identified in paragraph (b)(3)(i) of this section and removing the dwelling units from the PHA's inventory of vacant units. If the timing of any action is

dependent upon a HUD approval or decisionmaking process, the schedule for the PHA action may be presented in terms of a specified time period following completion of the HUD process. For each action, the schedule shall include the number of vacancies that will be eliminated by the end of each 12-month period after the PHA begins to receive assistance under this subpart.

(iii) When the PHA has been unable to return units vacated during the last two years to occupancy within an average of 30 days, the plan shall describe actions that the PHA will undertake to achieve at least a 30-day turnover rate.

(4) Identifying any impediments that will prevent elimination of the vacancies within the five-year period;

(5) Identifying any vacant units funded for modernization, major reconstruction, demolition, or disposition activities;

(6) Identifying any vacant dwelling units that are eligible for modernization, major reconstruction, demolition, or disposition, but have not been funded or approved for these activities and are not likely to be funded or approved for at least three years. The statement shall include an estimate of the amount of assistance necessary to complete the modernization, major reconstruction, demolition, or disposition of these units;

(7) Identifying any vacant units not identified under paragraphs (b)(5) and (b)(6) of this section. The statement shall include a description of any appropriate activities relating to elimination of the vacancies in these units and an estimate of the amount of assistance necessary to carry out the activities identified under this paragraph (b)(7);

(8) Setting forth an agenda for implementation of management improvements during the first fiscal year beginning after submission of the plan. If the timing of any improvement is dependent upon a HUD approval or decisionmaking process, the schedule for the improvement may be presented in terms of a specified time period following completion of the HUD process. The agenda should include any management improvements recommended by the assessment team pursuant to § 968.410 and an estimate of the amount of assistance necessary to implement the management improvements; and

(9) Of any other information that the Secretary shall deem appropriate, as provided in the applicable NOFA. Such information may include budget documents, in the case of any PHA that is applying for funds under a NOFA.

(c) *Housing standards.* To the extent that a plan involves modernization, reconstruction, or rehabilitation activities that have not been funded or approved previously and are not planned to be undertaken using Comprehensive Grant Program funds, the plan must reflect cost estimates that, at a minimum, are based on:

(1) For individual work items funded under the program, compliance with modernization standards, as set forth in HUD Handbook 7485.2, as revised; and

(2) For each vacant unit on which funds are expended, compliance of the unit with the Housing Quality Standards, as set forth in 24 CFR 882.109 and as amended by the regulations concerning lead-based paint in public housing in 24 CFR part 35.

(Approved by the Office of Management and Budget under control number 2577–0181)

§ 968.410 Assessments.

(a) *Requirement.* Each PHA participating in the program under this subpart shall cooperate with an onsite assessment of the vacancy situation of the PHA by an assessment team, whose members will be selected by the Secretary in accordance with paragraph (b) of this section. The Secretary will schedule assessments in a priority order, based on:

(1) The nature and extent of each PHA's vacancy problem, and HUD's goal of achieving maximum reoccupancy using the funds available; and

(2) The availability of assessment teams and the expected level of complexity of the assessments to be scheduled.

(b) *Composition of assessment team.* The assessment team shall include representatives of HUD, an equal number of independent experts knowledgeable with respect to vacancy problems and management issues relating to public housing, and officials of the PHA.

(c) *Scope of assessment.* The assessment team shall assess the vacancy situation of the PHA to determine the causes of the vacancies, including any management deficiencies or modernization activities. At least one member of the assessment team shall consult with residents of the PHA's units regarding the vacancy situation of the PHA. The assessment team shall also examine indicators of the management performance of the PHA relating to vacancy, which shall include consideration of the performance of the PHA as measured by the indicators under paragraphs (A) and (E) of section 6(j)(1) of the Act (implemented by 24 CFR 901.10(b)(1) and 901.10(b)(5)).

(d) *Report of assessment team.* The assessment team shall submit to the PHA and the Secretary written recommendations for management improvements to eliminate or alleviate management deficiencies and for strategies to deal with vacant units. If requested by the PHA, HUD will assist the PHA in preparing the vacancy reduction plan under § 968.407, including determining appropriate actions to eliminate vacancies.

§ 968.413 Funding.

(a) *Eligible activities.* Except as provided in paragraph (b) of this section, assistance may be provided under this subpart to PHAs submitting vacancy reduction plans for reasonable costs of the following activities:

(1) Implementing management improvements;

(2) Rehabilitating vacant dwelling units identified in the plan in accordance with § 968.407; and

(3) Carrying out vacancy reduction activities described in the plan in accordance with § 968.407.

(b) *Assistance to troubled PHAs.* Assistance may be provided to a troubled PHA only if the PHA meets either of the conditions described in paragraphs (b)(1) and (2) of this section:

(1) The PHA has demonstrated substantial progress on the following vacancy related Public Housing Management Assessment Plan (PHMAP) indicators: 2 (Modernization), 5 (Unit Turnaround), 6 (Outstanding Work Orders), or 7 (Annual Inspection and Condition of Units and Systems), as demonstrated by a PHMAP score of "C" or better. If the PHA does not have a score of "C" or better on these indicators, substantial progress may be demonstrated as follows:

(i) The PHA, based on current data would qualify for a score of "C" or better on the indicators.

(ii) A statement of alternative arrangements that have been made to assure effective administration of the function covered by the indicator, i.e. rehabilitation and modernization activities (in regard to the units for which funding is requested) and the PHA-wide administration of unit turnaround, work orders, and preventive maintenance.

(2) The PHA has provided reasonable assurances that substantial progress will be made to remedy any management deficiencies identified by the assessment team or any vacancy-related deficiencies identified in HUD reviews and audits, through activities that have already begun or will be initiated.

(c) *Costs of assessment teams.* The Secretary may use amounts appropriated for activities under this subpart for any travel, administrative, and other necessary expenses of assessment teams under § 968.410.

(d) *Determination of assistance amounts.* (1) Whether a PHA is to receive assistance, and the amount of any assistance, under this subpart will be determined through a process to be described in detail for each round of funding in Notices of Funding Availability to be published in the **Federal Register**. A portion of a PHA's plan, rather than the entire plan, may be funded, and the Secretary may establish reasonable limits on the funding that will be available under a NOFA for any category of eligible activities or for any PHA.

(2) Prior to determining the amount of any assistance to be awarded to a PHA, HUD will review the PHA's plan and the extent to which it is consistent with the assessment of the PHA, and any other factors that the Secretary finds to be appropriate.

(e) *Revisions.* Funding is expected to be spent to carry out the vacancy reduction activities funded under this program. Should a change in circumstances make a revision necessary, HUD approval is required. The grantee must submit a report that substantiates a need for the revision, along with an account of how the revision affects the funded plan.

§ 968.416 Fund requisitions.

To request funds against the total approved vacancy reduction program budget, a PHA must submit a request to HUD in accordance with HUD requirements.

§ 968.419 Grantee's oversight responsibilities.

Each grantee shall provide, by contract or otherwise, adequate and competent supervisory and inspection personnel to assure work quality and progress during modernization, whether work is performed by contract or force account labor and with or without the services of an architect/engineer.

§ 968.422 Progress reports and completion schedule.

(a) *Reports required.* Until completion of the activities funded under the vacancy reduction program, the grantee shall submit to HUD, in a form and at a time prescribed by HUD, the following:

(1) A report on modernization fund expenditures;

(2) A narrative report that includes an accounting of the grantee's progress against the milestones established in its vacancy reduction plan. The report shall include the number of both funded and regular turn-over units that have been made ready for occupancy; and

(3) Any additional information as HUD may require.

(b) *Completion schedule.* HUD expects that most work items funded under this program will be completed within one year. Work items must be completed within two years from the date of funding, or by some other time as may be specified in the Notice of Funding Availability, unless prior approval is obtained from HUD.

(Approved by the Office of Management and Budget under control number 2577–0181)

§ 968.425 HUD review of grantee performance.

(a) *Performance reviews.* HUD shall carry out such reviews of the performance of each funded PHA as may be necessary or appropriate to determine compliance with the PHA's vacancy reduction plan and related HUD requirements. In these reviews HUD will determine whether the PHA has:

(1) Carried out its vacancy reduction activities in a timely manner and in accordance with its vacancy reduction plan;

(2) Completed, or made reasonable progress toward completing, the physical items funded under the vacancy reduction plan, and whether the work items being carried out conform with the modernization and energy standards in § 968.115 of this chapter;

(3) Implemented, or made reasonable progress toward implementing, the management improvements funded under the vacancy reduction program; and

(4) Made reasonable progress in meeting the goals established in its vacancy reduction plan.

(b) *Notice of deficiency.* If HUD finds any deficiency in a review of a grantee's performance under this part, HUD may issue to the grantee a notice of deficiency stating the specific program requirements that the grantee has violated and requesting the grantee to take corrective action.

(c) *Corrective action order.* (1) *Issuance.* If HUD finds any of the deficiencies listed in paragraph (c)(3) of this section in its review of the grantee's performance, HUD may issue to the grantee a corrective action order, whether or not a notice of deficiency has previously been issued on the specific deficiency. The corrective action order shall notify the grantee of the specific program requirements that the grantee has violated and shall specify the corrective action.

(2) *Consultation with grantee.* Before ordering corrective action, HUD will give the grantee an opportunity to consult with HUD regarding the proposed action.

(3) *Bases for corrective action.* HUD may order a grantee to take corrective action only if HUD determines:

(i) The grantee has not submitted a performance report as required by HUD;

(ii) The grantee has not carried out activities under its vacancy reduction program in a timely manner and in accordance with HUD requirements;

(iii) The grantee does not have continuing capacity to carry out activities in its vacancy reduction plan; or

(iv) An audit conducted in accordance with 24 CFR part 44, or pursuant to other HUD reviews, reveals deficiencies that HUD reasonably believes require corrective action.

(d) *Nature of corrective action.* (1) HUD shall design corrective action to prevent a continuation or recurrence of the same or a similar deficiency or to mitigate to the greatest extent feasible any adverse effects of the deficiency.

(2) HUD may order a grantee to take the corrective action that HUD determines appropriate for carrying out the elements of the vacancy reduction plan. Corrective action may include, but is not limited to, suspension of grantee's authority to incur costs against the vacancy reduction funding and reimbursement, from sources other than HUD funds, of any amount spent improperly.

(e) *Failure to take corrective action.* In cases where HUD has ordered corrective action and the grantee has failed to take the required action within a reasonable time, as specified by HUD, HUD may take one or more of the following steps:

(1) Withhold vacancy reduction funds from the grantee;

(2) Declare a breach of the ACC by the grantee; and

(3) Any other sanctions authorized by law or regulation.

§ 968.428 Program closeout.

(a) *Requirements for grantees.* Upon completion of the activities funded in accordance with this part, the grantee shall submit to HUD, and in a form prescribed by HUD, the actual modernization cost certificate for HUD's review, audit verification, and approval. The grantee shall immediately remit any excess funds provided by HUD. If the audited modernization cost certificate discloses unauthorized expenditures, the grantee shall take such corrective actions as HUD may direct.

(b) *Audit*. The audit shall follow the guidelines prescribed in 24 CFR part 44, Non-Federal Government Audit Requirements.

(Approved by the Office of Management and Budget under control number 2577–0181)

§ 968.435 Other program requirements.

In addition to the program requirements applicable to this subpart under § 968.110, each PHA participating in the vacancy reduction program under this subpart shall:

(a) Certify that any modernization, reconstruction, or rehabilitation activities that are funded under this subpart will be undertaken in accordance with modernization standards, as set forth in HUD Handbook 7485.2, as revised;

(b) Certify that activities undertaken within vacant units will bring the affected vacant units into compliance with the Housing Quality Standards, as set forth in 24 CFR 882.109 and amended by the regulations concerning lead-based paint in public housing at 24 CFR part 35; and

(c) Provide for resident involvement, in a manner to be determined by the Secretary, in the process of applying for any funding available under this part.

Dated: June 6, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 94–14281 Filed 6–10–94; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N-94-3761; FR-3538-N-01]

NOFA for Vacancy Reduction Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of funding availability.

SUMMARY: This NOFA announces the availability of funding for activities under the Vacancy Reduction Program. Under this program, certain public housing agencies (PHAs) are required to develop and submit a plan regarding vacancies in units owned or operated by the PHA. Assessment teams have conducted on-site assessments of the vacancy situation at known eligible PHAs, and when notified will conduct an assessment at any PHA that meets the eligibility requirements but has not been assessed. In addition, when requested, HUD will provide assistance to any eligible PHA in developing its vacancy reduction plan. Although funds available under this NOFA will be used to implement the plans, these funds are intended to supplement other initiatives of the PHA that will reduce the rate of vacancies in a PHA's inventory. The NOFA contains information on the following:

(a) The purpose of the NOFA, available amounts, and eligibility; and

(b) Application processing, including how to apply, the required content of the application, and how selections will be made.

DATES: An application must be submitted before 4 p.m. (Eastern Standard Time) on July 28, 1994.

Any PHA that considers itself eligible for funding under this NOFA, but that has not yet been scheduled for an assessment under 24 CFR 968.410, must request an assessment before June 28, 1994.

The above-stated deadlines are firm as to date and hour. Applications may be hand-delivered or mailed, but applications sent by facsimile will not be accepted.

ADDRESSES: The original completed application must be submitted to: Attention: Office of Assisted Housing, Department of Housing and Urban Development, 451 Seventh St., SW., room 4204, Washington, DC 20410; one copy must be sent to the appropriate HUD Field Office; and a one copy must be sent to each member of the assessment team.

FOR FURTHER INFORMATION CONTACT: MaryAnn Russ, Director, Office of Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., room 4204, Washington, DC 20410, telephone (202) 708-1800 or (202) 708-1380 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this NOFA have been approved by the Office of Management and Budget (OMB), under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), and assigned OMB control number 2577-0181.

I. Purpose and Substantive Description

A. Authority

The funding made available under this Notice of Funding Availability (NOFA) is authorized as a set-aside by section 115(a) of the Housing and Community Development Act of 1992 (Pub. L. 102-550, approved October 28, 1992) (1992 Act). Section 115(a) requires a percentage of the amounts available under section 14 of the United States Housing Act of 1937 in fiscal years 1993 and 1994 to be set aside for the Vacancy Reduction Program. Final implementing regulations for the Vacancy Reduction Program are published elsewhere in today's **Federal Register**.

In the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1993 (Pub. L. 102-389, approved October 6, 1992; 106 Stat. 1582) (1993 Appropriations Act), Congress appropriated $3.1 billion for activities under section 14, and in the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1994 (Pub. L. 103-124, approved October 28, 1993 (1994 Appropriations Act), Congress appropriated $3.23 billion for these activities. A total of $202,560,000 in set-asides is available for this program to fund Vacancy Reduction Program activities.

B. Allocation Amounts

A portion of the funds available for this program will be used for travel and administrative expenses of the assessment teams, as authorized by Section 115 of the 1992 Act. Of the remaining amount, no PHA applying for funding under this NOFA may receive more than 15 percent of the total available funds.

Subject to this 15 percent limitation, eligible public housing agencies (PHAs) that are Comprehensive Improvement Assistance Program (CIAP) agencies will be provided funding in the full amounts approved for Vacancy Reduction Program activities. For PHAs that are Comprehensive Grant Program (CGP) agencies, if insufficient funds remain to fund all eligible and approved activities under this NOFA, the amount to be reserved for each CGP agency will be its pro rata share of the total remaining funds available, in accordance with Section I.J(3) of this NOFA.

All units that are funded in whole or in part by the Vacancy Reduction Program must be brought into compliance with the Housing Quality Standards (HQS), as set forth in 24 CFR 882.109, and must be readily marketable when the work is completed.

C. Background

In order to gain greater insight into the vacancy problems of the PHAs required to participate in the Vacancy Reduction Program, the Department sent a survey form on April 2, 1993, to all PHAs that, based on HUD data bases, were troubled or mod-troubled on January 1, 1993, or had a vacancy rate that exceeded 15.9% on that date. Of the 400 identified PHAs, 345 responded to the survey. These PHAs reported a total of 56,324 vacancies, about half of the total vacancies nationally. The responses showed that additional funding was necessary to cure only half of the vacancies in the inventories of the responding PHAs.

Of those vacant units whose occupancy was not dependent upon additional funding, the reasons for and percentages of the total vacancies were as follows:

- Ready, awaiting leasing—5.7%;
- No demand (defined as few or no persons on the waiting list)—3.5%;
- Undesirable (defined as requiring 4 or more offers to obtain a tenant, but not requiring funding)—2.0%;
- Funded under a modernization program—29.7%;
- In litigation—6.5%; and
- Other reason not requiring funding—3.2%.

Of those units in which vacancies could be eliminated with additional funding, the reasons for and percentages of the vacancies were as follows:

- Awaiting demolition—5.4%;
- Needing modernization—30.0%;
- Needing repair—12.8%; and
- Other reason requiring funding—1.1%.

Of the vacant units that would benefit from additional funding, the estimated costs of rehabilitation (exclusive of any

costs for lead-based paint testing and abatement) and percentage of total vacancies were as follows:

- Up to $5,000—4.8%;
- $5,000–10,000—14.8%;
- $10,000–25,000—7.1%; and
- Over $25,000—13.8%.

Thus, almost 20% of all vacancies in these high-vacancy PHAs could be remedied for a cost of $10,000 or less per unit, plus the cost of any lead-based paint activity, essential management improvements, Section 504 (of the Rehabilitation Act of 1973) rehabilitation, or other essential costs.

The Department seeks maximum efficiency in the use of Vacancy Reduction Program funds. To this end, the Department met with public housing interest groups and resident representatives on January 28 and July 9, 1993, to discuss the needs of public housing that might be met by this program. As a result, the Department has decided to focus this NOFA on units that can be rehabilitated for occupancy at a modest cost, and on units with more expensive rehabilitation costs where the PHA has the ability and agrees to provide the remainder of the funding necessary to prepare the property for occupancy. In this way, the Department hopes to house the optimal number of additional families using the available program funds.

The survey has enabled the Department to proceed with vacancy assessments (see 24 CFR 968.410 in the final rule published elsewhere in today's **Federal Register** and the preamble of the proposed rule, published at 58 FR 29728) for those PHAs that responded to the survey and indicated an inventory of unfunded vacant units. Other PHAs that did not receive a survey form or did not respond to the survey, but that believe they are eligible under this NOFA and wish to apply for funding, must notify the Department so that an assessment can be scheduled as indicated under DATES, at the beginning of this NOFA.

The Vacancy Reduction Program is not designed to focus solely on the rehabilitation of vacant units; the program also is intended to identify and correct site and management deficiencies as necessary to achieve and sustain occupancy of vacant units. Management problems in some of the high-vacancy PHAs also may be responsible for vacancies. These problems may include high turnover, poor maintenance and security, delays in making units ready for occupancy after they are vacated, delays in placing tenants in units as soon as they are ready, or inability to deal with marketability problems that could be addressed successfully. Therefore, management improvements that are necessary for a PHA to achieve and maintain a high level of occupancy and to manage turnover successfully also will be funded under this NOFA. The vacancy assessments will assist the PHAs and HUD in identifying what actions need to be taken in this regard.

Some PHAs may have difficulty preparing an application, including a vacancy reduction plan. The Department will, on request by the PHA, assist the PHA in preparation of the plan. Such assistance may be requested by telephoning Strategic Resources, Inc. (703) 749–3040. Moreover, if an application submitted in response to this NOFA is technically approvable under the NOFA, but is deemed by HUD to need improvement or supplementation in specific areas of the PHA's plan to increase the potential for success, HUD will require changes in the plan before execution of the amendment of the Annual Contributions Contract (ACC).

D. Definitions

The following definitions apply to this NOFA, in addition to the definitions that apply generally to the program under § 968.405 of the final rule published elsewhere in today's **Federal Register**:

Assistant Secretary means the Assistant Secretary for Public and Indian Housing.

Eligible unit means a dwelling unit that satisfies the conditions under either paragraph (1) or paragraph (2) of this definition, as applicable. The unit must be either:

(1) A *vacant unit* that meets the characteristics of both of the following paragraphs (1) (a) and (b):

(a) The cost of rehabilitation necessary to make the unit available for occupancy and marketable (including development-wide physical improvements and other necessary costs, but not including costs of lead-based paint activity, costs for accessibility for those with disabilities, and management improvement funding) is either:

(i) $8,000 or less, when averaged with other vacant units in the development for which the PHA is applying for this category of funding (i.e., average of not more than $8,000 per unit); or

(ii) More than $8,000, when averaged with other vacant units in the development for which the PHA is applying for this category of funding (i.e., average of more than $8,000 per unit), and the PHA has available funding that it agrees to use to pay the costs in excess of $8,000 per unit. "Available funding" includes funds legally available to the PHA by September 30, 1994; and

(b) The unit will be marketable when it has been made ready for occupancy. Units that cannot be made marketable, for any reason, are not eligible to be funded under this NOFA, and funds should not be requested for them in the application. Such units, however, must be included in the vacancy reduction plan; or

(2) An *occupied unit*, if either:

(a) The unit meets the criteria of paragraphs (1)(a)(i) or (ii) and paragraph (1)(b) of this definition, and either:

(i) In order to address the overall vacancy situation at a PHA, it is necessary to move a resident family to another unit. The unit vacated by that family may then be considered an eligible unit. For example, if a PHA has vacant one-bedroom units for which there is no demand, but also has overhoused families that could be transferred to the one-bedroom units (thus freeing up larger units for which there is a demand), the PHA could request funding under this NOFA for both units; or

(ii) The unit is expected to be vacated under the Moving to Opportunities Program; or

(b) The PHA has fewer vacancies on the date of its application than it had on September 1, 1993, and the PHA had expended funds on rehabilitation of the unit in reasonable anticipation of reimbursement from Vacancy Reduction Program funds. The PHA may be reimbursed for the cost of the rehabilitation only if funds remain available after HUD has funded all other eligible costs at all PHAs applying for funds.

Lead-based paint activity includes lead-based paint risk assessments, risk management (interim containment), testing, and abatement, consistent with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821–4826) and HUD implementing regulations at 24 CFR parts 35, 965, and 968.

Marketable means that there is a waiting list for units of the applicable size and that either the past experience of the PHA would indicate that the unit should lease reasonably quickly after completion of the work funded under this program, or other available data indicates that physical and management improvements, including more extensive outreach, would likely result in a demand for the units.

Repair includes routine maintenance when essential to the reoccupancy of the eligible vacant units.

Vacancy Reduction Plan means a plan developed by the PHA that includes the following:

(1) The statements required by § 968.407(b) of the final rule (also see Appendix to this NOFA) published elsewhere in today's **Federal Register**;

(2) For all vacant units, reported by development, information on the:

(i) Number and percentage of units vacant at the time of application under this NOFA;

(ii) Number and percentage of units expected to be occupied by each semiannual date after the submission of the PHA's vacancy reduction plan, as provided under paragraph (3) of this definition, including date of full occupancy;

(iii) Source of funding and expected percentage of funds to be obligated and expended by each semiannual date, as provided under paragraph (3) of this definition; and

(iv) Expected date of any demolition or disposition, and the number of units involved in this activity.

(3) A schedule, by chart or time line, indicating milestones for vacancy reduction activities (all vacant units must be included regardless of whether they require funding and whether they have already been funded). The schedule shall indicate all actions that will have been taken as of the end of each semiannual period, either September 30 or March 31.

(i) Actual calendar dates shall be used for units that do not require vacancy reduction program funding, but will be funded from sources within the control of the PHA (e.g., CGP and the operating budget) or have already been funded by another governmental program (e.g., CIAP, the Severely Distressed Public Housing Program).

(ii) For units for which specific calendar dates cannot be given because approval from HUD is a prerequisite to the action, the schedule shall specify semiannual dates from the expected HUD approval (e.g., first semiannual reporting date after approval, second semiannual reporting date after approval, etc.). Such units include those for which the PHA is requesting or intends to request funding under the Vacancy Reduction Program or another HUD program (e.g., CIAP or the Severely Distressed Public Housing Program), or for which approval of demolition/disposition is required but has not yet been granted.

E. PHA Eligibility

(1) Indian Housing Authorities are not eligible for the Vacancy Reduction Program.

(2) To be eligible under this NOFA, a PHA must:

(a) Have had a vacancy rate that exceeded 15.9% on March 30, 1993, the date used in the HUD survey of vacancies;

(b) Have had a receiver appointed for the PHA pursuant to section 6(j)(3) of the United States Housing Act of 1937; or

(c) Have been a designated troubled or mod-troubled PHA any time within the twelve-month period that ended September 1, 1993. Such a PHA must also meet either of the conditions described in paragraphs (i) and (ii) below:

(i) The PHA has demonstrated substantial progress on the following vacancy related Public Housing Management Assessment Program (PHMAP) indicators: 1 (Vacancy Number and Percentage), 2 (Modernization), 5 (Unit Turnaround), 6 (Outstanding Work Orders), or 7 (Annual Inspection and Condition of Units and Systems), as demonstrated by a PHMAP score of "C" or better. If the PHA does not have a score of "C" or better on these indicators, substantial progress may be demonstrated as follows:

(*A*) Evidence that the PHA, based on more recent data would qualify for a score of "C" or better on the indicators; or

(*B*) A statement of alternative arrangements that have been made to assure effective administration of the function covered by the indicator, i.e., rehabilitation and modernization activities (in regard to the units for which funding is requested) and the PHA-wide administration of unit turnaround, work orders, and preventive maintenance; or

(ii) The PHA has provided a reasonable assurance that substantial progress will be made to remedy any management deficiencies identified by the assessment team, or any vacancy-related management deficiencies related to PHMAP indicators 1, 2, 5, 6, and 7, through activities that have already begun or will be initiated in the next six months, including activities to be funded under this NOFA. The assurance may cross-reference management improvement activity described in its vacancy reduction plan.

F. Eligibility of Activities and Costs

(1) *Eligible Activities*. The following activities are eligible for funding to the extent that they are essential to the goal of improving and maintaining a lower vacancy rate at the PHA. The extent to which activities requested for funding are essential to the achievement of this goal will be determined by HUD on the basis of the application and the vacancy assessment.

(a) Management improvements that have the following characteristics:

(i) The management improvements generally may not exceed 25% of the hard costs to be funded (exclusive of costs for lead-based paint abatement and handicapped accessibility), except that higher amounts for management improvements may be approved when such expenditures are deemed by HUD to be critical to the reduction of vacancies in the PHA. Management improvements include, but are not limited to: activities permitted under paragraph 2–3 of CIAP Handbook 7485.1 (Rev. 4); equal opportunity and civil rights training; and the development of appropriate procedures when there are management problems regarding the PHA's administration of equal opportunity requirements; and

(ii) The management improvement costs shall be funded one time only, to cover a period not to exceed three years or, with regard to PHAs with serious management difficulties, such period as is proposed by the PHA and approved by HUD. Where an approved Vacancy Reduction Program includes management improvements that involve ongoing costs, such as security, HUD will not be obligated to provide any continued funding or additional operating subsidy after the funded period. The PHA shall be responsible for finding other funding sources or reducing its ongoing management costs.

(b) Rehabilitation or repair of vacant eligible units to bring the unit at least into compliance with the Housing Quality Standards (HQS), as set forth in 24 CFR 882.109. Correction of HQS deficiencies outside the unit is not required, unless the correction of the HQS deficiencies is essential to the marketability of the vacant units in the development. Any physical component that is replaced must meet the standards for such components set forth in the Public Housing Modernization Standards Handbook, 7485.2 Rev.1.

(c) Costs necessary to provide accessibility in eligible units to persons with disabilities, in accordance with the requirements of Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990.

(d) Lead-based paint activity, as defined in Section I.D of this NOFA, in eligible units. For lead-based paint (LBP) activities, the PHA is required to comply with 24 CFR part 965, subpart H, and 24 CFR part 35.

(e) Development-wide improvements that are essential to the marketability of the eligible units, such as improvements

made to enhance security or "curb appeal."

(f) Reconfiguration of the interior of buildings or units when there is documentation of significant problems in marketability for the currently available unit size. Documentation for reconfiguration must meet the requirements of HUD Handbook 7465.1 REV. In addition, where reconfiguration is requested, applicants must document that the lack of demand for these units is not compounded by the failure of the PHA to transfer inappropriately housed families. Approval of an application under this NOFA that includes reconfiguration activity will constitute HUD approval of the reconfiguration and no further HUD approval is necessary.

(g) When vacancies are attributable to families being overhoused, activities relating to reassigning those families and repairing of the occupied units made vacant by the reassignment may be included in the PHA request, if the reassignment is essential to correcting the vacancy problem. However, such units will be considered only if the reassignment and repair is likely to result in a decrease of the vacancy rate in the PHA.

(h) Other related activities and improvements eligible under the modernization program (see 24 CFR part 968), such as administrative expenses, fees and costs, nondwelling structures and equipment, and relocation, but only to the extent that such costs are necessary to support activity otherwise eligible and are essential to the achievement and maintenance of a lower vacancy rate.

(i) Demolition of vacant units, when a demolition application has been approved by HUD and the demolition has not been previously funded.

(j) If the PHA has fewer vacancies on the date of its application than it had on September 1, 1993, the PHA will be reimbursed for the costs of rehabilitating the formerly vacant units only if funds remain available after the Department has funded all other eligible costs at all PHAs applying for funds.

(2) *Eligible Costs.* The total amount of funding for which a PHA is eligible is the sum of the following:

(a) For each development, the necessary costs of rehabilitation of eligible units; development-wide physical improvements, including common areas; demolition; or reconfiguration. These costs are not to exceed $8,000 times the number of eligible units in the development at the time of application.

(b) Necessary costs of management improvements, not to exceed 25% of the total hard costs to be funded for all developments (exclusive of costs for lead-based paint abatement and handicapped accessibility), except that the Assistant Secretary may approve higher amounts for management improvements when such expenditures are deemed critical to reduction of vacancies in the PHA;

(c) Other related costs as discussed in paragraph (1)(h) (under "Eligible Activities") of this Section I.F;

(d) Necessary costs for lead-based paint containment or abatement in eligible units; and

(e) Necessary costs for handicapped accessibility for eligible units.

(3) *Ineligible Activities.* Activities are not eligible if the activities are under contract; have been selected for funding from other sources, such as Urban Revitalization Demonstration (URD) grants, CIAP, or State or local funding; or if the PHA has sufficient funds in its operating budget or pursuant to its formula grant under the CGP to fund the activities.

Sufficiency of funds will be determined as follows:

(a) For hard costs, a CGP agency will be deemed to have insufficient funds for the activities if the Assessment of Physical Needs in the Comprehensive Plan shows a need for funds greater than the funds expected to be available to the PHA under the CGP in the next five years.

(b) For management improvements, a CGP agency will be deemed to have insufficient funds if:

(i) For CGP agencies, the Management Needs Assessment in the Comprehensive Plan shows a need for funds greater than 10% of the funds expected to be available to the PHA under its CGP in the next five years; and

(ii) The PHA plans to use at least 10% of its CGP funds for management improvements in each of the next five years.

(c) In addition, for CGP and Comprehensive Improvement Assistance Program (CIAP) agencies, operating funds will be deemed to be insufficient only if the PHA has an operating reserve of less than 75% of the maximum allowable reserve.

G. Resident Involvement

The PHA shall develop a process that assures that residents are fully briefed, have an opportunity to comment on the proposed content of the PHA's application in response to this NOFA, and to be involved in all phases of the process. Particular attention shall be given to opportunities for resident employment. The PHA shall give full consideration to the comments and concerns of residents. The process shall include:

(1) Informing residents of the applicable housing developments about the preparation of the application, including a discussion of the report of the assessment team and actions that will be taken to address any deficiencies;

(2) Once a draft application has been prepared, the PHA shall make a copy available for reading in the management office; provide copies of the draft to any resident organization representing the residents of any development involved; and provide adequate opportunity for comment by the residents of the developments and their representative organizations prior to making the application final;

(3) Providing to HUD and any resident organization representing the development a summary of the resident comments and the PHA's response to them; and notifying residents of the developments that the summary and responses are available for reading in the management office; and

(4) After HUD approval of a grant, notifying residents of the development and any representative organizations of the approval of the grant; providing any resident organization with a copy of the HUD-approved implementation schedule; notifying the residents that the schedule is available in the management office for reading; and developing a system to facilitate regular resident monitoring of the program.

H. Resident Training, Employment, and Contracting

The Vacancy Reduction Program provides an ideal opportunity to enhance resident training, employment, and contracting. In furtherance of HUD goals and priorities, PHAs should, to the greatest extent possible, provide such opportunities for residents under this program, including development of programs under section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Section 3). Section 3 requires best efforts on the part of the PHA to give low- and very low-income persons training and employment opportunities generated by Vacancy Reduction Program assistance, and to award contracts for work to be performed in connection with Vacancy Reduction Program assistance to business concerns that provide economic opportunities for low- and very low-income persons. A PHA shall include in its vacancy reduction plan the projected number of residents the PHA expects to be trained or hired, and the number of business firms that provide economic opportunity to low-

and very low-income persons to be contracted with for vacancy reduction activities, whether directly by the PHA or through business concerns with which the PHA has contracts for vacancy reduction activities.

I. Required Results

(1) Except as provided below, funds provided under this NOFA must be expended and units reoccupied within 24 months from the date of funding, and management improvements must be implemented fully within 3 years from the date of funding. However, the Assistant Secretary for Public and Indian Housing may approve alternative schedules proposed by PHAs with significant management improvement needs. Funds awarded under this program that are not obligated on a timely basis may be recaptured.

(2) During the funding period, move-ins to developments funded under this program must at least equal the number of move-outs plus the number of units funded under this program (excluding units that are vacated for modernization and later reoccupied after modernization). At the end of the funding period, the PHA's current vacancy rate must be reduced to the extent of the number of units funded under this program.

J. Selection and Funding Process

(1) *Sufficiency of Application.* In order to be considered for funding, an application must be complete and consistent with the terms of this NOFA, and the vacancy reduction plan must generally be consistent with the recommendations of the assessment team. The Department recognizes that some variance will exist since some of the assessments already conducted concentrated on units that could be repaired for $10,000 or less. In determining the amount of funds to be reserved for each approvable application, HUD will review the request for consistency with the recommendations of the assessment team and will consider any other information HUD may have available. When an approvable vacancy reduction plan submitted in response to this NOFA needs improvement or supplementation, HUD will require any necessary changes or additions to the plan, and will assist the PHA in revising its plan, before execution of the amendment of the ACC.

(2) *Management Deficiencies.* If a PHA does not adequately address management weaknesses that contribute to its vacancy problem and have been reported by the assessment team, its application will be deemed ineligible for funding.

(3) *Funding Decisions.* When a PHA is requesting funding for eligible units in which rehabilitation costs will exceed an average of $8,000 (see paragraph (1)(a)(ii) in the definition of "eligible unit" in Section I.D of this NOFA), HUD will determine whether the PHA's plan to fund the cost above an average of $8,000 per unit is reasonable. However, no PHA may receive greater than 15 percent of the total amount of funding available.

(a) *CIAP Agencies.* HUD will fully fund all eligible units and associated costs (as defined in Section I.F of this NOFA) for which CIAP agencies apply.

(b) *CGP Agencies.* From the remaining funds HUD will fund eligible applications from CGP agencies to the extent funding is available. Of the total funds remaining available for CGP agencies, 75 percent will be made available for units eligible under paragraph (1)(a)(i) in the definition of "eligible unit" in Section I.D, "Definitions," of this NOFA. The other 25 percent will be made available for units eligible under paragraph (1)(a)(ii) of that definition of "eligible unit".

(i) If the amount of funds available is sufficient to fund fully (including the costs of management improvements, lead-based paint control, and accessibility for the disabled) all CGP agencies in either category of funding, HUD will fund those requests fully.

(ii) If the total funding requested by CGP agencies in any category exceeds the total amount of funds available in that category, the amount to be reserved for each CGP agency will be determined as follows, except that an agency will not be funded at a level exceeding its budget request:

(A) If the amount of available funding is sufficient, each CGP agency will be funded for its eligible costs (exclusive of management improvements and the costs of lead-based paint control and accessibility for the disabled). If funds remain available after funding the requested costs under this paragraph, each CGP agency will receive a pro rated share of the remaining funds, according to the ratio of eligible related costs (i.e., management improvements and the costs of lead-based paint control and accessibility for the disabled) requested by the agency to the total of eligible related costs requested by all CGP agencies.

(B) If the amount of available funding is not sufficient to fund all eligible costs costs under paragraph (3)(b)(ii)(A) of this Section I.J, the funding allocated to each CGP agency will be its pro rata share of funds, determined by using the same ratio as the number of eligible units in the CGP agency in that category for which funding is requested to the total number of eligible units in that category for which funding is requested by all applicant CGP agencies.

(iii) If funds remain available in either category and there are unmet needs in the other category, the excess funds will be reallocated to the category in which additional funding is needed.

(iv) If applications from CGP agencies are not fully funded, those agencies will be required to revise their vacancy reduction plans and budgets to indicate which items will be funded with the amounts reserved for the CGP agency under this program and state alternative plans for unfunded vacancies. To the extent that funds are prorated for its units averaging more than $8,000 in costs, each CGP agency receiving program funds under paragraph (1)(a)(ii) of that definition of "eligible unit" in Section I.D, "Definitions," will be required to commit a portion of the funds the agency had agreed to commit from independent resources if those units had been funded in the full amount requested. This portion will be determined by applying (to the total commitment made in the application) the ratio of funding received for those units to funding requested for those units.

(c) *Remaining funds.* If funds remain available after funding all eligible activities under paragraphs (a) and (b) of Section I.J(3), "Funding Decisions," of this NOFA, a PHA may be reimbursed for costs, or a portion of costs, associated with rehabilitating certain occupied units. The PHA must have fewer vacancies on the date of its application than it had on September 1, 1993, and must have expended funds on those units in reasonable anticipation of reimbursement from Vacancy Reduction Program funds.

K. Implementation of Plan and Other Programs

(a) An applicant's vacancy reduction plan must be approved before an application is funded under this NOFA even though, in most cases, the plan will cover the physical treatment of many units that are not eligible under this NOFA. The PHA is expected to implement the plan using available funds, including the operating budget and CGP funds, and by requesting funds under discretionary programs, including CIAP and the Severely Distressed Public Housing Program. HUD will monitor implementation of the vacancy reduction plan.

(b) Eligible units that a PHA originally planned to fund with CGP funds may

also be funded under this NOFA, as long as they are not currently under contract. The PHA may then reprogram its CGP funds to other work set forth in the Five-Year Action Plan.

II. Application Process

A. Submission of Application

An application must be submitted before 4 p.m. (Eastern Standard Time), July 28, 1994.

An original completed application must be submitted, as follows: (1) One to: Attention: Director, Office of Assisted Housing, Department of Housing and Urban Development, 451 Seventh St., SW., room 4204, Washington, DC 20410,; (2) one copy to the appropriate HUD Field Office; and (3) one copy to each member of the assessment team. The above-stated deadline is firm as to date and hour. Applications may be hand-delivered or mailed, but applications sent by facsimile will not be accepted.

B. Scheduling of Assessments

Any PHA that considers itself eligible and wishes to apply for funding under this NOFA, but that is not yet scheduled for a vacancy assessment under § 968.410, must notify the Department by June 28, 1994, so that an assessment can be performed.

C. Availability of Funding

CIAP agencies that apply early may receive funding prior to the application deadline. Funding will be provided as soon as the application is approved.

III. Checklist of Application Submission Requirements

The following documents comprise the application:

A. Vacancy Reduction Plan

As defined in Section I.D of this NOFA.

B. Request for Funding

Under this NOFA, including:

(1) Form HUD–52825, CIAP Budget/Progress Report, Part I—Summary, including work to be performed with funds other than VRP funds for units eligible under paragraph (1)(a)(ii) of the definition of "eligible unit" in Section I.E of this NOFA, indicating the source of funds. Do not include non-VRP funds in the totals.

(2) Form HUD–52825, CIAP Budget/Progress Report, Part II—Supporting Pages, include work to be performed with funds other than VRP funds for units eligible under paragraph (1)(a)(ii) of the definition of "eligible unit" in Section I.D of this NOFA, indicating the source of funds. Do not include non-VRP funds in the totals. Note that Form HUD–52825, CIAP Budget/Progress Report, Part III—Implementation Schedule is not required;

(3) For both categories of funding (i.e., units averaging costs of $8,000 or less by development, and units averaging costs of more than $8,000 by development), a statement of the number of eligible units in each development and the average per-unit cost in the development, including the costs for rehabilitation of the units and for any development-wide improvements, but excluding costs for lead-based paint, Section 504 compliance, and management improvements.

(4) Troubled and mod-troubled PHAs must demonstrate eligibility for the program by submission of documentation required under Section I.E(2)(b) of this NOFA.

(5) An administrative plan for carrying out the work.

(6) When funding is requested under Section I.J(3)(c), "Remaining Funds," of this NOFA, statements of the number of vacancies on September 1, 1993, and the total number of vacancies in the PHA at the time of the application under this NOFA.

C. Other Submissions

(1) OMB Standard Form SF–424, Application for Federal Assistance, including SF–424B, Assurances—Non-Construction Programs. On the SF–424, PHAs need to complete only items 2, 5, 12, 13, 14, 15, 17, and 18.

(2) A resolution of the governing board of the PHA, including the following:

(a) A certification that the units for which funding is requested in this application will be readily marketable when they are made ready for occupancy;

(b) Certification of eligibility of the PHA and the proposed activities under sections I.F(1) and (2) of this NOFA;

(c) A certification that the PHA has insufficient funds (as defined in Section I.F(3) of this NOFA) in its operating budget or pursuant to its formula grant under the Comprehensive Grant Program to fund the activities for which funding is sought under this NOFA, and that the activities have not been selected for funding from other sources, such as Urban Revitalization Demonstration (URD) grants, CIAP, or State or local funding.

(3) Form HUD–50070, Certification for Drug-Free Workplace.

(4) Form HUD–50071, Certification for Contracts, Grants, Loans and Cooperative Agreements, required of PHAs established under State law that are applying for grants exceeding $100,000.

(5) SF–LLL, Disclosure of Lobbying Activities, required of HAs established under State law only when any funds, other than federally appropriated funds, will be or have been used to influence Federal workers or Members of Congress or their staffs regarding specific grants or contracts.

(6) Form HUD–2880, Applicant/Recipient Disclosure/Update Report.

(7) For any unit reconfiguration for which funds are requested under Section I.F(1)(e) of this NOFA, data supporting the eligibility of the conversions.

(8) Certification of the PHA's intent to comply with the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Executive Order 11063, the Age Discrimination Act of 1975, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and any implementing regulations.

(9) Certification that the PHA will make best efforts to give low- and very low-income persons training and employment opportunities generated by assistance awarded under this NOFA, and to award contracts for work to be performed in connection with assistance provided under this NOFA to business concerns that provide economic opportunities for low- and very low-income persons, as required by section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u).

IV. Corrections to Deficient Applications

Immediately after the submission of an application, HUD will screen the application to determine whether all items were submitted. If the PHA fails to submit any of the items listed in Section III.C of this NOFA, or the application contains a technical mistake such as an incorrect signatory, HUD will immediately notify the PHA that it has 14 calendar days from the date of HUD's written notification to submit or correct the specified items. If any items are missing and the PHA does not submit them within the 14-day cure period, the application will be ineligible for further processing.

V. Subsequent Revisions of Vacancy Reduction Plan

The intent of the Department is to assist each high vacancy PHA to develop a plan that will assure success in reducing the PHA's vacancy rate and improving management capacity to assure continued progress in reaching high occupancy levels. If a plan submitted in response to this NOFA is

approved under the NOFA, but needs improvement or supplementation, HUD will so advise the PHA. The Department will specify areas in which improvement or supplementation is needed and require that revisions be made prior to execution of the amendment of the ACC. HUD staff will be available to assist the PHA in revising its plan.

VI. Other Matters

A. Environmental Review

A finding of no significant impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The finding of no significant impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

B. Federalism Executive Order

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. The NOFA merely sets forth funding availability for eligible PHAs that require the assistance to undertake vacancy reduction activities.

C. Family Executive Order

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this notice has potential for a significant impact on family formation, maintenance, and general well-being. The purpose of the notice is to provide funding to improve housing opportunities by reducing the number of vacant units in the inventories of PHAs, which could benefit some families significantly. However, because the impact on families would be indirect and would be beneficial, no further review is considered necessary.

D. Section 102 of the HUD Reform Act: Documentation and Public Access Requirements; Applicant/Recipient Disclosures

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 of 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, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

Public notice. HUD will include recipients that receive assistance pursuant to this NOFA in its quarterly **Federal Register** notice of recipients of all HUD assistance awarded on a competitive basis. (See 24 CFR 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

E. Section 103 of the HUD Reform Act

HUD's regulation implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a) was published on May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by 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 to HUD employees, 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 Field Office Counsel or Headquarters counsel for the program to which the question pertains.

F. Section 112 of the Reform Act

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b), added by section 112 of the Reform Act, 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 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read part 86, particularly the examples contained in Appendix A of that part.

Any questions about part 86 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.

G. 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. 14371 and 3535(d).

Dated: June 6, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

Appendix—Requirements for "Vacancy Reduction Plan" in 24 CFR 968.407

Section 968.407—Vacancy Reduction Plan

(a) *Submission of plan.* Each PHA to which this subpart applies, in accordance with § 968.403, shall submit a vacancy reduction plan. The plan shall contain the elements identified in paragraph (b) of this section, and shall be organized so that each of the elements can be identified, reviewed, and funded separately.

(b) *Contents of plan.* The format of a plan submitted for funding under this program will be defined in NOFAs to be published periodically in the **Federal Register.** Each vacancy reduction plan submitted by a PHA under paragraph (a) of this section shall include statements:

(1) Identifying all vacant dwelling units administered by the PHA, including unmarketable units, and explaining the reasons for the vacancies. Units may be grouped together when explaining the reasons for the vacancies;

(2) A description of the turnover rate of units for the past two years, including the number of units vacated and reoccupied per development per year and the average number of days required to return a unit to occupancy. If the turnover rate is increasing, the plan should identify each cause of the increase.

(3) Describing the actions to be taken by the PHA during the following five years to eliminate the vacancies. The PHA shall:

(i) State project-specific actions that it is taking or intends to take that will eliminate vacancies, such as modernization, demolition, unit redesign or conversion, density reduction, disposition, modification of occupancy policies, site and security improvements, and other physical or management improvements; and

(ii) For each project identified, set out a schedule for completing the actions identified in paragraph (b)(3)(i) of this section and removing the dwelling units from the PHA's inventory of vacant units. If the timing of any action is dependent upon a HUD approval or decisionmaking process, the schedule for the PHA action may be presented in terms of a specified time period following completion of the HUD process. For each action, the schedule shall include the number of vacancies that will be eliminated by the end of each 12-month period after the PHA begins to receive assistance under this subpart.

(iii) For units vacated during the last two years, when the PHA has been unable to return these units to occupancy within 30 days from the date the units become vacant, the plan shall describe actions planned to achieve at least a 30-day turnover rate.

(4) Identifying any impediments that will prevent elimination of the vacancies within the five-year period;

(5) Identifying any vacant units funded for modernization, major reconstruction, demolition, or disposition activities;

(6) Identifying any vacant dwelling units that are eligible for modernization, major reconstruction, demolition, or disposition, but have not been funded or approved for these activities and are not likely to be funded or approved for at least three years. The statement shall include an estimate of the amount of assistance necessary to complete the modernization, major reconstruction, demolition, or disposition of these units;

(7) Identifying any vacant units not identified under paragraphs (b)(5) and (b)(6) of this section. The statement shall include a description of any appropriate activities relating to elimination of the vacancies in these units and an estimate of the amount of assistance necessary to carry out the activities identified under this paragraph;

(8) Setting forth an agenda for implementation of management improvements during the first fiscal year beginning after submission of the plan. If the timing of any improvement is dependent upon a HUD approval or decisionmaking process, the schedule for the improvement may be presented in terms of a specified time period following completion of the HUD process. The agenda should include any management improvements recommended by the assessment team pursuant to § 968.410 and an estimate of the amount of assistance necessary to implement the management improvements; and

(9) Of any other information that the Secretary shall deem appropriate, as provided in the applicable NOFA. Such information may include budget documents, in the case of any PHA that is applying for funds under a NOFA.

(c) *Housing standards.* To the extent that a plan involves modernization, reconstruction, or rehabilitation activities that have not been funded or approved previously and are not planned to be undertaken using Comprehensive Grant Program funds, the plan must reflect cost estimates that, at a minimum, are based on:

(1) For individual work items funded under the program, compliance with modernization standards, as set forth in HUD Handbook 7485.2, as revised; and

(2) For each vacant unit on which funds are expended, compliance of the unit with the Housing Quality Standards, as set forth in 24 CFR 882.109 and as amended by the regulations concerning lead-based paint in public housing in 24 CFR part 35.

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Monday
June 13, 1994

Part VI

Department of Agriculture

Forest Service

36 CFR Part 292
Hells Canyon National Recreation Area—Private Lands; Final Rule

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 292

RIN 0596–AA88

Hells Canyon National Recreation Area—Private Lands

AGENCY: Forest Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements section 10(a) of the Hells Canyon National Recreation Area Act of 1975. The Act directs the Secretary of Agriculture to promulgate rules and regulations deemed necessary to guide the use and development of private lands within the Hells Canyon National Recreation Area. This rule establishes the baseline standards of private land use and development that are compatible with the purposes of the Act and that, if not met, could result in the Secretary's use of the private land acquisition authority provided by the Act. The intended effect is to ensure that the values of the HCNRA will be protected and preserved, and as envisioned by the Act, that traditional ranching, grazing, farming, timber harvesting, and other uses can be perpetuated.

EFFECTIVE DATE: This rule is effective June 13, 1994.

FOR FURTHER INFORMATION CONTACT: Tom Lennon, Branch Chief, Special Designations, Recreation, Heritage, and Wilderness Resources Staff, Forest Service, (202) 205–1423 or Ed Cole, Area Ranger, (503) 426–4978.

SUPPLEMENTARY INFORMATION:

Background

Congress established the Hells Canyon National Recreation Area (HCNRA) by the Act of December 31, 1975 (the Act) in order to assure that the natural beauty, and historical and archaeological values of the Hells Canyon area are preserved for this and future generations, and that the recreational and ecologic values and public enjoyment of the area are thereby enhanced. Public Law 94–199, 89 Stat. 1117 at Sec. 1 (codified at 16 U.S.C. 460gg et seq.).

Section 10 of the Act directs the Secretary to promulgate such rules and regulations as are deemed necessary to accomplish the purposes of the Act, including standards for the use and development of privately owned property within the HCNRA. Section 10 further provides that the Secretary may use the land acquisition authority in section 9 of the Act to implement the rules and regulations promulgated pursuant to section 10. As for the Snake, Rapid, and Imnaha Wild and Scenic Rivers, the governing authority for land acquisition is found in section 6 of the Wild and Scenic Rivers Act. Both section 9 of the Act and section 6 of the Wild and Scenic Rivers Act restrict the Secretary's condemnation authority; i.e. acquiring land without the consent of the landowner.

On December 14, 1993, the Forest Service published a proposed rule that would establish the standards for the use and development of private lands in the HCNRA (56 FR 65300). The purpose of the proposed regulations was to make clear those circumstances which would trigger possible use of the Secretary's condemnation authority. The proposed rule established categories of private land and standards for the use and development of private land within a given category. Compliance with the standards would generally be deemed consistent with the purposes for which the HCNRA was established. Violation of the standards would generally be deemed inconsistent with the purposes for which the HCNRA was established, and, thus the lands could become the subject of federal acquisition. Thus, the proposed rule sought to make clear to affected landowners those uses that could continue or be undertaken without risk of federal acquisition.

Throughout its efforts to devise regulations applicable to private lands within the HCNRA, the Forest Service has sought to avoid direct regulation of private lands and their uses. Instead, the agency has sought to define those uses of private lands that are consistent with the purposes for which the HCNRA was established, to encourage retention of traditional and valid private land uses as established by the Act, and, thereby, to avoid having to exercise the condemnation authority granted the Secretary by the Act. Under the proposed rule, the Forest Service would not seek to regulate per se or enjoin proposed uses or developments on private land. Rather, the agency chose to set forth in the proposed rule standards for private land use and development, which establish the basis for using the secretary's land acquisition authority in the HCNRA. The proposed rule also established a mechanism by which a landowner could petition for a change in land category assignment and a mechanism by which a landowner could determine whether an existing or proposed land use or development was in compliance with the standards of the rule. The Forest Service may also initiate a noncompliance determination on its own without having first received a landowner request.

Under the proposed rule, the Secretary would not acquire the subject land or interests therein unless it was with the consent of the landowner in those cases where a landowner was in compliance with the applicable standards. If, however, the landowner was not in compliance, the Secretary could acquire a fee simple or lesser interest in the subject land without the landowner's consent. The proposed rule also provided landowners and other interested parties an opportunity to appeal a compliance or noncompliance determination.

Eight letters expressing a variety of viewpoints were received during the 60-day comment period on the proposed rule. These letters contained the views of a power company, a powerboat association, a preservation group, a local county government, another agency of the federal government, an ad hoc citizens river committee, a state agricultural organization, and a local chapter of the same organization. The comments contained in these letters have been carefully considered in the adoption of this final rule. The Department appreciates the time and energy the reviewers invested in preparing these letters and articulating their concerns on the proposed rule.

All comments received are available for review in the Office of the Director, Recreation, Heritage, and Wilderness Resources Staff, Auditors Building, 4th Floor, 201 14th Street SW at Independence Avenue SW., Washington, DC, during regular business hours (8 a.m. to 4:30 p.m.) Monday through Friday.

Analysis of Public Comment

Comments on the proposed rule dealt both with general issues, such as the scope and extent of the Secretary's authority under this rule, as well as discrete issues relating to specific provisions enumerated in the proposed rule. In addition, there were several comments urging that language in the Supplementary Information section of the proposed rule be corrected and/or clarified. A summary of the comments and the Department's response follows.

General Comments

1. Scope and Extent of the Secretary's Authority Under This Rule

Two reviewers raised a number of concerns regarding the use of the Secretary's land acquisition authority to effectuate the standards set out in the rule for private land use and development. The comments reflected

the divergent views of the reviewers and, to some degree, a misunderstanding of the system as envisioned in the proposed rule. The comments received on this issue and the Department's response follow.

Comment: The Secretary is impermissibly engaged in the zoning of private lands in the HCNRA. One reviewer suggested that the process set forth in the proposed rule which establishes land use categories and allowable uses within those categories is "zoning." Further, this same reviewer noted that the acquisition of lands without the landowner's consent is "zoning." Finally, this reviewer noted that using condemnation to ensure compliance is an extreme measure and that the Forest Service should attempt to "work in harmony" with the private landowners in the HCNRA to ensure compliance.

Response. The proposed rule does not vest the Secretary with zoning authority. Zoning is defined as the division of a community into areas in each of which only certain designated uses of land are permitted, so that a community may develop in an orderly manner.

While the end result may be the same in terms of protecting an area against potentially incompatible land uses, there is an important distinction between the exercise of a local government's zoning authority and the federal government's eminent domain authority. Zoning laws are rooted in the exercise of a state's police power (usually delegated to a subdivision of the state) to prevent persons under its jurisdiction from using their property to the detriment of the general welfare. The power of eminent domain, on the other hand, is the power to acquire, or to authorize the acquisition of, private property for a public use or purpose without the owner's consent, conditioned upon the payment of just compensation. Because, zoning laws ordinarily do not constitute a taking of property for public use for which compensation must be paid, they differ substantially from the government's right to determine the use of real estate under the power of eminent domain, which requires just compensation.

In the preamble to the proposed rule, the agency went to great length to explain that the mechanism by which the Secretary would protect the HCNRA from incompatible private land use and development was through acquisition (condemnation) rather than regulation (injunction). In the conclusion to the preamble of the proposed rule [58 FR 65304, Col. 2], the agency expressly stated that: "The proposed regulations have been carefully drafted to avoid any conflict with local zoning authority and any appearance that the Forest Service desires to regulate private land uses." Relying on acquisition authority to enforce zoning ordinances is entirely consistent with sections 9 and 10 of the Act. Moreover, this approach is the least intrusive to the private landowners in the HCNRA, and it will not duplicate the role nor supplant the authority of the local governmental units in the HCNRA.

Finally, the Department agrees with the reviewer's observation that condemnation is an extreme measure to enforce compliance with the standards set out in this rule. As was stated in the conclusion to the preamble to the proposed rule [59 FR 65304, Col. 2], "The agency views the use of condemnation authority as a last resort to protect the HCNRA," to be instituted only where other, more harmonious measures and attempts to cooperate with the landowners do not succeed.

Comment: The Secretary should more actively regulate private lands in the HCNRA. Ironically, while one reviewer asserted that the Forest Service had virtually usurped local zoning authority over the private lands in the HCNRA, another reviewer stated that the Forest Service was obligated to assert a more vigorous regulatory role over these same lands. In particular, this reviewer asserted that relying on the condemnation authority delegated to the Secretary in section 9 of the Act will not adequately protect the HCNRA and that the Forest Service must exercise its "inherent regulatory authority" over private lands that are adjacent to federal lands.

Response: In order to properly respond to this comment, the following two questions must be addressed—(1) Does the Secretary have an "inherent regulatory authority" vis-a-vis private lands in the HCNRA? and (2) If so, is its exercise necessary to comply with the HCNRA Act?

The Department does not dispute the proposition that, pursuant to the Property Clause of the Constitution, Congress has delegated to it the authority to regulate and administer National Forest System lands under the Organic Act; the Multiple-Use, Sustained-Yield Act; the National Forest Management Act; the Forest and Rangeland Renewable Resources Planning Act; the Wilderness Act; the Wild and Scenic Rivers Act; and the HCNRA Act, to name just a few. In furtherance of those enactments, regulations throughout title 36 of the Code of Federal Regulations vest broad authority in the Forest Service to manage National Forest System lands and many of the activities that occur thereon.

However, these authorities are confined to National Forest System lands and do not apply to private lands. The options regarding regulation on private lands are considerably more limited. To begin with, the Forest Service cannot "zone" private lands as that term is commonly understood. "Zoning" is an authority that is reserved to the States and their subdivisions under the Constitution. Congress examined this issue prior to the establishment of the Cape Cod National Seashore many years ago. Their analysis then is instructive today.

> The Federal Government does not have authority to directly enact zoning laws applicable to private property in any of the States. If it had such authority, the task of preserving an area such as lower Cape Cod in such a way as to safeguard the interests of private landowners might be somewhat simplified, for Congress could simply enact a zoning law for the area. However, in the division of powers between the States and the Federal Government, it is wisely left to States to adopt zoning laws * * *
>
> For this reason, [the Act] requires the Secretary of the Interior to issue regulations as soon as possible after the enactment of the bill setting forth the standards which must be met by town zoning bylaws for purposes of suspending his power of eminent domain.

The only regulatory authority that the Forest Service possesses relative to private lands is its authority as a landowner to enjoin activities on adjacent or nearby lands which threaten the National Forest land.

It is the considered judgment of the Department that the acquisition of lands or interests therein, in conjunction with locally established zoning measures, remains the most efficient and viable system to legally control potentially incompatible land use and development in the HCNRA. This is the thrust of this rule. Its success depends on the best efforts of the Forest Service, State and local governments, and landowners in the HCNRA.

However, this rule should not be construed to foreclose the Agency's right to enjoin certain activities which threaten to compromise the values for which the HCNRA was established. Whether such action is warranted would need to be decided on a case-by-case basis. In the event that a nuisance-like activity should arise in the future which threatens the HCNRA, the Forest Service would be fully authorized to exercise its prerogative as a landowner to seek to get the activity terminated or modified so as to eliminate the deleterious effects on National Forest System lands.

Comment: Snake River water rights. One reviewer suggested that the rule should address withdrawals and diversions of water from the Snake River that are used for irrigating traditional farming and ranching activities in and around the HCNRA. This reviewer urged that the rule prescribe: how much water can be diverted, the time and purpose of diversion, and whether the diversion should be phased out so water may be retained in the Snake River.

Response. The use of water from the Snake River is an integral component of many of the traditional farming and ranching operations occurring in the HCNRA. While the reviewer's concern may be legitimate and this rule would present an appropriate vehicle to address these concerns, Section 6 of the Act expressly prohibits the incorporation of these suggestions into this rule as follows: No provision of this Act, nor any regulations issued hereunder, shall in any way limit, restrict, or conflict with present and future uses of the waters of the Snake River and its tributaries upstream from the boundaries of the [HCNRA] created hereby, for beneficial uses, whether consumptive or nonconsumptive, now or hereafter existing, including, but not limited to, domestic, municipal, stockwater, irrigation, mining, power, or industrial uses.

Comments: Access to private land. One reviewer stated that access is an integral part of the traditional uses recognized under the HCNRA Act and should not be arbitrarily limited since such limitations would reduce property value and restrict traditional uses.

Response. While the reviewer did not make clear how the proposed rule would limit access to private lands, nor did the reviewer offer suggestions for addressing the access issue, the Department notes that the proposed rule was silent on the issue of access and nowhere can it be inferred that the rule would permit the Forest Service to arbitrarily limit such access. The Department does not believe that this rule needs to address access, since section 1323 of the Alaska National Interest Lands Conservation Act (ANILCA) requires that access be granted to nonfederally owned lands located within the National Forest System. Agency rules at 36 CFR part 254, subpart E implement section 1323 and already apply to private lands within the HCNRA which are subject to the terms and conditions for reasonable ingress and egress that may be imposed by the Forest Service.

Comment: Monitoring. One reviewer noted that the proposed rule failed to establish a system whereby the use and development of private land in the HCNRA could be monitored by the Forest Service to detect violations. According to this reviewer, the rule is "grossly deficient, and contrary to law in this respect."

Response. While there was no provision for monitoring in the proposed rule, this rule is not somehow legally insufficient as a result. Monitoring by the Forest Service can occur in a number of ways and need not be expressly provided for or authorized in this rule. For instance, monitoring can occur by reviewing the actions of the local government regarding private land use and development issues. The Forest Service also can and does monitor private land use and development through routine aerial photographs for fire prevention and control, forest pest management, and landscape planning and management and on-the-ground observations from adjacent National Forest land. Additionally, where the Forest Service receives permission from the landowner, monitoring could also be accomplished via an on-site investigation.

In the proposed rule, monitoring also would be accomplished through the compliance determination process which is optional on the part of the landowner. Although the Department believes that monitoring was never eliminated from the Forest Service's responsibilities by the proposed rule, it also believes that monitoring is so important that it would like to make clear that the Forest Service may monitor the uses and developments on private lands at any time it believes it has good reason to be concerned about the protection of the values for which the HCNRA was established. To emphasize this point, the final rule adds a new standard in § 292.24, paragraph (b)(2) which states that the Forest Service may initiate the compliance process on its own without having first received a landowner request. This standard clearly shows that the Forest Service may initiate the determination of compliance process, where the agency has reason to believe, based on monitoring or other information, that the landowner may be violating the standards for private land use and development established by this rule.

Specific Comments on Proposed Subpart E of 36 CFR Part 292

The following is a discussion of comments that were received pertaining to specific sections of the proposed rule and the changes, if any, resulting from the comments. No comments were received on § 292.20, Purpose and Scope, or on § 292.25, Information Requirements, and no substantive modifications have been made to the text of these sections, although editing for improved readability and word choice was made. Accordingly, neither section is set out for further discussion.

Section 292.21 Definitions

This section listed and defined special terms used in this subpart.

Comment: "Farm/forest/grazing lands." Two reviewers suggested that the definition of "farm/forest/grazing lands" be modified to eliminate references to watershed protection, fish & wildlife habitat maintenance and recreational activities as purposes for which farm/forest/grazing lands may be used. These reviewers felt that these additional non-farming uses could pose burdensome and expensive requirements on the management of farming or grazing operations.

Response. The reviewers' concern that this definition would result in the imposition of additional requirements on their operations is unfounded. The subject definition is set out in the disjunctive. In other words, farm/forest/grazing lands may be used for farm/forest/grazing purposes or for watershed purposes, or for fish & wildlife purposes, or for recreational purposes, or for a combination of the above. The inclusion of these terms in this definition does not imply that new requirements would be incorporated into ongoing farming and ranching operations in the HCNRA. Of course, these farming and ranching operations are still subject to applicable federal, state, and local laws and ordinances. Therefore, the definition is adopted without change from the proposed rule. However, on consideration of the comments on the term "farm/forest/grazing lands," the Department has determined that the definition of "farm/forest/grazing uses" should be modified so that it more closely parallels the definition of "farm/forest/grazing lands." To that end, a new second sentence has been included in the "farm/forest/grazing use" definition which recognizes that uses related to watershed protection, fish and wildlife habitat maintenance, and recreational activities may also be undertaken on these lands. Again, because these activities may be undertaken does not signify that they must be undertaken. The definition of "farm/forest/grazing use" also has been rearranged for ease of reading and comprehension.

Comment: "Land modification." One reviewer noted that the definition of "land modification" in the proposed

rule included road construction as an example but that the circumstances under which road construction would be accommodated in conjunction with access needs for the purpose of maintaining and constructing utility facilities were unclear.

Response. The Department agrees that the potential applicability of the definition of "land modification" to utility maintenance activities is unclear. Indeed, while "land modification" was included in § 292.21 of the proposed rule, it was not used elsewhere; therefore, it has been deleted from the final rule. Absent this term, the Department construes the standard at § 292.23(a)(4) of the final rule as accommodating reasonable road access to utility facilities provided that such access is associated with the routine and necessary maintenance of these facilities.

In addition, further review of the definition section disclosed that the terms, "Comprehensive management plan," "seasonal feedlots," and "zoning", were not used in the proposed rule; accordingly, those terms have not been retained in the final rule. All other terms and their definitions are retained without change in the final rule.

Section 292.22 Land Category Assignments

The proposed rule established four categories to which private lands in the HCNRA would be assigned and would require that maps showing private lands and the categories to which they have been assigned be on file and available for public inspection at the Ranger's office.

Comment. One reviewer complained that the map identifying the private lands in the HCNRA and the land use category to which they had been assigned was not available for review during the comment period on the proposed rule.

Response. The Department regrets that the map was unavailable, since this could have been of some assistance to the parties in the preparation of their comments on the rule. The Department has modified this section in the final rule to require the map (or maps) to be prepared and available for review not later than 60 days after the effective date of this regulation and also to require the Ranger to give notice of the availability of the maps in the local newspapers of record. If any parties are concerned about a specific land category assignment, they can make their concerns known to the Forest Service at that time, and the Forest Service will consider these concerns prior to the adoption of a final map. No other changes were made to this section.

Section 292.23 Standards of Compatible Land Use and Development

The proposed rule would establish standards of private land use and development that reflect traditional and valid uses of private lands in existence as of December 31, 1975 for four categories of land use. These categories were farm/forest/grazing, mining, residential, and commercial land. The standards for these land categories were intended to guide the Ranger in determining whether uses of a private parcel are compatible with the purposes for which the HCNRA was established. Some standards applied to all categories of private lands, while others were specific only to a particular land category. Standards were prescribed to allow conformity of private land uses and developments with the laws of various jurisdictions. Among other things, the proposed rule set standards for the screening and blending of new and replacement structures, banned solid waste and hazardous substance disposal sites, required utility lines to be buried, disallowed new or replacement structures in wilderness, and provided for the protection of historic and archaeological sites.

Comment: Expense of underground utility installation. One reviewer noted that the standard in § 292.23(a)(4) regarding the placement of new or replacement of existing utility lines underground could be prohibitively expensive and environmentally damaging.

Response. While this standard clearly establishes a preference for underground utility installation wherever feasible, the Department is well aware of the rugged and varied terrain in the HCNRA and the difficulty, if not impossibility, of installing utility lines underground in certain areas. It is for that reason that the standard in the proposed rule regarding underground utility installation included the caveat "where ground conditions and topography permit." Therefore, a change in the final rule was necessary. It is recognized that, by necessity, the evaluation of the location of utility lines must be made on a case-by-case basis.

Comment: Wilderness structures. One reviewer opposed the standard in § 292.23(a)(5) which provided that no new structures could be developed on private lands within the boundaries of the Hells Canyon Wilderness in the HCNRA. This reviewer stated that this standard oversteps the professed bounds of the law. This reviewer further contended that such a restriction should apply only if the structure would be visible from the wilderness, since otherwise there would be no negative effect on anyone's wilderness experience. The reviewer also stated that nothing in the Wilderness Act permitted wilderness visitors to trespass on private lands.

Response. The intent of the rule is, where deemed necessary, to apply the same standards for private land uses and developments to lands within the designated wilderness boundaries, as would be applied outside of wilderness. Under the proposed rule, those lots within wilderness would be classified as farm/forest/grazing lands. Most of the private land parcels within wilderness are less than 160 acres, and so, even without the wilderness lands restriction, the proposed rule would not consider the development of any new residences appropriate.

In developing the proposed rule, the Department determined that the protection of the wilderness resource is paramount. Congress designates wilderness to protect and preserve a variety of natural resource and other values; scenic value is only one of many attributes. Uses and developments on private lands have the potential to impact a full range of wilderness values, including scientific, cultural, historical, and water quality values. One of the most important aspects of the recreational experience within wilderness is the opportunity for solitude and to experience an area where man is only a temporary visitor. A standard which would allow development of new structures so long as they are not visible from the wilderness simply ignores the fact that other, non-visual impacts may result from the construction of new structures. Furthermore, the Forest Service is unaware of any location from which a new structure could be developed within the wilderness and also not be visible because of the area's topography. As noted in the proposed rule, the repair and maintenance of existing structures that may be located on private land within a wilderness is not affected by this standard. Therefore, after considering this comment, no change was made in the final rule regarding the construction of new or replacement structures in wilderness.

Comment: Lack of standards for livestock grazing, timber harvesting, pesticide application, water quality, and ground disturbing activities. One reviewer objected to the lack of standards in the proposed rule for livestock grazing, timber harvesting, pesticide use, water quality protection,

and ground disturbing activities on private lands.

Response. This concern is fully addressed by the proposed rule. In determining what approach it should take to the regulation of private lands, the Forest Service determined that if other federal, state, and local laws and ordinances are enforced, then the HCNRA Act's purposes would be accomplished. Accordingly, in developing the proposed rule, the agency assessed existing ordinances and laws for their capability to protect on private lands the values for which the HCNRA was established. In many instances, the proposed rule expressed these local ordinances as standards.

However, the proposed rule made it very clear that other laws would be enforced; if not by the promulgating government, then, if necessary, by the Forest Service through acquisition (condemnation) action. In § 292.23 paragraph (a)(1), the final rule retains the language of the proposed rule, with minor editing, to make clear that land uses are compatible if they conform to applicable local, state, and federal laws. This provision is intended to cover such matters as those referred to by the reviewer. Examples of the types of ordinances and laws that this clause refers to include the following: Oregon Forest Practices Act; Idaho Forest Practices Act; Idaho Water Quality Standards and Wastewater Treatment Requirements; Oregon Water Quality Standards; and the Idaho Agricultural Pollution Abatement Plan. The Department is not aware of any situation which merits standards different from those currently imposed by other laws. The proposed rule addressed the concerns raised by this reviewer by providing for compliance with environmental and other laws and ordinances. Therefore, no modification has been made in the final rule as a result of this comment.

Additional Changes Adopted in the Final Rule

In the process of reviewing the comments on § 292.23, the Department recognized the need to make two other changes.

1. *Residences on less than 160 acre parcels in farm/forest/grazing lands.* As drafted, the provision at § 292.23(b)(1) that limits residences on farm/forest/grazing lands to minimum lots of 160 acres could be interpreted to mean that an existing house on a lot that is less than 160 acres would prompt the Secretary to exercise the acquisition authority. This is not the Department's intent. It is recognized that some of these smaller parcels have existed with residential developments for years and there is no reason that they should not continue as a recognized nonconforming use. Consequently, the final rule is modified to make clear that nonconforming lots (i.e., less than 160 acres) with permanently affixed residences (i.e., constructed on a foundation or basement), existing on the effective date of the final rule, are in compliance with the Act.

2. *Sites used for the extraction of common mineral materials.* The proposed rule, at § 292.23 (a)(7), would only allowed extraction of common materials for road construction and maintenance and would limit sites to not exceed 5 acres. The use limitation ignored other forms of construction that may also use smaller quantities of materials, such as in the repair or construction of structures. It is impractical to require a landowner to find a gravel source outside of the HCNRA boundaries, when a source may exist already within a mile of his or her property. Upon reconsideration, the 5 acre size limit appears to be excessive for the foreseen uses for this resource and the esthetic concerns for the HCNRA. Therefore, the final rule is modified to eliminate the references to only road construction and maintenance and to decrease the size limit to not exceed 2 acres. As written, the final rule may be more generally applied to the extraction of common mineral materials for construction and maintenance purposes so long as these sites have screening and are less than 2 acres in size.

Section 292.24 Determination of Compliance and Noncompliance

Under the proposed rule, this section provided an optional compliance determination process so that the landowner could obtain assurance from the Ranger that existing or proposed uses of their land are compatible with the Act and thus would not be acquired by the Secretary without their consent. A notice of noncompliance would mean that a proposed or actual land use does not comply with the standards in § 292.23 and thus, could potentially trigger the initiation of the Secretary's land acquisition authority, as authorized by the Act. This section also proposed a process for reviewing a compliance or noncompliance decision.

Comment: Noncompliance results in condemnation. One reviewer thought that the system to determine compliance or noncompliance was flawed because a finding of noncompliance resulted in condemnation.

Response. Condemnation is one option that may be considered in the event of a noncompliance determination. However, it is not the only option. The proposed rule clearly states that if the Forest Service makes a noncompliance determination, it will offer suggestions on how the land use or development could be modified to avoid this result. As noted previously, condemnation is not the tool of choice to enforce compliance with the standards of this rule—it is the last resort. In administering the HCNRA, the Forest Service position has been, and will continue to be, one which favors discussion, negotiation, and cooperation with landowners to reach mutually satisfactory objectives wherever possible.

Comment: Written petition. Three reviewers requested that the procedure to appeal a determination of compliance or noncompliance be modified to exclude "other interested parties." These reviewers felt that the petition process provided by this rule should be strictly limited to the Forest Service and the affected landowner and that the involvement of outside parties would unnecessarily complicate and prolong the process. Another reviewer supported the petition process as set out in the proposed rule.

Response. The Department agrees with the reviewers that requests for reviews of compliance and noncompliance determinations involving "other interested parties" could be unnecessarily cumbersome and time consuming and that the review process should be limited to those directly affected, i.e. the landowner whose property was the subject of the determination. Accordingly, in the final rule, paragraph (c) of § 292.24 has been revised to limit petitions for review to affected landowners.

Comment: Acquiescence to local zoning ordinances and administration. One reviewer felt that the compliance/noncompliance determination procedure should be discarded in favor of a system in which proposals for use and development of private land in the HCNRA would be channeled through the existing local mechanisms provided under the Wallowa County Land Use Development Ordinance and the Wallowa County Comprehensive Land Use Plan. In this alternative, the HCNRA Ranger's role would be limited to that of an interested party who would be able to testify in favor of or in opposition to a proposed use or development. However, if the Ranger opposed the proposal, it would be his or her burden to prove that the proposal is contrary to the County Ordinance and Plan. According to this reviewer, it is only through this mechanism that the

standard of local citizen involvement required by state and local law would be satisfied.

Response. This alternative is not one that the Department can implement and remain consistent with its responsibilities under the HCNRA Act. The federal interest must be protected and cannot be dependent upon, or subservient to, state and local zoning decisions. In effect, this alternative would relegate the Forest Service to the status of an interested party whose comments would be considered by the County in the context of a pending development or use proposal. Forest Service comments would not be binding on the commission, nor would they necessarily even be persuasive. It is difficult to comprehend how the Forest Service could carry out its responsibilities under the HCNRA Act and effectively ensure that activities on the private lands not impair the values for which Congress established the HCNRA under this system.

It is the hope of the Department that the procedures currently in place at the state and local level will suffice to condition, restrict, or preclude many incompatible uses or developments in the HCNRA. The standards adopted by the final rule are from local zoning ordinances and applicable laws that already adequately protect the HCNRA. The County's disposition of pending development proposals should, in most cases, result in decisions that are compatible with the purposes of the HCNRA Act. However, in the event uses or developments are incompatible, or in the event that the County Ordinances and Plan are amended in such a way as to lessen the restrictions on private lands which would thereby increase the potential threat to the HCNRA, then the Forest Service must have the ability to enforce the standards needed to protect the HCNRA. The rule as proposed provides this protection. Therefore, no change was made to § 292.24 in response to this comment.

Finally, the heading for § 292.24 was edited for clarity to read: "Determination of compliance and noncompliance."

Conclusion

Having carefully considered the comments received on the proposed rule, and explained the basis for adopting or not adopting changes proposed by reviewers, the Department hereby adopts a final rule to ensure that the use and development of private lands within the Hells Canyon Recreation Area are compatible with the purposes for which Congress established the Area and its management direction.

The standards established by the final rule are those essential to protection of the Area. The approach adopted is not one of direct federal regulation of private land but rather one of relying, to the greatest extent possible, on local zoning authority. The rule gives private landowners notice of those uses that are compatible with the purposes of the HCNRA, provides a mechanism whereby the landowner and the agency may determine compliance or noncompliance with the standards of the rule and gives constructive notice to private landowners that incompatible uses of private land may trigger the use of the Secretary's condemnation authority. Nevertheless this rule is predicated on the premise that the use of the Secretary's condemnation authority is to be a last resort and that the agency shall make every effort to work harmoniously and cooperatively with private landowners to ensure protection of the HCNRA.

Regulatory Impact

This final rule has been reviewed under USDA procedures and Executive Order 12866 on Regulatory Planning and Review. It has been determined that this is not a significant rule. This rule will not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, the environment, public health or safety, nor state or local governments. This rule will not interfere with an action taken or planned by another agency nor raise new legal or policy issues. Finally, this action will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients of such programs. Accordingly, this final rule is not subject to OMB review under Executive Order 12866.

Moreover, this final rule has been considered in light of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), and it has been determined that this action will not have a significant economic impact on a substantial number of small entities as defined by that Act. To the extent that the rule imposes additional requirements on any small entity, these requirements are the minimum necessary to protect the public interest, are not administratively burdensome or costly to meet, and are well within the capability of small entities to perform.

Takings Implication

Since this rule is premised on the formal exercise of the Secretary's eminent domain authority, it is not an "action" as that term is defined in Section 2(c)(1) of Executive Order 12630. Nonetheless, the Office of General Counsel has reviewed this rule for takings implications and determined that there is no risk of a taking related to this rule or its implementation.

Executive Order 12778, Civil Justice Reform Act

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Accordingly, (1) all state and local laws and regulations that are in conflict with this rule or which impede its full implementation are preempted; (2) no retroactive effect will be given to this rule; and (3) it will not require administrative proceedings before parties could file suit in court challenging its provisions.

Environmental Impact

This rulemaking was discussed as a proposed rule in the final Environmental Impact Statement and Comprehensive Management Plan for the Hells Canyon National Recreation Area, pages 155–158. The analysis completed for the Comprehensive Management Plan was revalidated in April 1990 with the signing of the Wallowa-Whitman National Forest Land and Resource Management (pages 1–2). Information pertaining to the environmental analysis may be obtained by writing or calling the persons or offices listed under **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT.**

Information collection requirements

As outlined in the rule at § 292.24, a landowner may request an optional compliance determination from the Forest Service. As such, this rule contains information requirements as defined in 5 CFR Part 1320. These information requirements are assigned control number 0596–0135 and are approved for use through March 1997.

List of Subjects in 36 CFR Part 292

Recreation and recreation uses, and National forest.

Therefore, for the reasons set forth in the preamble, part 292 of title 36 of the Code of Federal Regulations, is amended by adding a new subpart E to read as follows:

PART 292—NATIONAL RECREATION AREAS [AMENDED]

Subpart E—Hells Canyon National Recreation Area—Private Lands

Sec.

292.20 Purpose and scope.
292.21 Definitions.
292.22 Land category assignments.

292.23 Standards of compatible land use and development.
292.24 Determination of compliance and noncompliance.
292.25 Information requirements.

Authority: 89 Stat. 1117; 16 U.S.C. 460gg–460gg–13.

Subpart E—Hells Canyon National Recreation Area—Private Lands

§ 292.20 Purpose and scope.

(a) *Purpose.* The Act establishing the Hells Canyon National Recreation Area (hereafter referred to as HCNRA) (16 U.S.C. 460gg–460gg–13) encourages the retention of traditional and valid uses of private land within the HCNRA, such as ranching, grazing, farming, timber harvesting, and the occupation of homes and lands associated therewith, as they existed at the time the HCNRA was established on December 31, 1975. To this end, the Act directs the Secretary of Agriculture to promulgate regulations establishing standards for the use and development of private land within the HCNRA and grants the Secretary limited condemnation authority to address situations where the standards are not met. The purpose of this subpart is to establish standards that would guide the Secretary's consideration of the use of the limited condemnation authority granted by the Act.

(b) *Scope.* The regulations in this subpart establish standards applicable to all private property within the boundaries of the HCNRA, including that within the boundaries of the Rapid, Snake, and Imnaha Wild and Scenic Rivers and the Hells Canyon Wilderness. The regulations in this subpart do not operate to restrict the use and development of private property; rather, they serve to inform the landowner of those uses that are compatible with purposes for which the HCNRA was established. Uses not compatible with these standards could result in the Secretary acquiring land or interests therein without a landowner's consent.

The regulations in this subpart, in and of themselves, do not effect a taking of private property, including valid, existing water rights, nor do the standards established in this subpart limit or restrict a private landowner's property use that is compatible with the purposes of the Act. The Responsible Official may use the regulations in this subpart solely to determine whether private land uses or developments are compatible with the purposes and direction of the Act and, if not, to determine whether the Secretary should consider initiating condemnation proceedings to acquire land or scenic easements.

§ 292.21 Definitions.

For the purposes of this subpart, the following terms are defined:

Act refers to the act of December 31, 1975, which established the Hells Canyon National Recreation Area (89 Stat. 1117; 16 U.S.C. 460gg–460gg–13).

Archaeological sites are those sites containing relics, artifacts, and other evidence of past human cultures including historic properties as defined by the National Historic Preservation Act.

Commercial land is land within the HCNRA developed for commercial purposes as of June 13, 1994 and which is assigned to the commercial land category (§ 292.22).

Condemnation is the acquisition of lands or interests therein by the Secretary without the consent of the owner. In the case of the Act, condemnation is a limited authority that may be exercised by the Secretary only in the event that a standard or standards set forth herein are violated for all private land categories except mining lands. Where mining lands are involved, the Secretary may exercise his or her condemnation authority notwithstanding the fact that the mining land owner has complied with the relevant standards of this section.

Conservation easement or *Scenic easement* as defined in Section 9(d) of the Act "means the right to control the use of land in order to protect aesthetic values for the purposes of this Act, but shall not be acquired without the consent of the owner to preclude the continuation of any farming or pastoral use exercised by the owner as of the date of enactment of this Act."

Dude ranching is a business oriented primarily towards furnishing small groups with an outdoor recreational and educational experience associated with ranching activities and perpetuates the purposes for which the HCNRA was established. Dude ranching is subservient to the primarily recognized ranching operation.

Existing uses are those uses of or developments to private land as of the date of enactment of the Act on December 31, 1975.

Farm/Forest/Grazing lands are those lands used for farm, forest, and grazing purposes, for maintaining watersheds as fish and wildlife habitat, or for providing outdoor recreational activities. All such lands are assigned to the Farm/Forest/Grazing land category in § 292.22.

Farm/Forest/Grazing Use is any traditional agricultural, silvicultural, or livestock management use or combination thereof on farm/forest/grazing lands within the HCNRA. This includes, but is not limited to, truck farming, growing and harvesting of timber, grazing of livestock, horticultural use, animal husbandry use, horse, cattle, and sheep ranching, and preparation and storage of the products raised on farm/forest/grazing land for on-site use or for disposal by marketing or otherwise. Farm/forest/grazing uses may also consist of uses related to and in furtherance of the protection of watersheds, maintenance of fish and wildlife habitat, and the pursuit of recreational activities.

Hazardous substance includes any material so classified under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. 9601 et seq.).

Mining lands are lands primarily used for mining purposes as of June 13, 1994 and which are assigned to the mining land category in § 292.22.

Outdoor recreational activities are activities such as camping, picnicking, rafting, boating, hiking, rock climbing, fishing, hunting, horseback riding, and the viewing of wildlife or scenery.

Parcel as used in this subpart refers to contiguous tax lots under one ownership. For the purposes of this subpart, rights-of-way do not divide parcels into smaller units.

Partition is the division of land into lots, and which, under county planning ordinances, is identified by a map, drawing, or writing which contains the descriptions, locations, specifications, and dedications for roads, utilities, etc. and which has been properly filed with the County recorder.

Private land is land not in federal, state, or local government ownership.

Proposed uses are those uses of or development to a private land parcel within the HCNRA initiated after June 13, 1994.

Ranger is the HCNRA Area Ranger, Wallowa-Whitman National Forest, with offices located in Enterprise, Oregon, Riggins, Idaho, and Clarkston, Washington, except for the Rapid Wild and Scenic River where the term refers to the Salmon River District Ranger, Nez Perce National Forest, located in Whitebird, Idaho.

Recreational facilities are facilities associated with or required for outdoor recreational activities and include, but are not limited to, parks, campgrounds, hunting and fishing lodges, and interpretive displays.

Residential lands are lands within the HCNRA developed for residential purposes as of June 13, 1994 and which

are assigned to the Residential land category in § 292.22.

Scenic Easement. See *Conservation Easement.*

Screening is the reduction or elimination of the visual impact of any structure or land modification as seen from any public travel route within the HCNRA.

Solid waste is discarded solid materials resulting from mining, industrial, commercial, agricultural, silvicultural, and community activities. This term does not include domestic sewage or pollutants such as silt or dissolved materials in irrigation return flows.

Structure is any permanent building or facility, or part thereof such as barns, outhouses, residences and storage sheds. This includes electric transmission line systems, substations, commercial radio transmitters, relays or repeater stations, antennas, and other electronic sites and associated structures.

Traditional uses are ranching, grazing, farming, timber harvesting and the occupation of homes and land associated therewith within the HCNRA, or other activities including outdoor recreational activities and facilities, which existed on or before December 31, 1975.

Travel route is a route, such as a county or National Forest system road or river or trail, that is open for use by members of the general public.

§ 292.22 Land category assignments.

(a) *Land categories.* (1) All privately owned lands within the HCNRA are to be assigned to one of the following four land categories:

(i) Farm/forest/grazing land.

(ii) Mining land.

(iii) Residential land.

(iv) Commercial land.

(2) Not later than August 12, 1994, a map or maps displaying the privately owned lands within the HCNRA and the land categories to which they have been assigned must be on file and available for public inspection at the Ranger's office. The Ranger shall give notice of the availability of this map or maps in the local newspapers of record.

(b) *Changes in land category assignment.* Lands assigned to the Commercial, Residential, or Mining category may be reclassified as farm/forest/grazing land so long as the intended use or development is consistent with the standards in § 292.23 and the Ranger has given public notice of the proposed change in the local newspaper of record and has notified adjacent landowners and the affected county government at least 30 days prior to any decision on the proposed change.

§ 292.23 Standards of compatible land use and development.

Private land use that conforms to the standards of this section is deemed to be compatible with the purpose for which the HCNRA was established.

(a) *Standards applicable to all private lands.* As of June 13, 1994, the use and development of private lands in all land categories within the HCNRA is deemed compatible with the purposes for which the HCNRA was established, if the use and development of such lands meets the following standards:

(1) Use and development conforms to applicable local, state, and federal environmental, natural resource, cultural resource, and land use development law.

(2) All new or replacement structures are screened and/or constructed of materials that blend with the natural environment, except where structures typify the architectural style and materials of a significant historic era such as pre-World War II. Screening is not required, however, for new or replacement structures that are associated with an existing unscreened structure or structures that were not screened at the time this rule became effective.

(3) No public or commercial solid waste disposal sites or hazardous substance disposal sites are located on private lands within the HCNRA.

(4) All new or replacement utility lines are placed underground where ground conditions and topography permit. This standard does not prevent or impair routine maintenance of utility lines or related structures in existence prior to June 13, 1994.

(5) No new or replacement structures are developed within the boundaries of the Hells Canyon Wilderness, provided that existing structures may be repaired and/or maintained.

(6) Significant historic, archaeologic, or paleontologic sites are protected.

(7) Sites used for the extraction of common mineral materials, such as gravel, for construction and maintenance purposes on all except designated mining lands, are screened where possible, and are not in excess of 2 acres in size.

(8) New recreational facilities enhance and are compatible with the purpose of the Act.

(b) *Farm/forest/grazing lands standards.* The following additional standards are applicable to farm/forest/grazing lands:

(1) Except as otherwise provided in this paragraph, the minimum lot size for residential development is 160 acres. Only residences associated with farm/forest/grazing uses may be developed. Partitions of less than 160 acres may be made to provide for the continuation of existing commercial agriculture, but such partitions may not be developed for residential use. Lots of less than 160 acres existing on June 13, 1994, with residences permanently affixed to a foundation or basement, are considered to be in compliance.

(2) Structures are limited to those necessary to conduct farm/forest/grazing use.

(3) Dude ranching is permitted provided it is compatible with the purpose and direction of the Act and is part of a recognized ranching operation.

(4) New or replacement structures for farm/forest/grazing use are not closer than 25 feet from a property line or 55 feet from the center line of a travel route.

(c) *Mining Lands.* (1) The following standards are applicable to mining lands:

(i) The owner of mining lands must consult with the Ranger concerning proposed mineral development activities prior to submitting a plan of operations to the relevant state or federal agencies.

(ii) Operations comply with Federal and State mining, air quality, water quality, hazardous waste, water disposal and reclamation standards.

(iii) The type and number of structures, including but not limited to residences associated with the mining activity, are limited to the minimum necessary for the use and development of the mining lands.

(iv) No new structures are located closer than 25 feet from a property line or 55 feet from the center line of a travel route.

(v) Mining lands are not partitioned.

(2) Notwithstanding compliance with the standards of paragraph (c)(1) of this section, the Secretary may acquire mineral interests in the HCNRA without the consent of the owner, if the Secretary deems this necessary to meet the purposes for which the HCNRA was established.

§ 292.24 Determination of compliance and noncompliance.

(a) *Compliance.* Landowners may request a determination by the Forest Service as to whether an existing or a proposed use or development complies with the relevant standards set out in this subpart.

(1) Requests for a determination of compliance must be made in writing to the Ranger and include the following information:

(i) The current land category to which the land is assigned (§ 292.23);

(ii) The use of development that exists or that is proposed for the property;

(iii) A statement as to whether a change in the land category assignment will be necessary to accommodate the proposed use or development;

(iv) The timeframe for implementing the proposed use or development; and

(v) A statement as to how the proposed use or development satisfies the relevant standards of § 292.23 of this subpart.

(2) The Ranger shall review the request and notify the landowner in writing within 45 days whether the existing or proposed use or development is in compliance with § 292.23 of this subpart. The Ranger may extend the time for making a compliance determination by 30 days if additional information is needed.

(b) *Noncompliance.* (1) In the event that the Forest Service determines that an existing or proposed use of development is not in compliance with the standards of § 292.23 of this subpart, the Ranger shall give the landowner written notice of the manner and nature of noncompliance. To the extent practicable, the notice will include suggestions for achieving compliance. The notice also must include a statement that the violation of a standard or standards and the failure to cure such violation may result in the initiation of condemnation proceedings by the Secretary.

(2) The Forest Service may initiate a noncompliance determination on its own without having first received a landowner request.

(c) *Written petition.* The landowner may file a written petition with the Forest Supervisor for a review of a decision of compliance or noncompliance. The Forest Supervisor shall render a decision within 30 days of the receipt of the petition. A decision by the Forest Supervisor constitutes the final administrative determination by the Department of Agriculture. Petitions of decisions on lands within the Rapid River Wild and Scenic River Corridor should be addressed to the Forest Supervisor, Nez Perce National Forest, Route 2, P.O. Box 475, Grangeville, Idaho 83450. All other petitions should be addressed to the Forest Supervisor, Wallowa-Whitman National Forest, P.O. Box 907, Baker City, Oregon 97814.

§ 292.25 Information requirements.

The information required by § 292.24 of this subpart in order for a landowner to obtain a determination of compliance constitutes an information requirement as defined in the Paperwork Reduction Act (44 U.S.C. 3507) and has been approved for use by the Office of Management and Budget and assigned control number 0596–0135.

Dated: June 6, 1994.

James R. Lyons,

Assistant Secretary, Natural Resources and Environment.

[FR Doc. 94–14305 Filed 6–10–94; 8:45 am]

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Federal Register

Vol. 59, No. 112

Monday, June 13, 1994

INFORMATION AND ASSISTANCE

Federal Register

Index, finding aids & general information	202–523–5227
Public inspection announcement line	523–5215
Corrections to published documents	523–5237
Document drafting information	523–3187
Machine readable documents	523–3447

Code of Federal Regulations

Index, finding aids & general information	523–5227
Printing schedules	523–3419

Laws

Public Laws Update Service (numbers, dates, etc.)	523–6641
Additional information	523–5230

Presidential Documents

Executive orders and proclamations	523–5230
Public Papers of the Presidents	523–5230
Weekly Compilation of Presidential Documents	523–5230

The United States Government Manual

General information	523–5230

Other Services

Data base and machine readable specifications	523–3447
Guide to Record Retention Requirements	523–3187
Legal staff	523–4534
Privacy Act Compilation	523–3187
Public Laws Update Service (PLUS)	523–6641
TDD for the hearing impaired	523–5229

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FEDERAL REGISTER PAGES AND DATES, JUNE

28207–28458.....1
28459–28758.....2
28759–29184.....3
29185–29350.....6
29351–29534.....7
29535–29710.....8
29711–29936.....9
29937–30276.....10
30277–30500.....13

CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
6695.....28459
6696.....28461
6697.....28463
6698.....28757

Administrative Orders:
Presidential Determinations:
No. 94–24 of May 16, 1994.....28759

Executive Orders:
3406 (Revoked in part by PLO 7048).....29661
4257 (Revoked in part by PLO 7056).....29206
8248 (Superseded or revoked in part by EO 12919).....29525
10222 (Superseded or revoked by EO 12919).....29525
10480 (Superseded or revoked by EO 12919).....29525
10647 (Superseded or revoked by EO 12919).....29525
10789 (Amended by EO 12919).....29525
11179 (Superseded or revoked by EO 12919).....29525
11355 (Superseded or revoked by EO 12919).....29525
11790 (Amended by EO 12919).....29525
11912 (Superseded or revoked in part by EO 12919).....29525
12148 (Superseded or revoked in part by EO 12919).....29525
12521 (Superseded or revoked by EO 12919).....29525
12649 (Superseded or revoked by EO 12919).....29525
12773 (Superseded or revoked in part by EO 12919).....29525
12918 (See State Dept. notice of May 27).....28583
12919.....29525

5 CFR

591.....29351

Proposed Rules:
1320.....29738

7 CFR

271.....29711
272.....29711
273.....29711
275.....29711
276.....29711
278.....29711
279.....29711
723.....28207
911.....29535
1735.....29536
1980.....28465

Proposed Rules:
6.....28495
210.....30218
220.....30218
246.....29549
319.....29557
372.....28814
1530.....28286
1710.....28495
1726.....28924

8 CFR

Proposed Rules:
1.....29386
3.....29386
103.....29386
208.....29386
242.....29386

9 CFR

77.....29185
92.....28214, 29186
94.....28216, 28218

10 CFR

2.....29187
40.....28220

Proposed Rules:
9.....30308
52.....29965
72.....28496

12 CFR

34.....29482
201.....29537
208.....28761
225.....29482
323.....29482
327.....29714
545.....29482
563.....29482
564.....29482
574.....28468
701.....29066

Proposed Rules:
26.....29740
203.....30310
304.....29965
327.....29965

333....30316
362....29559
563b....29480, 29975
575....29480, 29975

13 CFR

107....28471
121....28231

14 CFR

25....28234, 28762, 29538
39....28475, 28763, 29351, 29353, 29354, 29355, 29540, 30277, 30278, 30282, 30283, 30285
71....28245, 28449, 28476, 28477, 28478, 29189, 29190, 29542, 29937, 29938, 29939, 29944, 29945, 29946, 29947, 29948, 29949, 30288
91....29716
97....28479

Proposed Rules:

Ch. I....29210, 29561
13....29880
16....29800
27....29976
29....29976
39....29210, 29212, 29391, 29744, 29745
71....28498, 28499, 29213, 29215, 29562
189....29934

17 CFR

Proposed Rules:

240....29393, 29398
249....29393, 29398
270....28286

18 CFR

284....29716

Proposed Rules:

35....28297
803....29563
804....29563
805....29563

19 CFR

10....30289
101....30289
111....30289
123....30289
128....30289
141....30289
143....30289
145....30289
148....30289
159....30289

20 CFR

200....28764
404....30389

21 CFR

16....29950
73....28765
101....28480
270....29950
341....29172
346....28766
347....28767
510....28768
520....28768
524....28768
1270....29950

Proposed Rules:

Ch. I....29977
352....29706
600....28821
601....28821
606....28822
607....28822
610....28821
640....28822
660....28822

22 CFR

123....29950
124....29950
126....29950
220....28769
222....28769

23 CFR

657....30392
658....30392
660....30296
710....30302
712....30302
713....30302
720....30302

24 CFR

42....29326
207....28246
213....28246
215....29326
220....28246
221....28246, 29326
232....28246
236....29326
241....28246
242....28246
244....28246
291....29506
510....29326
850....29326
881....29326
882....29326
883....29326
884....29326
900....29326
941....29326
968....30472

25 CFR

Proposed Rules:

256....30276

26 CFR

1....30100
20....30100
25....30100
301....29356, 29359
602....29359, 30100

Proposed Rules:

1....30180
20....30180
25....30180

27 CFR

70....29366

Proposed Rules:

6....29215
8....29215
10....29215
11....29215

28 CFR

0....29717
16....29717
552....30468

Proposed Rules:

16....29747

29 CFR

70....29900

Proposed Rules:

103....28501
1910....28594, 30389
1917....28594, 30389
1918....28594, 30389
2609....29661

30 CFR

756....29719
906....28248
916....28769

Proposed Rules:

701....28744
773....28744
785....28744
816....28744
817....28744
901....28302
917....28823
935....29748
Ch. II....28304

31 CFR

205....28260
356....28773

32 CFR

251....29368
367....29952
701....29721

Proposed Rules:

701....28304

33 CFR

100....28775
117....28776, 28778
165....28262, 28263, 28778, 28780, 29368, 29369, 29370, 29371
167....28499

Proposed Rules:

100....29403
117....28324, 29405, 29406
165....28824, 30389

34 CFR

75....30258
682....29543

Proposed Rules:

Ch. VI....28502

36 CFR

242....28922, 29032
292....30492
1220....28781
1252....29191
1254....29191
1260....29191

38 CFR

3....29723
17....28264

39 CFR

241....29724
946....29372

40 CFR

52....28785, 29730, 29731, 29732, 29953, 29956, 29957, 30302
63....29196
81....28326, 28480
144....29958
170....30264
180....28482, 29543
260....28484
264....29958
270....29372
271....29734
280....29958
281....29201
721....29202, 29203, 29204

Proposed Rules:

Ch. I....29750
52....28503, 29977, 30326
63....29196, 29750
81....29977, 30326
124....28680
180....29576
264....28504
265....28504
270....28504, 28680
271....28504
280....30448
281....30448
372....29252
721....29255, 29258

42 CFR

412....30389

Proposed Rules:

413....29578

43 CFR

1720....29205
2070....29205
2510....29205
4700....28275
8350....29205

Public Land Orders:

1800 (Revoked in part by PLO 7062)....28791
7048....29661
7056....29206
7057....28788
7058....28789
7059....28789
7060....28790
7061....29545
7062....28791
7063....29544

Proposed Rules:

3160....29407

44 CFR

65....28484, 28485

Proposed Rules

67....28505

45 CFR

46....28276

46 CFR

12....28791
16....28791

Proposed Rules:

40....29259
154....29259

47 CFR

73....29272, 29273
90....30304

Proposed Rules:

73....29408, 30331

48 CFR

533....29480
1801....29960
1802....29960
1804....29960
1805....29960
1807....29960, 29962
1809....29960
1810....29962
1815....29960
1822....29960
1823....29960
1825....29960
1839....29960
1843....29963
1852....29960, 29963

Proposed Rules:

7....29696
10....29696
37....29696
245....28327
252....28327
1601....28487
1602....28487
1609....28487
1615....28487
1632....28487
1642....28487
1646....28487
1652....28487

49 CFR

171....28487
172....28487
173....28487
174....28487
178....28487
179....28487
195....29379

Proposed Rules:

1002....29586

50 CFR

17....30254
100....28922, 29032
216....30305
217....29545
226....28793
227....29545
301....29207, 30307
625....28809, 29207
663....29736
671....28276
672....28811, 29208, 29548
675....28811, 29208, 29737, 29964, 30307
676....28281
685....28499

Proposed Rules:

15....28826
17....28328, 28329, 28508, 29778
20....29700
630....29779
641....30389
642....28330
671....28827
672....28827
675....28827
676....28827
Ch. II....28838

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last List June 6, 1994

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This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869-022-00001-2)	$5.00	Jan. 1 1994
3 (1993 Compilation and Parts 100 and 101)	(869-022-00002-1)	33.00	[1] Jan. 1, 1994
4	(869-022-00003-9)	5.50	Jan. 1 1994
5 Parts:			
1-699	(869-022-00004-7)	22.00	Jan. 1, 1994
*700-1199	(869-022-00005-5)	19.00	Jan. 1 1994
1200-End, 6 (6 Reserved)	(869-022-00006-3)	23.00	Jan. 1 1994
7 Parts:			
0-26	(869-022-00007-1)	21.00	Jan. 1, 1994
27-45	(869-022-00008-0)	14.00	Jan. 1, 1994
46-51	(869-022-00009-8)	20.00	[7] Jan. 1, 1993
52	(869-022-00010-1)	30.00	Jan. 1, 1994
53-209	(869-022-00011-0)	23.00	Jan. 1, 1994
210-299	(869-022-00012-8)	32.00	Jan. 1, 1994
300-399	(869-022-00013-6)	16.00	Jan. 1, 1994
400-699	(869-022-00014-4)	18.00	Jan. 1, 1994
700-899	(869-022-00015-2)	22.00	Jan. 1, 1994
*900-999	(869-022-00016-1)	34.00	Jan. 1, 1994
*1000-1059	(869-022-00017-9)	23.00	Jan. 1, 1994
1060-1119	(869-022-00018-7)	15.00	Jan. 1, 1994
1120-1199	(869-022-00019-5	12.00	Jan. 1, 1994
1200-1499	(869-019-00020-8)	27.00	Jan. 1, 1993
1500-1899	(869-019-00021-6)	17.00	Jan. 1, 1993
*1900-1939	(869-022-00022-5)	15.00	Jan. 1, 1994
1940-1949	(869-022-00023-3)	30.00	Jan. 1, 1994
1950-1999	(869-022-00024-1)	35.00	Jan. 1, 1994
2000-End	(869-022-00025-0)	14.00	Jan. 1, 1994
*8	(869-022-00026-8)	22.00	Jan. 1, 1994
9 Parts:			
1-199	(869-022-00027-6)	29.00	Jan. 1, 1994
200-End	(869-022-00028-4)	23.00	Jan. 1, 1994
10 Parts:			
0-50	(869-022-00029-2)	29.00	Jan. 1, 1994
51-199	(869-022-00030-6)	22.00	Jan. 1, 1994
200-399	(869-022-00031-4)	15.00	[7] Jan. 1, 1993
400-499	(869-022-00032-2)	21.00	Jan. 1, 1994
500-End	(869-022-00033-1)	37.00	Jan. 1, 1994
11	(869-022-00034-9)	14.00	Jan. 1, 1994
12 Parts:			
1-199	(869-022-00035-7)	12.00	Jan. 1, 1994
200-219	(869-019-00036-4)	15.00	Jan. 1, 1993
220-299	(869-019-00037-2)	26.00	Jan. 1, 1993
300-499	(869-022-00038-1)	22.00	Jan. 1, 1994
500-599	(869-022-00039-0)	20.00	Jan. 1, 1994
600-End	(869-022-00040-3)	32.00	Jan. 1, 1994
13	(869-022-00041-1)	30.00	Jan. 1, 1994
14 Parts:			
1-59	(869-019-00042-9)	29.00	Jan. 1 1993
60-139	(869-022-00043-8)	26.00	Jan. 1 1994
140-199	(869-022-00044-6)	13.00	Jan. 1 1994
200-1199	(869-022-00045-4)	23.00	Jan. 1 1994
1200-End	(869-022-00046-2)	16.00	Jan. 1 1994
15 Parts:			
0-299	(869-022-00047-1)	15.00	Jan. 1 1994
300-799	(869-022-00048-4)	26.00	Jan. 1 1994
800-End	(869-022-00049-7)	23.00	Jan. 1 1994
16 Parts:			
0-149	(869-022-00050-1)	6.50	Jan 1 1994
150-999	(869-022-00051-9)	18.00	Jan. 1 1994
1000-End	(869-022-00052-7)	25.00	Jan. 1 1994
17 Parts:			
1-199	(869-019-00054-2)	18.00	Apr 1 1993
200-239	(869-019-00055-1)	23.00	June 1 1993
240-End	(869-019-00056-9)	30.00	June 1 1993
18 Parts:			
1-149	(869-019-00057-7)	16.00	Apr 1 1993
150-279	(869-019-00058-5)	19.00	Apr 1 1993
280-399	(869-019-00059-3)	15.00	Apr 1 1993
400-End	(869-019-00060-7)	10.00	Apr 1 1993
19 Parts:			
1-199	(869-019-00061-5)	35.00	Apr 1 1993
*200-End	(869-022-00062-4)	12.00	Apr 1 1994
20 Parts:			
1-399	(869-019-00063-1)	19.00	Apr 1 1993
400-499	(869-019-00064-0)	31.00	Apr 1 1993
500-End	(869-019-00065-8)	30.00	Apr 1 1993
21 Parts:			
1-99	(869-019-00066-6)	15.00	Apr 1 1993
100-169	(869-019-00067-4)	21.00	Apr 1 1993
170-199	(869-019-00068-2)	20.00	Apr 1 1993
200-299	(869-019-00069-1)	6.00	Apr 1 1993
300-499	(869-019-00070-4)	34.00	Apr 1 1993
500-599	(869-019-00071-2)	21.00	Apr 1 1993
600-799	(869-019-00072-1)	8.00	Apr 1 1993
800-1299	(869-019-00073-9)	22.00	Apr 1 1993
1300-End	(869-019-00074-7)	12.00	Apr 1 1993
22 Parts:			
1-299	(869-019-00075-5)	30.00	Apr. 1 1993
300-End	(869-019-00076-3)	22.00	Apr. 1 1993
23	(869-019-00077-1)	21.00	Apr. 1 1993
24 Parts:			
0-199	(869-019-00078-0)	38.00	Apr. 1, 1993
200-499	(869-019-00079-8)	36.00	Apr. 1, 1993
500-699	(869-019-00080-1)	17.00	Apr. 1, 1993
700-1699	(869-019-00081-0)	39.00	Apr. 1, 1993
1700-End	(869-019-00082-8)	15.00	Apr 1 1993
25	(869-019-00083-6)	31.00	Apr 1 1993
26 Parts:			
§§ 1.0-1-1.60	(869-019-00084-4)	21.00	Apr. 1 1993
§§ 1.61-1.169	(869-019-00085-2)	37.00	Apr. 1, 1993
§§ 1.170-1.300	(869-019-00086-1)	23.00	Apr. 1 1993
§§ 1.301-1.400	(869-019-00087-9)	21.00	Apr. 1 1993
§§ 1.401-1.440	(869-019-00088-7)	31.00	Apr. 1 1993
§§ 1.441-1.500	(869-019-00089-5)	23.00	Apr. 1, 1993
§§ 1.501-1.640	(869-019-00090-9)	20.00	Apr. 1, 1993
§§ 1.641-1.850	(869-019-00091-7)	24.00	Apr. 1, 1993
§§ 1.851-1.907	(869-019-00092-5)	27.00	Apr. 1, 1993
§§ 1.908-1.1000	(869-019-00093-3)	26.00	Apr. 1, 1993
§§ 1.1001-1.1400	(869-019-00094-1)	22.00	Apr 1 1993
§§ 1.1401-End	(869-019-00095-0)	31.00	Apr. 1 1993
2-29	(869-019-00096-8)	23.00	Apr 1 1993
30-39	(869-019-00097-6)	18.00	Apr. 1, 1993
40-49	(869-019-00098-4)	13.00	Apr. 1, 1993
50-299	(869-019-00099-2)	13.00	Apr. 1, 1993
300-499	(869-017-00100-0)	23.00	Apr. 1, 1993
500-599	(869-022-00101-9)	6.00	[4] Apr 1, 1990

Title	Stock Number	Price	Revision Date
600-End	(869-019-00102-6)	8.00	Apr. 1, 1993
27 Parts:			
1-199	(869-019-00103-4)	37.00	Apr. 1, 1993
200-End	(869-019-00104-2)	11.00	[5] Apr. 1, 1991
28 Parts:			
1-42	(869-019-00105-1)	27.00	July 1, 1993
43-end	(869-019-00106-9)	21.00	July 1, 1993
29 Parts:			
0-99	(869-019-00107-7)	21.00	July 1, 1993
100-499	(869-019-00108-5)	9.50	July 1, 1993
500-899	(869-019-00109-3)	36.00	July 1, 1993
900-1899	(869-019-00110-7)	17.00	July 1, 1993
1900-1910 (§§ 1901.1 to 1910.999)	(869-019-00111-5)	31.00	July 1, 1993
1910 (§§ 1910.1000 to end)	(869-019-00112-3)	21.00	July 1, 1993
1911-1925	(869-019-00113-1)	22.00	July 1, 1993
1926	(869-019-00114-0)	33.00	July 1, 1993
1927-End	(869-019-00115-8)	36.00	July 1, 1993
30 Parts:			
1-199	(869-019-00116-6)	27.00	July 1, 1993
200-699	(869-019-00117-4)	20.00	July 1, 1993
700-End	(869-019-00118-2)	27.00	July 1, 1993
31 Parts:			
0-199	(869-019-00119-1)	18.00	July 1, 1993
200-End	(869-019-00120-4)	29.00	July 1, 1993
32 Parts:			
1-39, Vol. I		15.00	[2] July 1, 1984
1-39, Vol. II		19.00	[2] July 1, 1984
1-39, Vol. III		18.00	[2] July 1, 1984
1-190	(869-019-00121-2)	30.00	July 1, 1993
191-399	(869-019-00122-1)	36.00	July 1, 1993
400-629	(869-019-00123-9)	26.00	July 1, 1993
630-699	(869-019-00124-7)	14.00	[6] July 1, 1991
700-799	(869-019-00125-5)	21.00	July 1, 1993
800-End	(869-019-00126-3)	22.00	July 1, 1993
33 Parts:			
1-124	(869-019-00127-1)	20.00	July 1, 1993
125-199	(869-019-00128-0)	25.00	July 1, 1993
200-End	(869-019-00129-8)	24.00	July 1, 1993
34 Parts:			
1-299	(869-019-00130-1)	27.00	July 1, 1993
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400-End	(869-019-00132-8)	37.00	July 1, 1993
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36 Parts:			
1-199	(869-019-00134-4)	16.00	July 1, 1993
200-End	(869-019-00135-2)	35.00	July 1, 1993
37	(869-019-00136-1)	20.00	July 1, 1993
38 Parts:			
0-17	(869-019-00137-9)	31.00	July 1, 1993
18-End	(869-019-00138-7)	30.00	July 1, 1993
39	(869-019-00139-5)	17.00	July 1, 1993
40 Parts:			
1-51	(869-019-00140-9)	39.00	July 1, 1993
52	(869-019-00141-7)	37.00	July 1, 1993
53-59	(869-019-00142-5)	11.00	July 1, 1993
60	(869-019-00143-3)	35.00	July 1, 1993
61-80	(869-019-00144-1)	29.00	July 1, 1993
81-85	(869-019-00145-0)	21.00	July 1, 1993
86-99	(869-019-00146-8)	39.00	July 1, 1993
100-149	(869-019-00147-6)	36.00	July 1, 1993
150-189	(869-019-00148-4)	24.00	July 1, 1993
190-259	(869-019-00149-2)	17.00	July 1, 1993
260-299	(869-019-00150-6)	39.00	July 1, 1993
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790-End	(869-019-00155-7)	26.00	July 1, 1993
41 Chapters:			
1, 1-1 to 1-10		13.00	[3] July 1, 1984
1, 1-11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3-6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10-17		9.50	[3] July 1, 1984
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18, Vol. II, Parts 6-19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20-52		13.00	[3] July 1, 1984
19-100		13.00	[3] July 1, 1984
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102-200	(869-019-00158-1)	11.00	[6] July 1, 1991
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42 Parts:			
1-399	(869-019-00160-3)	24.00	Oct. 1, 1993
400-429	(869-019-00161-1)	25.00	Oct. 1, 1993
430-End	(869-019-00162-0)	36.00	Oct. 1, 1993
43 Parts:			
1-999	(869-019-00163-8)	23.00	Oct. 1, 1993
1000-3999	(869-019-00164-6)	32.00	Oct. 1, 1993
4000-End	(869-019-00165-4)	14.00	Oct. 1, 1993
44	(869-019-00166-2)	27.00	Oct. 1, 1993
45 Parts:			
1-199	(869-019-00167-1)	22.00	Oct. 1, 1993
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1-40	(869-019-00171-9)	18.00	Oct. 1, 1993
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166-199	(869-019-00177-8)	17.00	Oct. 1, 1993
200-499	(869-019-00178-6)	20.00	Oct. 1, 1993
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47 Parts:			
0-19	(869-019-00180-8)	24.00	Oct. 1, 1993
20-39	(869-019-00181-6)	24.00	Oct. 1, 1993
40-69	(869-019-00182-4)	14.00	Oct. 1, 1993
70-79	(869-019-00183-2)	23.00	Oct. 1, 1993
80-End	(869-019-00184-1)	26.00	Oct. 1, 1993
48 Chapters:			
1 (Parts 1-51)	(869-019-00185-9)	36.00	Oct. 1, 1993
1 (Parts 52-99)	(869-019-00186-7)	23.00	Oct. 1, 1993
2 (Parts 201-251)	(869-019-00187-5)	16.00	Oct. 1, 1993
2 (Parts 252-299)	(869-019-00188-3)	12.00	Oct. 1 1993
3-6	(869-019-00189-1)	23.00	Oct. 1 1993
7-14	(869-019-00190-5)	31.00	Oct. 1, 1993
15-28	(869-019-00191-3)	31.00	Oct. 1, 1993
29-End	(869-019-00192-1)	17.00	Oct. 1, 1993
49 Parts:			
1-99	(869-019-00193-0)	23.00	Oct. 1, 1993
100-177	(869-019-00194-8)	30.00	Oct. 1, 1993
178-199	(869-019-00195-6)	20.00	Oct. 1, 1993
200-399	(869-019-00196-4)	27.00	Oct. 1, 1993
400-999	(869-019-00197-2)	33.00	Oct. 1, 1993
1000-1199	(869-019-00198-1)	18.00	Oct. 1, 1993
1200-End	(869-019-00199-9)	22.00	Oct. 1 1993
50 Parts:			
1-199	(869-019-00200-6)	20.00	Oct 1 1993
200-599	(869-019-00201-4)	21.00	Oct. 1 1993
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[1] Because title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1994. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period Apr. 1, 1991 to Mar. 31, 1993. The CFR volume issued April 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1993. The CFR volume issued July 1, 1991, should be retained.

[7] No amendments to this volume were promulgated during the period January 1, 1993 to December 31, 1993. The CFR volume issued January 1, 1993, should be retained.

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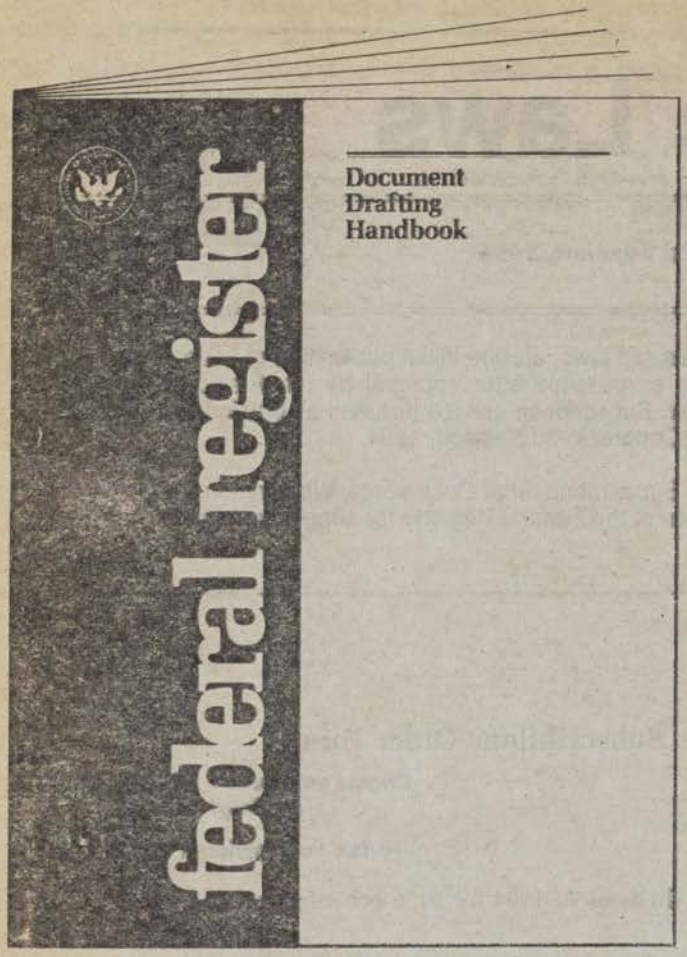

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