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Contents

Federal Register

Vol. 59, No. 150

Friday, August 5, 1994

Agriculture Department
See Animal and Plant Health Inspection Service
See Food Safety and Inspection Service
See Forest Service
See Rural Electrification Administration

Animal and Plant Health Inspection Service
RULES
Plant-related quarantine, domestic:
Pine shoot beetle, 39937–39941

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

Coast Guard
RULES
Dangerous cargoes:
Class I (explosive) materials; classification and handling, 39963–39966
Pollution:
Existing tank vessels without double hulls; structural and operational measures to reduce oil spills, 40186–40189
Ports and waterways safety:
Inland waterways navigation regulations—
Vessel bridge-to-bridge radiotelephone regulations, 39962–39963
Vocational rehabilitation and education:
Veterans education—
Reservists education; procedural due process and Montgomery GI Bill-Selected Reserve; correction, 39966
PROPOSED RULES
Dangerous cargoes:
Bulk solid materials requiring special handling; carriage, 40004–40005
NOTICES
Committees; establishment, renewal, termination, etc.:
Houston/Galveston Navigation Safety Advisory Committee, 40079

Commerce Department
See International Trade Administration
See Minority Business Development Agency
See National Institute of Standards and Technology

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 40008–40010
Procurement list; additions and deletions; correction, 40010

Comptroller of the Currency
RULES
Real estate lending and appraisals:
Exceptions in major disaster areas, 40202–40204

Defense Department
RULES
Acquisition regulations:
North American Free Trade Agreement (NAFTA)—
Buy American Act asnd Balance of Payments Program waivers; correction, 39974
Vocational rehabilitation and education:
Veterans education—
Reservists education; procedural due process and Montgomery GI Bill-Selected Reserve; correction, 39966
PROPOSED RULES
Acquisition regulations:
Essential contractor services; continuation during crises; withdrawn, 40005

Delaware River Basin Commission
PROPOSED RULES
Practice and procedure rules:
Administrative manual—
Comprehensive plan and basin regulations; water supply charges; hearing, 39991

Education Department
RULES
Special education and rehabilitative services:
State vocational rehabilitation unit in-service training program, 40176–40180
NOTICES
Postsecondary education:
National direct student and Federal Perkins loan programs; directory of designated low-income schools; availability
Teacher cancellation benefits; amendments availability, 40010–40011

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 40055–40057

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Rocky Flats Environmental Technology Site, CO, 40011–40014
Grant and cooperative agreement awards:
Illinois, 40015
Kansas State University, 40014–40015
Photonic Sensor Systems, Inc., 40015–40016
Thermotrex East, Inc., 40016
University of—
Pittsburgh, 40016

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States; and air quality planning purposes; designation of areas:
Tennessee; correction, 40084

Hazardous waste program authorizations:
Oregon, 39967–39971
Wisconsin, 39971–39972
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
Minnesota, 39994–40001
Toxic substances:
Significant new uses—
Pentaerythritol, mixed esters with carboxylic acids, 40001–40002
NOTICES
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 40017–40018
Weekly receipts, 40018
Toxic and hazardous substances control:
Premanufacture exemption approvals, 40018–40019

Federal Aviation Administration
RULES
Airworthiness directives:
Class E airspace; correction, 40084
Pratt & Whitney; correction, 40084
Special conditions—
Beech model 65 airplane, etc., 39941–39943
Standard instrument approach procedures, 39943–39950
PROPOSED RULES
Airworthiness directives:
AlliedSignal, Inc., 39983–39985
Practice and procedure:
Investigative and enforcement procedures; civil penalty assessment procedures, 40192–40200
Rulemaking petitions; summary and dispositon, 39983
NOTICES
Exemption petitions; summary and disposition, 40079–40081

Federal Communications Commission
NOTICES
Agency information collection activities under OMB review, 40019–40020
Applications, hearings, determinations, etc.:
Community Educational Association et al., 40020
Music Ministries, Inc., et al., 40020

Federal Deposit Insurance Corporation
RULES
Real estate lending and appraisals:
Exceptions in major disaster areas, 40202–40204

Federal Emergency Management Agency
RULES
Flood elevation determinations:
Hawaii et al., 39972–39974
PROPOSED RULES
Flood elevation determinations:
California et al., 40002–40004
NOTICES
Disaster and emergency areas:
Georgia, 40020–40021
South Dakota, 40021

Federal Energy Regulatory Commission
PROPOSED RULES
Oil pipelines:
Market-based ratemaking, 39985–39991
NOTICES
Applications, hearings, determinations, etc.:
Southern Natural Gas Co., 40016–40017

Federal Maritime Commission
NOTICES
Freight forwarder licenses:
L.A. Matrix, Inc., et al., 40021

Federal Reserve System
RULES
Real estate lending and appraisals:
Exceptions in major disaster areas, 40202–40203
Truth in lending (Regulation Z):
Consumer's right to rescind home-secured loans, waiver; creditor's preprinted form use prohibition; temporary exceptions due to flooding in South, 40203–40204
NOTICES
Meetings; Sunshine Act, 40083
Applications, hearings, determinations, etc.:
CFB Bancorp, Inc., et al., 40021
Holton, Stephen B., et al., 40021–40022

Federal Trade Commission
RULES
Appliances, consumer; energy costs and consumption information in labeling and advertising:
Comparability ranges—
Central air conditioners and heat pumps, 39951–39952
NOTICES
Premerger notification waiting periods; early terminations, 40022–40023
Prohibited trade practices:
Adobe Systems Inc. et al., 40023–40026
American Institute of Smoking Cessation et al., 40026–40028
Boulder Ridge Cable TV et al., 40028–40031
California & Hawaiian Sugar Co., 40031
Coca-Cola Co., 40031
College Football Association et al., 40031–40032
Gorayeb Seminars, Inc., et al., 40032–40034
Vein Clinics of America, Inc., et al., 40034

Fish and Wildlife Service
NOTICES
Environmental statements; availability, etc.:
Patoka River National Wetlands Project, IN, 40053–40054
Meetings:
Alaska Federal Subsistence Regional Advisory Council, 40006

Food and Drug Administration
NOTICES
Committees; establishment, renewal, termination, etc.:
Anesthetic and Life Support Drugs Advisory Committee et al., 40034–40035
Device Good Manufacturing Practice Advisory Committee, 40035–40036
Veterinary Medicine Advisory Committee, 40036
Food additive petitions:
Registration & Consulting Co. AG, 40036–40037
GRAS or prior-sanctioned ingredients:
Stepan Co., 40037

Food Safety and Inspection Service
RULES
Meat and poultry inspection:
Nutrition labeling

Ground beef and hamburger; lean and fat percentage labeling, 39941

Forest Service
NOTICES
Meetings:
Alaska Federal Subsistence Regional Advisory Council, 40006

Health and Human Services Department
See Food and Drug Administration
See Health Care Financing Administration
See National Institutes of Health
See Public Health Service
See Substance Abuse and Mental Health Services Administration

Health Care Financing Administration
NOTICES
Health maintenance organizations (HMO) qualification determinations and compliance actions, 40037–40038
Medicaid and Medicare:
Program issuances and coverage decisions; quarterly listing, 40038–40048

Health Resources and Services Administration
See Public Health Service

Housing and Urban Development Department
RULES
Fair housing:
Discriminatory housing practices; complaint processing, 39955–39956
Mortgage and loan insurance programs:
FHA single family coinsurance program; termination, 39956–39958
PROPOSED RULES
Community planning and development programs; consolidation, 40148–40167
NOTICES
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 40049–40051

Indian Affairs Bureau
PROPOSED RULES
Human services:
Financial assistance and social services programs; adult care services and work experience program
Tribal consultation meeting, 40182
Indian adult and juvenile detention, community residential, and holding facilities and programs; standards, 40086–40146
Meetings:
Indian Child Protection and Family Violence Prevention Act; tribal consultation, 40184

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See Minerals Management Service
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
RULES
Income taxes:
Capitalization and inclusion of inventory of certain costs, 39958–39962

International Trade Administration
NOTICES
Antidumping:
Silicomanganese from—
China, 40008
Antidumping duty orders, etc.; determinations not to revoke, 40006–40008

Interstate Commerce Commission
NOTICES
Railroad operation, acquisition, construction, etc.:
Burlington Northern Inc. et al., 40054–40055
Railroad services abandonment:
Dakota, Minnesota & Eastern Railroad Corp., 40055

Labor Department
See Employment Standards Administration

Land Management Bureau
NOTICES
Coal leases, exploration licenses, etc.:
Wyoming; correction, 40084
Memorandums of understanding:
Animal and Plant Health Inspection Service; animal damage management, 40051–40053
Realty actions; sales, leases, etc.:
Arizona, 40051

Merit Systems Protection Board
RULES
Practice and procedure:
Board organization and function statements; addition of new section to clarify case resolution procedures, 39937

Minerals Management Service
PROPOSED RULES
Outer Contentental Shelf; oil, gas, and sulphur operations:
Training of lessee and contractor employees engaged in drilling, well-completion, well-workover, well-servicing, or production operations, 39991–39993

Minority Business Development Agency
NOTICES
Business development center program applications:
Illinois; correction, 40008

National Credit Union Administration
RULES
Real estate lending and appraisals:
Exceptions in major disaster areas, 40202–40204

National Institute of Standards and Technology
NOTICES
Information processing standards, Federal:
Secure hash standard; correction, 40084

National Institutes of Health
NOTICES
Recombinant DNA molecules research:
Actions under guidelines, 40170–40174

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Chemetron Corp., Inc., 40057–40058
Meetings:
CONTAIN Peer Review Committee, 40058

Regulatory agreements:
Agreement State program; policy statement, 40058–40068
Applications, hearings, determinations, etc.:
University of—
Washington, 40069

Postal Service
RULES
Domestic Mail Manual:
Special bulk third-class eligibility restrictions, 39967

Public Health Service
See Food and Drug Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration
NOTICES
Agency information collection activities under OMB review, 40048–40049

Research and Special Programs Administration
NOTICES
Applications, hearings, determinations, etc.:
Chemical Waste Transportation Institute, 40081–40082

Rural Electrification Administration
PROPOSED RULES
Electric loans:
Pre-loan policies and procedures, 39975–39983

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 40083
Self-regulatory organizations; proposed rule changes:
American Stock Exchange, Inc., 40069–40071
Chicago Board Options Exchange, Inc., 40071–40073
Chicago Stock Exchange, Inc., 40073–40075
Applications, hearings, determinations, etc.:
Computer Data Systems, Inc., 40075
Maxxim Medical, Inc., 40075
Public utility holding company filings, 40075–40076
Valmora Partners, L.P., 40076–40078

State Department
RULES
Visas; immigrant documentation:
Alien immigrant visas; place of application, 39952–39955

Substance Abuse and Mental Health Services Administration
NOTICES
Meetings:
Substance Abuse and Mental Health Services Administration National Advisory Council, 40049

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
Ohio, 39993–39994

Thrift Supervision Office
RULES
Real estate lending and appraisals:
Exceptions in major disaster areas, 40202–40204

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Research and Special Programs Administration
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 40078
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 40078

Treasury Department
See Comptroller of the Currency
See Internal Revenue Service
See Thrift Supervision Office

Veterans Affairs Department
RULES
Vocational rehabilitation and education:
Veterans education—
Reservists education; procedural due process and Montgomery GI Bill-Selected Reserve; correction, 39966

Separate Parts In This Issue

Part II
Department of the Interior, Bureau of Indian Affairs, 40086–40146

Part III
Department of Housing and Urban Development, 40148–40167

Part IV
Department of Health and Human Services, National Institutes of Health, 40170–40174

Part V
Department of Education, 40176–40180

Part VI
Department of the Interior, Bureau of Indian Affairs, 40182

Part VII
Department of the Interior, Bureau of Indian Affairs, 40184

Part VIII
Department of Transportation, Coast Guard, 40186–40189

Part IX
Department of Transportation, Federal Aviation Administration, 40192–40200

Part X
Department of the Treasury, Office of the Comptroller, Office of Thrift Supervision; Federal Deposit Insurance Corporation; Federal Reserve System; National Credit Union Administration, 40202–40204

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.

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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.

5 CFR
1200 39937

7 CFR
301 39937

Proposed Rules:
1710 39975
1714 39975
1785 39975

9 CFR
317 39941

12 CFR
34 40202
225 40202
226 40203
323 40202
564 40202
722 40202

14 CFR
23 39941
39 40084
71 40084
97 (3 documents) 39943, 39944, 39947

Proposed Rules:
Ch. I 39983
13 40192
39 39983

16 CFR
305 39951

18 CFR

Proposed Rules:
348 39985
420 39991

22 CFR
42 39952

24 CFR
103 39955
204 39956

Proposed Rules:
91 40148
92 40148
570 40148
574 40148
576 40148
968 40148

25 CFR

Proposed Rules:
10 40086
20 40182
63 40184

26 CFR
1 39958

30 CFR

Proposed Rules:
250 39991
935 39993

33 CFR
26 39962
110 39963
126 39963
157 40186
160 (2 documents) 39963, 40186
162 39962

34 CFR
388 40176

38 CFR
21 39966

39 CFR
111 39967

40 CFR
81 40084
271 (2 documents) 39967, 39971

Proposed Rules:
52 39994
721 40001

44 CFR
65 39972

Proposed Rules:
67 40002

46 CFR
38 39963
78 39963
97 39963
194 39963

Proposed Rules:
97 40004
148 40004

48 CFR
225 39974

Proposed Rules:
207 40005
237 40005
252 40005

Rules and Regulations

Federal Register
Vol. 59, No. 150
Friday, August 5, 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.

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

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1200

Board Organization

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Board is amending its organization and functional statements by adding a new section to clarify the procedure to be followed when a majority of the members of the Board cannot agree on the disposition of a case or a matter involved in a case due to a vacancy, recusal, or other reasons.

None of these matters is currently addressed in the Board's regulations.

EFFECTIVE DATE: August 5, 1994.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, (202) 653–7200.

SUPPLEMENTARY INFORMATION: The procedures established by this regulation are based on established law which the Board applies when one vacancy exists and the two sitting members are unable to agree on the disposition of a case. Kopp v. Office of Personnel Management, 38 M.S.P.R. 430, 433 (1988); Glass v. Office of Personnel Management, 31 M.S.P.R. 162 (1986); Wade v. Department of Justice, 31 M.S.P.R. 35 (1986); Ingram v. Department of the Navy, 30 M.S.P.R. 699 (1986) aff'd 818 F.2d 876 (Fed. Cir. 1987) (Table). Consistent with these cases, the regulation rejects suggestions in earlier cases that the Board members may not under any circumstances delegate final decisional authority. Acting Special Counsel v. Sullivan, 4 M.S.P.R. 485, 490 (1981); Kling v. Department of Justice, 2 M.S.P.R. 464, 468 (1981).

The Board is publishing this rule as a final rule pursuant to 5 U.S.C. 1204(h).

List of Subjects in 5 CFR Part 1200

Organization and functions (Government agencies).

Accordingly, the Board amends 5 CFR part 1200 as follows:

PART 1200—[AMENDED]

1. The authority citation for part 1200, subpart B—General, continues to read as follows:

Authority: 5 U.S.C. 1204 (h) and (j).

2. Subpart A is amended by adding a new § 1200.3 to read as follows:

* * * * *

§ 1200.3 How the Board members make decisions.

(a) The three Board members make decisions in all cases by majority vote except in circumstances described in paragraphs (b) and (c) of this section or as otherwise provided by law.

(b) When due to a vacancy, recusal or other reasons, the Board members are unable to decide any case by majority vote, the decision, recommendation or order under review shall be deemed the final decision or order of the Board. The Chairman of the Board may direct the issuance of an order consistent with this paragraph.

(c) When due to a vacancy, recusal or other reasons, the Board members are unable to decide a matter in a case which does not involve a decision, recommendation or order, the Chairman may direct referral of the matter to an administrative judge or other official for final disposition.

(d) Decisions and orders issued pursuant to paragraphs (b) and (c) of this section shall not be precedential.

(e) This section applies only when at least two Board members are in office.

Dated: August 2, 1994.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 94–19143 Filed 8–4–94; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspectior Service

7 CFR Part 301

[Docket No. 92–139–6]

Pine Shoot Beetle

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the pine shoot beetle regulations by adding Lake and McHenry Counties, IL; Blackford, Cass, and Wabash Counties, IN; Huron, Kent, Lapeer, Sanilac, and St. Clair Counties, MI; Oswego County, NY; and Allegheny, Beaver, Butler, Clarion, Mercer, Venango, and Warren Counties, PA, to the list of quarantined areas. This action is necessary on an emergency basis to prevent the spread of the pine shoot beetle, a highly destructive pest of pine trees, into noninfested areas of the United States.

DATES: Interim rule effective August 1, 1994. Consideration will be given only to comments received on or before October 4, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92–139–6. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Milton C. Holmes, Senior Operations Officer, Plant Protection and Quarantine, APHIS, USDA, room 642, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8247.

SUPPLEMENTARY INFORMATION:

Background

The pine shoot beetle is a highly destructive pest of pine trees. The pine shoot beetle can cause damage in weak

and dying trees, where reproduction and immature stages of pine shoot beetle occur, and in the new growth of healthy trees. The "maturation feeding" of young beetles takes the form of boring up the center of pine shoots (usually of the current year's growth), causing stunted and distorted growth in the host trees. The pine shoot beetle is also a vector of several diseases of pine trees. Adults can fly at least 1 kilometer, and the wood, nursery stock, and Christmas trees they infest are often transported long distances. This pest damages urban trees, and can cause economic losses to the timber, Christmas tree, and nursery industries.

The regulations in 7 CFR 301.50 (referred to below as the regulations) impose restrictions on the interstate movement of regulated articles from quarantined areas in order to prevent the spread of the pine shoot beetle into noninfested areas of the United States.

Surveys recently conducted by State and Federal inspectors revealed that Lake and McHenry Counties, IL; Blackford, Cass, and Wabash Counties, IN; Huron, Kent, Lapeer, Sanilac, and St. Clair Counties, MI; Oswego County, NY; and Allegheny, Beaver, Butler, Clarion, Mercer, Venango, and Warren Counties, PA, are infested with the pine shoot beetle. The regulations in § 301.50–3 provide that the Administrator of the Animal and Plant Health Inspection Service (APHIS) will list as a quarantined area each State, or each portion of a State, in which the pine shoot beetle has been found by an inspector, in which the Administrator has reason to believe the pine shoot beetle is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the pine shoot beetle has been found.

In accordance with these criteria, we are designating Lake and McHenry Counties, IL; Blackford, Cass, and Wabash Counties, IN; Huron, Kent, Lapeer, Sanilac, and St. Clair Counties, MI; Oswego County, NY; and Allegheny, Beaver, Butler, Clarion, Mercer, Venango, and Warren Counties, PA, as quarantined areas, and adding them to the list of quarantined areas in § 301.50–3(c).

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency situation exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the pine shoot beetle from spreading to noninfested areas of the United States.

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

Executive Order 12866 and Regulatory Flexibility Act

This interim rule has been reviewed under Executive Order 12866.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

About 300 small nurseries and 330 producers of Christmas trees and other forest products operate in the 18 newly quarantined counties. All could probably be classified as small entities by Small Business Administration criteria (annual gross receipts of $0.5 million or less). While most of the small nurseries in these counties specialize in production of deciduous landscape products, some also produce rooted pine Christmas trees and pine nursery stock.

This action will affect only the sale of restricted pine products from quarantined areas to non-quarantined areas. If inspected and found to be infested with the pine shoot beetle, restricted pine products can be either diverted for sale within local markets or treated in accordance with § 301.50–10 prior to shipment to a non-quarantined area. Based on information acquired from extension agents and trade association representatives, we estimate that in the newly quarantined counties, the sale of restricted pine products to buyers in non-quarantined areas will represent less than one percent of total sales by small nurseries and less than five percent of total sales by Christmas tree and forest product producers. We anticipate, therefore, that this action will not have a significant economic impact on small nurseries, Christmas tree farmers, or other forest product producers.

There are a few logging operations in the newly quarantined counties in Pennsylvania. However, these operations harvest hardwoods primarily. Furthermore, the little pine that is cut is sold locally and thus would not be affected by this action.

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

Executive Order 12372

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

Executive Order 12778

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

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0088.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment provides a basis for the conclusion that the treatment of restricted pine products, under the conditions specified in this rule, will not present a risk of introducing or disseminating plant pests and will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement will not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR Part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR

50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended to read as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.50–3, in paragraph (c), under Illinois, Indiana, Michigan, New York, and Pennsylvania, new counties are added, in alphabetical order; and a new paragraph (d) is added to read as follows:

§ 301.50–3 Quarantined areas.

* * * * *

(c) * * *

Illinois

* * * * *

Lake County. The entire county.

* * * * *

McHenry County. The entire county.

* * * * *

Indiana

* * * * *

Blackford County. The entire county.

Cass County. The entire county.

* * * * *

Wabash County. The entire county.

* * * * *

Michigan

* * * * *

Huron County. The entire county.

* * * * *

Kent County. The entire county.

Lapeer County. The entire county.

* * * * *

St. Clair County. The entire county.

Sanilac County. The entire county.

* * * * *

New York

* * * * *

Oswego County. The entire county.

* * * * *

Pennsylvania

Allegheny County. The entire county.

Beaver County. The entire county.

Butler County. The entire county.

Clarion County. The entire county.

* * * * *

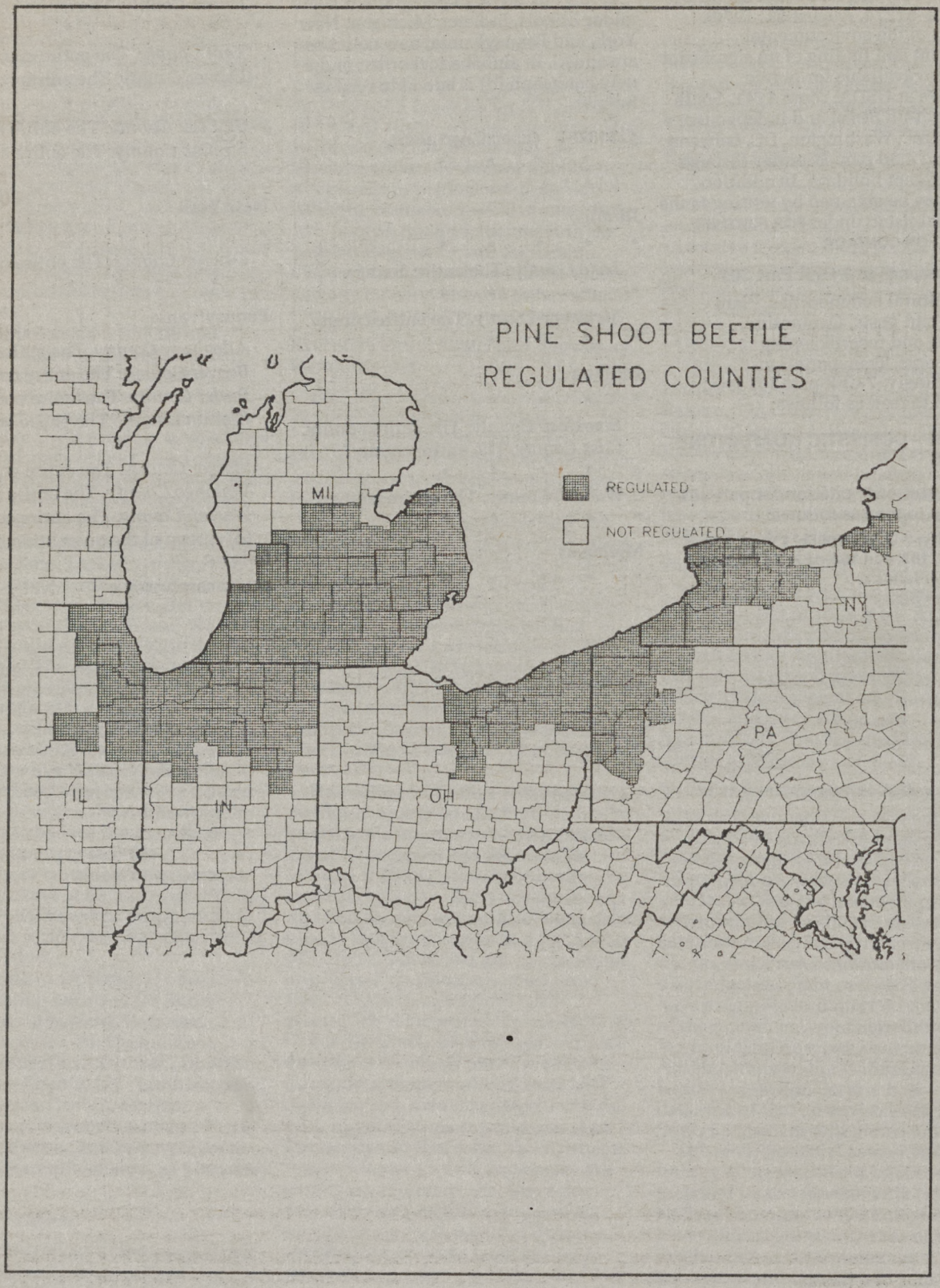
Mercer County. The entire county.

Venango County. The entire county.

Warren County. The entire county.

(d) A map of the quarantined areas follows:

BILLING CODE 3410–34–P



BILLING CODE 3410-34-C

Done in Washington, DC, this 1st day of August 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–19142 Filed 8–4–94; 8:45 am]

BILLING CODE 3410–34–P

Food Safety and Inspection Service

9 CFR Part 317

[Docket No. 94–024N]

Nutrition Labeling of Ground Beef and Hamburger: Extension of Compliance Date

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of extension of compliance date.

SUMMARY: The Food Safety and Inspection Service (FSIS) is announcing an extension of the date for enforcing compliance with its nutrition labeling regulations for ground beef and hamburger. The compliance enforcement date for the nutrition labeling regulations published on January 6, 1993, is August 8, 1994. FSIS is issuing this notice to clarify its policy on the enforcement of nutrition labeling of ground beef and hamburger pending publication of a final regulation concerning percentage labeling for lean and fat on ground beef and hamburger.

DATES: The compliance enforcement date is extended indefinitely until further notice.

FOR FURTHER INFORMATION CONTACT: Charles Edwards, Director, Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 254–2565.

SUPPLEMENTARY INFORMATION: On May 24, 1994, FSIS issued a proposed rule (59 FR 26916) with a shortened 45-day comment period to permit percentage labeling on lean and fat on ground beef and hamburger. On July 5, 1994, FSIS announced that it was granting a request filed by the Center for Science in the Public Interest to extend the comment period of the proposed rule for an additional 45 days until August 22, 1994 (59 FR 34396). Extending the comment period will allow additional survey data to be collected and submitted to FSIS concerning consumer perceptions of terms such as "percent lean," "lean," and "reduced fat." As a result of the extension, the comment period of the proposed rule on labeling of ground beef and hamburger now extends beyond the nutrition labeling compliance date of August 8, 1994. On June 16, 1994, FSIS announced that although the effective date of the nutrition labeling regulations was July 6, 1994, the Agency would not take enforcement action on meat and poultry products until August 8, 1994 (59 FR 30875).

FSIS has received several requests to clarify its enforcement posture for nutrition labeling policies for ground beef and hamburger pending the completion of the rulemaking process. Many of those requesting clarification contend that extending the comment period on the proposed rule caused confusion regarding FSIS' enforcement posture for nutrition labeling of ground beef and hamburger. After carefully considering the issue, FSIS has decided to extend the effective date for enforcing compliance with the nutrition labeling regulations for ground beef and hamburger until evaluation of comments received on the May 24 proposed rule is completed, and a final rule is issued. FSIS believes such action is reasonable and practical because the Agency extended the comment period on the proposed rule (59 FR 34396) in order to collect information about consumer understanding of nutrition labeling terms on these products. Extending enforcement action on nutrition labeling of ground beef and hamburger should avoid the situation of having three potentially different labeling schemes for ground beef and hamburger products within several months, and will prevent a lapse of information that consumers might expect or want on ground beef and hamburger packages. The extension will also allow manufacturers and retailers to use existing label inventories during this interim period.

FSIS will publish a final rule on ground beef and hamburger labeling in the **Federal Register** after it analyzes the public comments and consumer survey results received in response to the proposed rule.

Done at Washington, DC, on: August 2, 1994.

William J. Hudnall,

Acting Administrator, Food Safety and Inspection Service.

[FR Doc. 94–19260 Filed 8–5–94; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. 120CE, Special Condition 23–ACE–77]

Special Conditions; Beech Models 65, A65, 65–80, 65–A80, 65–B80, 65–90, 65–A90, 70, B90, C90, C90A, and E90 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to Elliott Aviation, Des Moines, Iowa, for a Supplemental Type Certificate (STC) on the Beech Models 65, A65, 65–80, 65–A80, 65–B80, 65–90, 65–A90, 70, B90, C90, C90A and E90 airplanes. These airplanes will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of electronic displays for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is [Date of August 5, 1994.] Comments must be received on or before September 6, 1994.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, ACE–7, Attention: Rules Docket Clerk, Docket No. 120CE, Room 1558, 601 East 12th Street, Kansas City, Missouri 64106. All comments must be marked: Docket No. 120CE. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Ervin Dvorak, Aerospace Engineer, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone (816) 426–6941.

SUPPLEMENTARY INFORMATION:

Comments Invited

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

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the rules docket for examination by interested parties, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments, submitted in response to this request, must include a self-addressed and stamped postcard on which the following statement is made: "Comments to Docket No. 120CE." The postcard will be date stamped and returned to the commenter.

Background

On July 10, 1994, Elliott Aviation, 2800 McKinley Avenue, Des Moines, Iowa 50321, made an application to the FAA for a supplemental type certificate (STC) for the Beech Models 65, A65, 65–80, 65–A80, 65–B80, 65–90, 65–A90, 70, B90, C90, C90A and E90 airplanes. The proposed modification incorporates a novel or unusual design feature, such as digital avionics consisting of an electronic flight instrument system (EFIS), that is vulnerable to HIRF external to the airplane.

Type Certification Basis

The type certification basis for the Beech Models 65, A65, 65–80, 65–A80, 65–B80, 65–90, 65–A90, 70, B90, C90, C90A and E90 Airplanes is given in Type Certificate Data Sheet No. 3A20.

Discussion

The FAA may issue and amend special conditions, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards, designated according to § 21.101(b), do not contain adequate or appropriate safety standards because of novel or unusual design features of an airplane. Special conditions are normally issued according to § 11.49, after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and become a part of the type certification basis.

Elliott Aviation plans to incorporate certain novel and unusual design features into an airplane for which the airworthiness standards do not contain adequate or appropriate safety standards for protection from the effects of HIRF. These features include electronic systems, which are susceptible to the HIRF environment, that were not envisaged by the existing regulations for this type of airplane.

Protection of Systems From High Intensity Radiated Fields (HIRF)

Recent advances in technology have given rise to the application in aircraft designs of advanced electrical and electronic systems that perform functions required for continued safe flight and landing. Due to the use of sensitive solid state advanced components in analog and digital electronics circuits, these advanced systems are readily responsive to the transient effects of induced electrical current and voltage caused by the HIRF. The HIRF can degrade electronic systems performance by damaging components or upsetting system functions.

Furthermore, the HIRF environment has undergone a transformation that was not foreseen when the current requirements were developed. Higher energy levels are radiated from transmitters that are used for radar, radio, and television. Also, the number of transmitters has increased significantly. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined.

The combined effect of the technological advances in airplane design and the changing environment has resulted in an increased level of vulnerability of electrical and electronic systems required for the continued safe flight and landing of the airplane. Effective measures against the effects of exposure to HIRF must be provided by the design and installation of these systems. The accepted maximum energy levels in which civilian airplane system installations must be capable of operating safely are based on surveys and analysis of existing radio frequency emitters. These special conditions require that the airplane be evaluated under these energy levels for the protection of the electronic system and its associated wiring harness. These external threat levels, which are lower than previous required values, are believed to represent the worst case to which an airplane would be exposed in the operating environment.

These special conditions require qualification of systems that perform critical functions, as installed in aircraft, to the defined HIRF environment in paragraph 1 or, as an option to a fixed value using laboratory tests, in paragraph 2, as follows:

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the HIRF environment defined below:

FIELD STRENGTH VOLTS/METER

Frequency	Peak	Average
10–100 KHz	50	50
100–500	60	60
500–2000	70	70
2–30 MHz	200	200
30–70	30	30
70–100	30	30
100–200	150	33
200–400	70	70
400–700	4020	935
700–1000	1700	170
1–2 GHz	5000	990
2–4	6680	840
4–6	6850	310
6–8	3600	670
8–12	3500	1270
12–18	3500	360
18–40	2100	750

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform critical functions can withstand a minimum threat of 100 volts per meter, peak electrical field strength, from 10 KHz to 18 GHz. When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

A preliminary hazard analysis must be performed by the applicant, for approval by the FAA, to identify electrical and/or electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to, or cause, a failure condition that would prevent the continued safe flight and landing of the airplane. The systems identified by the hazard analysis that perform critical functions are candidates for the application of HIRF requirements. A system may perform both critical and non-critical functions. Primary electronic flight display systems, and

their associated components, perform critical functions such as attitude, altitude, and airspeed indication. The HIRF requirements apply only to critical functions.

Compliance with HIRF requirements may be demonstrated by tests, analysis, models, similarity with existing systems, or any combination of these. Service experience alone is not acceptable since normal flight operations may not include an exposure to the HIRF environment. Reliance on a system with similar design features for redundancy as a means of protection against the effects of external HIRF is generally insufficient since all elements of a redundant system are likely to be exposed to the fields concurrently.

Conclusion

In view of the design features discussed for the Beech Models 65, A65, 65–80, 65–A80, 65–B80, 65–90, 65–A90, 70, B90, C90, C90A and E90 Airplanes, the following special conditions are issued. This action is a rule of general applicability and affects only those applicants who apply to the FAA for approval of these features on these airplanes.

The substance of these special conditions has been subject to the notice and public comment procedure in several prior rulemaking actions. For example, the Dornier 228–200 (53 FR 14782, April 26, 1988), the Cessna Model 525 (56 FR 49396, September 30, 1991), and the Beech Model 200, A200, and B200 airplanes (57 FR 1220, January 13, 1992). It is unlikely that additional public comment would result in any significant change from those special conditions already issued and commented on. For these reasons, and because a delay would significantly affect the applicant's installation of the system and certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions without notice. Therefore, these special conditions are being made effective upon publication in the **Federal Register**. However, as previously indicated, interested persons are invited to comment on these special conditions if they so desire.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols

Citation

The authority citation for these special conditions is as follows:

Authority: Secs. 313(a), 601, and 603 of the Federal Aviation Act of 1958; as amended (49 U.S.C. 1354(a), 1421, and 1423); 49 U.S.C. 106(g); 14 CFR 21.16 and 21.101; and 14 CFR 11.28 and 11.49.

Adoption of Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the modified Beech Models 65, A65, 65–80, 65–A80, 65–B80, 65–90, 65–A90, 70, B90, C90, C90A and E90 airplanes:

1. *Protection of Electrical and Electronic Systems from High Intensity Radiated Fields (HIRF).* Each system that performs critical functions must be designed and installed to ensure that the operations, and operational capabilities of these systems to perform critical functions, are not adversely affected when the airplane is exposed to high intensity radiated electromagnetic fields external to the airplane.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions:* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Kansas City, Missouri, on July 28, 1994.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–19116 Filed 8–4–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 27846; Amdt. No. 1614]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1992.

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

For Examination

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

For Purchase

Individual SIAP copies may be obtained from:

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

By Subscription

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

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

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a

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

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC, on July 29, 1994.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

Authority: 49 U.S.C. app. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

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

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

** * * Effective Oct 13, 1994*

Osceola, AR, Osceola Muni, NDB RWY 19, Orig.
Austin, TX, Robert Mueller Muni, ILS RWY 13R, Amdt 9

** * * Effective Sep 15, 1994*

Camarillo, CA, Camarillo, VOR OR GPS RWY 26, Amdt 4
Fort Myers, FL, Southwest Florida Intl, NDB RWY 6, Amdt 4
Duluth, MN, Sky Harbor, VOR–A, Orig, CANCELLED
Duluth, MN, Sky Harbor, NDB–B, Amdt 1
Kirksville, MO, Kirksville Regional, VOR–A, Amdt 14
Kirksville, MO, Kirksville Regional, VOR/DME–B, Amdt 6
Kirksville, MO, Kirksville Regional, LOC/DME RWY 36, Amdt 6
Kirksville, MO, Kirksville Regional, VOR/DME RNAV RWY 18, Amdt 7
Kirksville, MO, Kirksville Regional, VOR/DME RNAV RWY 36, Amdt 8
Wildwood, NJ, Cape May County, LOC RWY 19, Amdt 5
Woodbine, NJ, Woodbine Muni, VOR–A, Amdt 2
Bedford, PA, Bedford County, VOR–A, Orig.
Philadelphia, PA, Philadelphia Intl, ILS RWY 91, Amdt 1
Richmond, VA, Richmond Intl (Byrd Field), RADAR–1, Amdt 10, CANCELLED
Clarksburg, WV, Benedum, RADAR–1, Amdt 1, CANCELLED

** * * Effective Aug 18, 1994*

Lawrenceville, GA, Gwinnett County-Briscoe Field, LOC Rwy 25, Orig, CANCELLED
Lawrenceville, GA, Gwinnett County-Briscoe Field, ILS Rwy 25, Orig
Waycross, GA, Waycross-Ware County, NDB Rwy 18, Orig
Waycross, GA, Waycross-Ware County, NDB Rwy 18, Amdt 5, CANCELLED
Wilmington, OH, Clinton Fld, VOR–A, Orig
Tyler, TX, Tyler Pounds Field, VOR/DME OR GPS RWY 4, Amdt 2
Tyler, TX, Tyler Pounds Field, VOR/DME OR GPS RWY 22, Amdt 2
Tyler, TX, Tyler Pounds Field, VOR RWY 31, Orig
Tyler, TX, Tyler Pounds Field, LOC BC RWY 31, Amdt 18, CANCELLED
Tyler, TX, Tyler Pounds Field, NDB OR GPS RWY 13, Amdt 16
Tyler, TX, Tyler Pounds Field, ILS RWY 13, Amdt 19
Hoquiam, WA, Bowerman, LOC Rwy 24, Amdt 3, CANCELLED
Hoquiam, WA, Bowerman, ILS/DME Rwy 24, ORIG

[FR Doc. 94–19117 Filed 8–4–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 27847; Amdt. No. 1615]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination

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

For Purchase

Individual SIAP copies may be obtained from:

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

By Subscription

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

FOR FURTHER INFORMATION CONTACT:

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

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

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

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

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

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC, on July 29, 1994.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

Authority: 49 U.S.C. app. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

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

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

* * * EFFECTIVE UPON PUBLICATION

FDC date	State	City	Airport	FDC No.	SIAP
07/13/94	TX	San Antonio	Stinson Muni	FDC 4/3643	VOR or GPS Rwy 32, Amdt 13. . .
07/19/94	NJ	Teterboro	Teterboro	FDC 4/3758	VOR/DME RNAV or GPS Rwy 24, Orig.-A. . .
07/19/94	OH	Cincinnati	Cincinnati Muni Airport-Lunken Field	FDC 4/3744	Departure Procedures/Takeoff Minimums, Amdt 8. . .
07/19/94	OH	Cincinnati	Cincinnati Muni Airport-Lunken Field	FDC 4/3745	ILS Rwy 20L Amdt 14A. . .
07/19/94	OH	Cincinnati	Cincinnati Muni Airport-Lunken Field	FDC 4/3746	LOC BC Rwy 2R Amdt 7. . .
07/19/94	OH	Cincinnati	Cincinnati Muni Airport-Lunken Field	FDC 4/3747	NDB or GPS Rwy 20L, Amdt 11A. . .
07/19/94	OH	Cincinnati	Cincinnati Muni Airport-Lunken Field	FDC 4/3748	NDB or GPS Rwy 24 Amdt 6. . .
07/20/94	AK	Nome	Nome	FDC 4/3788	NDB/DME Rwy 2, Orig-A. . .
07/22/94	TN	Chatanooga	Lovell Field	FDC 4/3843	ILS Rwy 20 Amdt 35. . .
07/25/94	CA	Napa	Napa County	FDC 4/3907	LOC Rwy 36L Amdt 2. . .

Nome

Nome
Alaska
NDB/DME Rwy 2, Orig–A. . .
FDC Date: 07/20/94

FDC 4/3788/OME/ FI/P Nome, Nome, AK. NDB/DME Rwy 2, Orig–A. . .Chg SIAP Name to read. . . NDB/DME–1, Rwy 2, Orig–B.

Napa

Napa County
California
LOC Rwy 36L Amdt 2. . .
FDC Date: 07/25/94

FDC 4/3907/APC/ FI/P Napa County, Napa, CA. Loc Rwy 36L Amdt 2. . . Delete Trml Route CCR VOR/DME TO Lilly OM/Int. Chg Note When Ctl Zone not in effect. . .to read. . .when Ctl TWR CLSD, use Travis AFB ALSTG and Increase all MDAS 60 FT. This Becomes Loc Rwy 36L Amdt 2A.

Teterboro

Teterboro
New Jersey
VOR/DME RNAV or GPS Rwy 24, Orig.–A. . .
FDC Date: 07/19/94

FDC 4/3758/TEB/ FI/P Teterboro, Teterboro, NJ. VOR/DME Rnav or Gps Rwy 24, Orig.–A. . .Additional Flight data. . . Delete horizontal DSTC MDA to map on GS 3.1NM. This is VOR/DME RNAV or GPS Rwy 24, Orig–B.

Cincinnati

Cincinnati Muni Airport-Lunken Field
Ohio
Departure Procedures/Takeoff Minimums, Amdt 8. . .
FDC Date: 07/19/94

FDC 4/3744/LUK/ FI/P Cincinnati Muni Airport-Lunken Field, Cincinnati, OH. Departure Procedures/Takeoff Minimums, Amdt 8. . .Change all Reference to Rwys 2L–20R, 2R–20L and 6–24 to Rwys 3L–21R, 34–21L ANDT 7–25. This is Departure procedures/takeoff minimums amdt 8A.

Cincinnati

Cincinnati Muni Airport-Lunken Field
Ohio
ILS Rwy 20L Amdt 14A. . .
FDC Date: 07/19/94

FDC 4/3745/LUK/ FI/P Cincinnati Muni Airport-Lunken Field, Cincinnati, OH. ILS Rwy 20L Amdt 14A. . .Change all Reference to Rwy 2R–20L to Rwy 3R–21L. This is ILS Rwy 21L Amdt 14B

Cincinnati

Cincinnati Muni Airport-Lunken Field
Ohio
LOC BC Rwy 2R Amdt 7. . .
FDC Date: 07/19/94

FDC 4/3746/LUK FI/P Cincinnati Muni Airport-Lunken Field, Cincinnati, OH. Loc BC Rwy 2R Amdt 7. . .Change all Reference to Rwy 2R–20L to Rwy 3R–21L. This is Loc BC Rwy 3R Amdt 7A.

Cincinnati

Cincinnati Muni Airport-Lunken Field
Ohio
NDB or GPS Rwy 20L. Amdt 11A. . .
FDC Date: 07/19/94

FDC 4/3747/LUK/ FI/P Cincinnati Muni Airport-Lunken Field, Cincinnati, OH. NDB or GPS Rwy 20L, Amdt 11A. . .Change all Reference to Rwy 2R–20L to Rwy 3R–21L. This is NDB or GPS Rwy 21L Amdt 11B

Cincinnati

Cincinnati Muni Airport-Lunken Field
Ohio
NDB or GPS Rwy 24 Amdt 6. . .
FDC Date: 07/19/94

FDC 4/3748/LUK/ FI/P Cincinnati Muni Airport-Lunken Field, Cincinnati, OH. NDB or GPS Rwy 24 Amdt 6. . .Change all reference to Rwy 6–24 to Rwy 7–25. This is NDB or GPS Rwy 25 Amdt 6A.

Chatanooga

Lovell Field
Tennessee
ILS Rwy 20 Amdt 35. . .
FDC Date: 07/22/94

FDC 4/3843/CHA/ FI/P Lovell Field, Chatanooga, TN. ILS Rwy 20 Amdt 35. . .S–ILS–20 VIS CAT D RVR 1800. This becomes ILS Rwy 20 Amdt 35A.

San Antonio

Stinson Muni
Texas
VOR or GPS Rwy 32, Amdt 13. . .
FDC Date: 07/13/94

FDC 4/3643/SSF/ FI/P Stinson Muni, San Antonio, TX. VOR or GPS Rwy 32, Amdt 13. . .San Antonio Altimeter Setting Minimums S–32 MDA 1020/ HAT 450 all CATS. Change Missed Approach Instructions to. . .Climb to 1400 Then Climbing Right Turn to 2500 Direct Stinson VOR and Hold. This is VOR or GPS Rwy 32, Amdt 13A.

[FR Doc. 94–19118 Filed 8–4–94; 8:45 am]
BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 27848; Amdt. No. 1616]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

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

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

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

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

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

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

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

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Form 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

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

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAPs contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Approach Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with Global Positioning System (GPS) equipment. In consideration of the above, the applicable Standard Instrument Approach Procedures (SIAPs) will be altered to include "or GPS" in the title without otherwise reviewing or modifying the procedure. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

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. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on July 29, 1994.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

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

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

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

Authority: 49 U.S.C. app. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.27, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.27 NDB, NDB/DME; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective October 13, 1994*

Cold Bay, AK, Cold Bay, VOR/DME or TACAN or GPS–A, Orig-A

Cold Bay, AK, Cold Bay, VOR or GPS RWY 14, Amdt. 12A

Cordova, AK, Merle K (Mudhole) Smith, NDB or GPS–A, Orig.
Cordova, AK, Merle K (Mudhole) Smith, NDB/DME or GPS RWY 27, Orig.
Fort Yukon, AK, Fort Yukon, VOR/DME or TACAN or GPS RWY 3, Amdt. 1A
Fort Yukon, AK, Fort Yukon, VOR/DME or TACAN or GPS RWY 21, Amdt. 1A
Nome, AK, Nome, VOR or GPS RWY 27, Orig. A
Nome, AK, Nome, VOR/DME or GPS RWY 9, Orig. B
Auburn, AL, Auburn-Opelika Robert G. Pitts, VOR/DME or GPS–A, Amdt. 6
Auburn, AL, Auburn-Opelika Robert G. Pitts, RNAV or GPS RWY 36, Amdt. 3
Auburn, AL, Auburn-Opelika Robert G. Pitts, VOR or GPS RWY 28, Amdt. 9
Haleyville, AL, Posey Field, VOR/DME or GPS–A Amdt. 3A
Haleyville, AL, Posey Field, VOR/DME or GPS RWY 18, Amdt. 3A
Mobile, AL, Mobile Regional, NDB or GPS RWY 14, Amdt. 2
Mobile, AL, Mobile Regional, VOR or TACAN or GPS–A, Orig.
Conway, AR, Dennis F. Cantrell Field, NDB or GPS–A, Orig.
Hope, AR, Hope Muni, VOR/DME or GPS RWY 4, Amdt. 6
Hope, AR, Hope Muni, NDB or GPS RWY 16, Amdt. 3
Huntsville, AR, Huntsville-Madison County Regional, VOR/DME or GPS RWY 12, Amdt. 1
Siloam Springs, AR, Smith Field, VOR or GPS–A, Amdt. 8
Siloam Springs, AR, Smith Field, VOR/DME RNAV or GPS RWY 18, Amdt. 1
Nogales, AZ, Nogales Intl, VOR or GPS–A, Amdt. 3
Nogales, AZ, Nogales Intl, VOR/DME or GPS–B, Amdt. 2
Nogales, AZ, Nogales Intl, NDB or GPS–C, Amdt. 2
Bishop, CA, Bishop, VOR/DME or GPS–B, Amdt. 3
Bishop, CA, Bishop, VOR or GPS–A, Amdt. 6
Brawley, CA, Brawley Muni, VOR/DME or GPS–A, Orig.
Brawley, CA, Brawley Muni, VOR/DME or GPS–B, Amdt. 1
Imperial, CA, Imperial County, VOR or GPS–A, Amdt. 4
Madera, CA, Madera Muni, VOR or GPS RWY 30, Amdt. 9
Marysville, CA, Yuba County, NDB or GPS RWY 14, Amdt. 2
Marysville, CA, Yuba County, VOR or GPS RWY 32, Amdt. 9
Montague, CA, Siskiyou County, NDB or GPS–A, Amdt. 7
Monterey, CA, Monterey Peninsula, NDB or GPS RWY 10R, Amdt. 11
Porterville, CA, Porterville Muni, VOR or GPS–A, Orig.
Salinas, CA, Salinas Muni, VOR or GPS RWY 13, Amdt. 11
Erie, CO, Tri-County, VOR/DME or GPS–A, Orig.
Greeley, CO, Greeley-Weld County, VOR or TACAN or GPS–A, Amdt. 7A
Greeley, CO, Greeley-Weld County, NDB or GPS RWY 9, Amdt. 1A
Longmont, CO, Vance Brand, VOR/DME or GPS–A, Orig.
Chester, CT, Chester, VOR/DME RNAV or GPS RWY 35, Amdt. 1
Chester, CT, Chester, VOR or GPS–A, Amdt. 3
Chester, CT, Chester, VOR/DME RNAV or GPS RWY 17, Amdt. 2
Wilmington, DE, New Castle County, VOR/DME RNAV or GPS RWY 9, Amdt. 4
Fort Pierce, FL, St. Lucie County Intl, NDB or GPS RWY 27, Orig.
Gainesville, FL, Gainesville Regional, VOR or GPS–A, Amdt. 10
Key West, FL, Key West Intl, VOR/DME or GPS RWY 27, Amdt. 1
Keystone Heights, FL, Keystone Airpark, VOR/DME or GPS RWY 4, Amdt. 1
Kissimmee, FL, Kissimmee Muni, RNAV or GPS RWY 15, Amdt. 5
Orlando, FL, Orlando/Central Florida Regional, VOR/DME RNAV or GPS RWY 9L, Orig.
St. Augustine, FL, St. Augustine, VOR or GPS RWY 13, Amdt. 5
St. Petersburg, FL, Albert Whitted, VOR or GPS RWY 18, Amdt. 6
St. Petersburg-Clearwater, FL, St. Petersburg-Clearwater Intl, VOR or GPS RWY 17L, Amdt. 11B
Tallahassee, FL, Tallahassee Regional, VOR or GPS RWY 18, Amdt. 9
Adel, GA, Adel/Cook County, VOR/DME or GPS–A, Orig.
Atlanta, GA, Peachtree City-Falcon Field, VOR/DME RNAV or GPS RWY 31, Orig.
Augusta, GA, Bush Field, NDB or GPS RWY 35, Amdt. 27
Augusta, GA, Bush Field, NDB or GPS RWY 17, Amdt. 14
Brunswick, GA, Malcolm McKinnon, VOR or GPS RWY 4, Amdt. 14A
Brunswick, GA, Malcolm McKinnon, RNAV or GPS RWY 22, Amdt. 5
Reidsville, GA, Reidsville, NDB or GPS RWY 11, Amdt. 6A
Swainsboro, GA, Emanuel County, VOR/DME or GPS–A, Amdt. 2A
Swainsboro, GA, Emanuel County, NDB or GPS RWY 13, Orig. A
Hilo, HI, Hilo International, VOR/DME or TACAN or GPS–A, Amdt. 7
Hilo, HI, Hilo International, VOR/DME or TACAN or GPS RWY 26, Amdt. 5
Hilo, HI, Hilo International, VOR or GPS–B, Orig.
Clarion, IA, Clarion Muni, NDB or GPS RWY 14, Amdt. 3
Clinton, IA, Clinton Muni, NDB or GPS RWY 14, Amdt. 3
Clinton, IA, Clinton Muni, VOR/DME or GPS RWY 21, Amdt. 8
Clinton, IA, Clinton Muni, VOR or GPS RWY 3, Amdt. 13
Decorah, IA, Decorah Muni, RNAV or GPS RWY 29, Amdt. 2
Denison, IA, Denison Muni, NDB or GPS RWY 30, Amdt. 3
Des Moines, IA, Des Moines Intl. NDB or GPS RWY 31R, Amdt. 17
Des Moines, IA, Des Moines Intl. VOR or GPS RWY 23 Orig.
Iowa City, IA, Iowa City Muni, RNAV or GPS RWY 24, Amdt. 1
Iowa City, IA, Iowa City Muni, NDB or GPS RWY 30, Amdt. 1
Iowa City, IA, Iowa City Muni, NDB or GPS–A, Orig.
Iowa City, IA, Iowa City Muni, VOR or GPS RWY 35, Amdt. 10
Mountain Home, ID, Mountain Home Muni, NDB or GPS RWY 28, Amdt. 1
Belvidere, IL, Belvidere Ltd, VOR or GPS–A, Amdt. 1
Cahokia/St. Louis, IL, Cahokia/St. Louis Downtown-Parks, NDB or GPS RWY 30L, Amdt. 16
Freeport, IL, Albertus, VOR or GPS RWY 24, Amdt. 5
Freeport, IL, Albertus, RNAV or GPS RWY 6, Amdt. 4
Kewanee, IL, Kewanee Muni, NDB or GPS RWY 9, Amdt. 6
Kewanee, IL, Kewanee Muni, NDB or GPS RWY 1, Amdt. 6
Lacon, IL, Marshall County, VOR or GPS RWY 13, Amdt. 1
Lake In The Hills, IL, Lake In The Hills, VOR or GPS RWY 26, Amdt. 1
Rochelle, IL, Rochelle Muni-Koritz Field, VOR or GPS–A, Amdt. 7
Huntington, IN, Huntington Muni, NDB or GPS RWY 9, Orig.
Indianapolis, IN, Indianapolis Intl, NDB or GPS RWY 5L, Amdt. 20
Indianapolis, IN, Indianapolis Intl, NDB or GPS RWY 23L, Amdt. 1
Indianapolis, IN, Mount Comfort, VOR or GPS RWY 34, Amdt. 1
Knox, IN, Starke County, VOR or GPS RWY 18, Orig.
Lafayette, IN, Aretz, VOR or GPS–C, Amdt. 1
Madison, IN, Madison Muni, VOR/DME or GPS RWY 3, Amdt. 6
Plymouth, IN, Plymouth Muni, VOR or GPS RWY 10, Amdt. 11
Plymouth, IN, Plymouth Muni, VOR or GPS RWY 28, Amdt. 10
Rensselaer, IN, Jasper County, NDB or GPS RWY 18, Amdt. 3A
Emporia, KS, Emporia Muni, VOR/DME RNAV or GPS RWY 19, Amdt. 7
Emporia, KS, Emporia Muni, VOR or GPS–A, Amdt. 12
Garden City, KS, Garden City Regional, VOR/DME or GPS RWY 30, Orig.
Hutchinson, KS, Hutchinson Muni, NDB or GPS RWY 13, Amdt. 14A
Hutchinson, KS, Hutchinson Muni, VOR or GPS RWY 3, Amdt. 18A
Neodesha, KS, Neodesha Muni, VOR or GPS RWY 2, Amdt. 2
Newton, KS, Newton-City-County, VOR/DME or GPS–A, Orig. A
Newton, KS, Newton-City-County, NDB or GPS RWY 17, Amdt. 3A
Wellington, KS, Wellington Muni, VOR/DME or GPS RWY 17, Amdt. 1
Ashland, KY, Ashland-Boyd County, VOR or GPS RWY 10, Amdt. 9A
Bardstown, KY, Samuels Field, VOR/DME or GPS RWY 2, Amdt. 3
Flemingsburg, KY, Fleming-Mason, NDB or GPS RWY 25, Admt. 6
Madisonville, KY, Madisonville Muni, VOR or GPS RWY 23, Amdt. 12
Vivian, LA, Vivian, VOR/DME or GPS–A, Amdt. 2
Vivian, LA, Vivian, NDB or GPS RWY 9, Amdt. 1
Welsh, LA, Welsh, VOR/DME or GPS RWY 6, Amdt. 3
Tewksbury, MA, Tew-Mac, NDB or GPS–A, Amdt. 4

Tewksbury, MA, Tew-Mac, VOR or GPS RWY 21, Amdt. 7
Baltimore, MD, Baltimore-Washington Intl, VOR or GPS RWY 10, Amdt. 14A
Baltimore, MD, Baltimore-Washington Intl, VOR or GPS RWY 28, Amdt. 21B
Caribou, ME, Caribou Muni, VOR or GPS–A, Amdt. 9
Rangeley, ME, Rangeley Lake, NDB or GPS–B, Orig–A
Rangeley, ME, Rangeley Muni, NDB or GPS–A, Amdt. 3
Ann Arbor, MI, Ann Arbor Muni, VOR or GPS RWY 6, Amdt. 13
Ann Arbor, MI, Ann Arbor Muni, VOR or GPS RWY 24, Amdt. 13
Bad Axe, MI, Huron County Memorial, VOR or GPS RWY 3, Amdt. 9
Bad Axe, MI, Huron County Memorial, VOR or GPS RWY 21, Amdt. 8
Lansing, MI, Capital City, NDB or GPS RWY 28L, Amdt. 24
Lansing, MI, Capital City, VOR or GPS RWY 24, Amdt. 8
Lansing, MI, Capital City, VOR or GPS RWY 6, Amdt. 24
Menominee, MI, Menominee-Marinette Twin County, RNAV or GPS RWY 21, Amdt. 1A
Oscoda, MI, Oscoda-Wurtsmith, VOR or GPS RWY 6, Orig. A
Three Rivers, MI, Three Rivers Muni-Dr Haines, NDB or GPS RWY 27, Amdt. 7A
Three Rivers, MI, Three Rivers Muni-Dr Haines, VOR or GPS–A, Amdt. 9A
Redwood Falls, MN, Redwood Falls Muni, RNAV or GPS RWY 30, Orig.
Redwood Falls, MN, Redwood Falls Muni, VOR or GPS–A, Amdt. 3
Rochester, MN, Rochester Muni, VOR or GPS RWY 2, Amdt. 15
Rochester, MN, Rochester Muni, NDB or GPS RWY 31, Amdt. 20
Roseau, MN, Roseau Muni, VOR or GPS RWY 16, Amdt. 6A
Roseau, MN, Roseau Muni, VOR or GPS–A, Amdt. 7A
Worthington, MN, Worthington Muni, VOR or GPS RWY 35, Amdt. 4A
Worthington, MN, Worthington Muni, NDB or GPS RWY 29, Orig.
Worthington, MN, Worthington Muni, VOR or GPS RWY 17, Amdt. 8A
Worthington, MN, Worthington Muni, VOR or GPS RWY 11, Amdt. 1A
Springfield, MO, Springfield Regional, RNAV or GPS RWY 14, Amdt. 4
Springfield, MO, Springfield Regional, VOR or GPS RWY 20, Amdt. 17
Springfield, MO, Springfield Regional, NDB or GPS RWY 2, Amdt. 16
Holly Springs, MS, Holly Springs-Marshall County, VOR/DME or GPS RWY 18, Amdt. 6
Indianola, MS, Indianola Muni, VOR/DME or GPS–B, Amdt. 3
Indianola, MS, Indianola Muni, VOR/DME or GPS–A, Amdt. 8
West Point, MS, McCharen Field, VOR/DME or GPS–B, Amdt. 4
West Point, MS, McCharen Field, RNAV or GPS RWY 36, Amdt. 3
West Point, MS, McCharen Field, VOR or GPS–A, Amdt. 3
Glendive, MT, Dawson Community, NDB or GPS RWY 12, Amdt. 4A
Havre, MT, Havre City-County, VOR or GPS RWY 25, Amdt. 8A
Havre, MT, Havre City-County, VOR or GPS RWY 7, Amdt. 6
Burlington, NC, Burlington-Alamance Regional, VOR or GPS RWY 9, Amdt. 6
Burlington, NC, Burlington-Alamance Regional, NDB or GPS RWY 6, Amdt. 3
Burlington, NC, Burlington-Alamance Regional, VOR/DME or GPS–A, Orig.
Clinton, NC, Sampson County, VOR/DME or GPS–A, Amdt. 4
Clinton, NC, Sampson County, NDB or GPS RWY 6, Amdt. 4
Elizabethtown, NC, Elizabethtown, VOR/DME or GPS RWY 15, Orig.
Elizabethtown, NC, Elizabethtown, NDB or GPS RWY 33, Orig.
Raleigh/Durham, NC, Raleigh-Durham Intl, NDB or GPS RWY 5R, Amdt. 20
Raleigh/Durham, NC, Raleigh-Durham Intl, VOR or GPS RWY 32, Amdt. 3A
Minot, ND, Minot Intl, VOR or GPS RWY 26, Amdt. 12
Minot, ND, Minot Intl, VOR or GPS RWY 8, Amdt. 10
Minot, ND, Minot Intl, VOR or GPS RWY 13, Amdt. 10
Minot, ND, Minot Intl, VOR or GPS RWY 31, Amdt. 10
Columbus, NE, Columbus Muni, VOR or GPS RWY 32, Amdt. 13
Columbus, NE, Columbus Muni, NDB or GPS RWY 14, Amdt. 12
Fairmont, NE, Fairmont State Airfield, NDB or GPS RWY 35, Orig.
Kearney, NE, Kearney Muni, VOR or GPS RWY 13, Amdt. 1
Kearney, NE, Kearney Muni, VOR or GPS RWY 18, Amdt. 12
Kearney, NE, Kearney Muni, NDB or GPS RWY 36, Amdt. 4
Lincoln, NE, Lincoln Muni, NDB or GPS RWY 35L, Amdt. 8
Lincoln, NE, Lincoln Muni, VOR or GPS RWY 17R, Amdt. 11
Lincoln, NE, Lincoln Muni, VOR or GPS RWY 17L, Amdt. 6
Lebanon, NH, Lebanon Muni, VOR/DME or GPS RWY 7, Orig.
Rochester, NH, Skyhaven, NDB or GPS–B, Amdt. 1
Newark, NJ, Newark Intl, VOR/DME or GPS RWY 22L/R, Amdt. 2
Newark, NJ, Newark Intl, NDB or GPS RWY 4R, Amdt. 5A
Newark, NJ, Newark Intl, NDB or GPS RWY 4L, Amdt. 9B
Vineland, NJ, Rudy's, VOR or GPS–A, Amdt. 6
Wildwood, NJ, Cape May County, RNAV or GPS RWY 19, Amdt. 5A
Wildwood, NJ, Cape May County, VOR or GPS–A, Orig.
Taos, NM, Taos Muni, NDB or GPS RWY 4, Orig–A.
Taos, NM, Taos Muni, VOR/DME or GPS–B, Amdt. 2A
Truth Or Consequences, NM, Truth Or Consequences Muni, VOR or GPS–A, Amdt. 9
Ely, NV, Ely Airport-Yelland Field, VOR or GPS–A, Amdt. 6
Ely, NV, Ely Airport-Yelland Field, VOR/DME or GPS–C, Amdt. 1
Akron, NY, Akron, VOR/DME or GPS RWY 25, Amdt. 4
Akron, NY, Akron, VOR or GPS RWY 7, Amdt. 3
Middletown, NY, Randall, VOR or GPS RWY 8, Amdt. 5
Montauk, NY, Montauk, VOR or GPS RWY 6, Amdt. 1
New York, NY, La Guardia, NDB or GPS RWY 22, Amdt. 12
New York, NY, La Guardia, NDB or GPS RWY 4, Amdt. 36
Norwich, NY, Lt. Warren Eaton, RNAV or GPS RWY 19, Amdt. 1A
Norwich, NY, Lt. Warren Eaton, VOR/DME or GPS–A, Amdt. 3A
Syracuse, NY, Syracuse Hancock Intl, VOR or GPS RWY 14, Amdt. 2
Syracuse, NY, Syracuse Hancock Intl, NDB or GPS RWY 28, Amdt. 2
Akron, OH, Akron Fulton Intl, NDB or GPS RWY 25, Amdt. 13
Beach City, OH, Beach City, VOR or GPS–A, Amdt. 1
Bellefontaine, OH, Bellefontaine Muni, NDB or GPS RWY 22, Amdt. 6
Bluffton, OH, Bluffton, VOR or GPS RWY 23, Amdt. 6
Celina, OH, Lakefield, VOR/DME RNAV or GPS RWY 26, Amdt. 5
Celina, OH, Lakefield, NDB or GPS RWY 8, Amdt. 3
Hillsboro, OH, Highland County, NDB or GPS RWY 23, Amdt. 4
Hillsboro, OH, Highland County, VOR/DME or GPS–A, Amdt. 1A
Jackson, OH, James A. Rhodes, VOR/DME or GPS–A, Amdt. 2
Kent, OH, Kent State Univ, NDB or GPS RWY 1, Amdt. 11
Kent, OH, Kent State Univ, VOR or GPS–A, Amdt. 12
Phillipsburg, OH, Phillipsburg, VOR or GPS RWY 21, Amdt. 3
Elk City, OK, Elk City Muni, RNAV or GPS RWY 17, Amdt. 2A
Fairview, OK, Fairview Muni, NDB or GPS RWY 17, Amdt. 3
Holdenville, OK, Holdenville Muni, NDB or GPS RWY 17, Amdt. 3
Idabel, OK, Idabel, NDB or GPS RWY 17, Amdt. 3
Miami, OK, Miami Muni, NDB or GPS RWY 17, Amdt. 1
Mooreland, OK, Mooreland Muni, NDB or GPS RWY 17, Amdt. 2
Norman, OK, University of Oklahoma Westheimer Airpark, RNAV or GPS RWY 3, Orig–A
Tipton, OK, Tipton Muni, VOR/DME or GPS RWY 17, Orig–A
Corvallis, OR, Corvallis Muni, VOR or GPS–A, Amdt. 8
Corvallis, OR, Corvallis Muni, VOR/DME or GPS RWY 35, Amdt. 9
Corvallis, OR, Corvallis Muni, NDB or GPS RWY 17, Orig.
Newport, OR, Newport Muni, VOR/DME or GPS RWY 16, Amdt. 7
Newport, OR, Newport Muni, VOR or GPS–A, Amdt. 3
Allentown, PA, Allentown Queen City Muni, VOR or GPS–B, Amdt. 4
Allentown, PA, Allentown-Bethlehem-Easton, VOR or TACAN or GPS–A, Amdt. 8
Allentown, PA, Allentown-Bethlehem-Easton, NDB or GPS RWY 6, Amdt. 16
Carlisle, PA, Carlisle, VOR/DME or GPS–A, Amdt. 1

Carlisle, PA, Carlisle, NDB or GPS RWY 28, Amdt. 2
Corry, PA, Corry-Lawrence, VOR or GPS RWY 32, Amdt. 4
Perkasie, PA, Pennridge, NDB or GPS–A, Amdt. 2
Perkasie, PA, Pennridge, VOR or GPS RWY 8, Amdt. 1
North Kingstown, RI, Quonset State, VOR or GPS RWY 34, Orig.
Bennettsville, SC, Marlboro County, VOR/DME or GPS–A, Amdt. 3
Camden, SC, Woodward Field, NDB or GPS RWY 24, Amdt. 6B
Camden, SC, Woodward Field, VOR/DME or GPS–A, Amdt. 3A
Charleston, SC, Charleston Executive, RNAV or GPS RWY 9, Amdt. 5A
Charleston, SC, Charleston Executive, VOR or GPS–A, Orig., Amdt.
Florence, SC, Florence Regional, RNAV or GPS RWY 27, Amdt. 2
Sioux, SD, Joe Foss Field, VOR or TACAN or GPS RWY 15, Amdt. 19
Sioux, SD, Joe Foss Field, NDB or GPS RWY 3, Amdt. 23
Sioux, SD, Joe Foss Field, VOR/DME or TACAN or GPS RWY 33, Amdt. 10
Columbia/Mount Pleasant, TN, Maury County, NDB or GPS RWY 23, Amdt. 3B
Columbia/Mount Pleasant, TN, Maury County, VOR/DME or GPS–A, Amdt. 3A
Huntingdon, TN, Carroll County, NDB or GPS RWY 1, Amdt. 1
Selmer, TN, Robert Sibley, NDB or GPS RWY 17, Amdt. 5
Tullahoma, TN, Tullahoma Regional Arpt/Wm Northern Field, NDB or GPS RWY 18, Amdt. 1
Tullahoma, TN, Tullahoma Regional Arpt/Wm Northern Field, VOR/DME or GPS–B, Amdt. 3A
Tullahoma, TN, Tullahoma Regional Arpt/Wm Northern Field, RNAV or GPS RWY 36, Amdt. 4
Tullahoma, TN, Tullahoma Regional Arpt/Wm Northern Field, VOR or GPS–A, Amdt. 3
Abilene, TX, Abilene Regional VOR or GPS–A, Amdt. 8
Abilene, TX, Abilene Regional VOR or GPS RWY 22, Amdt. 3
Abilene, TX, Abilene Regional NDB or GPS RWY 35R, Amdt. 4
Austin, TX, Lakeway Airpark, VOR/DME or GPS–C, Amdt. 1
Austin, TX, Lakeway Airpark, RNAV or GPS RWY 16, Amdt. 1
Ballinger, TX, Bruce Field, NDB or GPS RWY 35, Amdt. 1
Baytown, TX, Baytown, VOR or GPS RWY 31, Orig.
Baytown, TX, Baytown, VOR or GPS RWY 13, Orig.
Baytown, TX, RWJ Airpark, RNAV or GPS RWY 26, Orig.
Baytown, TX, RWJ Airpark, VOR/DME or GPS RWY 32, Amdt. 3
Gruver, TX, Cluck Ranch, VOR/DME or GPS–A, Amdt. 1
Gruver, TX, Gruver Muni, VOR/DME or GPS–A, Amdt. 1
Lubbock, TX, Lubbock Intl, VOR/DME RNAV or GPS RWY 8, Amdt. 2
Lubbock, TX, Lubbock Intl, VOR or GPS–A, Amdt. 6
Lubbock, TX, Lubbock Intl, NDB or GPS RWY 17R, Amdt. 15
Lubbock, TX, Lubbock Intl, NDB or GPS RWY 26, Amdt. 2
Lufkin, TX, Angelina County, VOR or GPS RWY 33, Amdt. 13
Lufkin, TX, Angelina County, VOR/DME RNAV or GPS RWY 15, Amdt. 4
Lufkin, TX, Angelina County, VOR/DME RNAV or GPS RWY 7, Amdt. 3
Madisonville, TX, Madisonville Muni, VOR/DME or GPS RWY 18, Orig.
Palacios, TX, Palacios Muni, VOR or GPS RWY 13, Amdt. 10
Pampa, TX, Perry Lefors Field, NDB or GPS RWY 17, Amdt. 3
Pampa, TX, Perry Lefors Field, VOR/DME or GPS–A, Amdt. 1
Pearsall, TX, Mc Kinley Field, VOR/DME or GPS–A, Amdt. 2
Wichita Falls, TX, Tom Danaher, VOR/DME or GPS /RWY 35, Amdt. 1
Yoakum, TX, Yoakum Muni, NDB or GPS RWY 31, Amdt. 2
Blanding, UT, Blanding Muni, NDB or GPS RWY 35, Amdt. 7
Brigham City, UT, Brigham City, NDB or GPS RWY 34, Amdt. 6A
Lynchburg, VA, Lynchburg Regional/Preston Glenn Field, VOR/DME or GPS RWY 21, Amdt. 7
Lynchburg, VA, Lynchburg Regional/Preston Glenn Field, VOR or GPS RWY 3, Amdt. 11
Roanoke, VA, Roanoke Regional/Woodrum Field, NDB or GPS RWY 33, Amdt. 9
Roanoke, VA, Roanoke Regional/Woodrum Field, VOR/DME or GPS–A, Amdt. 4
Olympia, WA, Olympia, VOR or GPS–A, Orig.
Olympia, WA, Olympia, VOR/DME or GPS RWY 35, Amdt. 11
Pullman/Moscow, WA, Pullman/Moscow Regional, VOR or GPS RWY 5, Amdt. 6
Beloit, WI, Beloit, VOR or GPS–A, Amdt. 5
Burlington, WI, Burlington Muni, VOR or GPS–A, Amdt. 1
Burlington, WI, Burlington Muni, VOR or GPS RWY 29, Amdt. 7
Marshfield, WI, Marshfield Muni, NDB or GPS RWY 4, Amdt. 13
Marshfield, WI, Marshfield Muni, NDB or GPS RWY 16, Amdt. 9
Merrill, WI, Merrill Muni, NDB or GPS RWY 16, Amdt. 6
Minocqua-Woodruff, WI, Lakeland/Noble F. Lee Memorial Field, NDB or GPS RWY 18, Amdt. 12
Minocqua-Woodruff, WI, Lakeland/Noble F. Lee Memorial Field, NDB or GPS RWY 28, Amdt. 11
Minocqua-Woodruff, WI, Lakeland/Noble F. Lee Memorial Field, NDB or GPS RWY 36, Amdt. 9
Oshkosh, WI, Wittman Regional, VOR or GPS RWY 18, Amdt. 6
Oshkosh, WI, Wittman Regional, NDB or GPS RWY 36, Amdt. 5
Berkeley Springs, WV, Potomac Airpark, VOR or GPS RWY 29, Amdt. 5
Berkeley Springs, WV, Potomac Airpark, VOR/DME RNAV or GPS–A, Amdt. 1
Fairmont, WV, Fairmont Muni, VOR/DME or GPS RWY 22, Amdt. 4
Fort Bridger, WY, Fort Bridger, VOR or GPS RWY 22, Amdt. 1
Jackson, WY, Jackson Hole, VOR or GPS–A, Amdt. 6
Jackson, WY, Jackson Hole, VOR/DMF or GPS RWY 36, Amdt. 4
Newcastle, WY, Mondell Field, VOR or GPS RWY 31, Amdt. 3

The following are *corrected* procedure titles adding "or GPS" published in Transmittal Letter 94–14.

Eureka, KS, Eureka, Muni, VOR/DME or GPS RWY 18, Amdt. 1
Garden City, KS, Garden City Regional, VOR/DME or GPS RWY 35, Amdt. 1
Minneapolis, KS, Minneapolis City County, VOR/DME or GPS RWY 34, Orig.
Easton, MD, Easton/Newnan Field, NDB or GPS RWY 22, Amdt. 8
Fergus Falls, MN, Fergus Falls Muni-Einar Mickelson Fld, VOR or GPS RWY 13, Orig.
Minneapolis, MN, Anoka County-Blaine Airport (Janes Field), RNAV or GPS RWY 17, Amdt. 2
Minneapolis, MN, Anoka County-Blaine Airport (Janes Field), VOR or GPS RWY 8, Amdt. 10
Warrensburg, MO, Skyhaven, VOR/DME or GPS–A, Orig.
Caldwell, NJ, Essex County, NDB or GPS–A, Amdt. 4A
Millville, NJ, Millville Muni, VOR or GPS RWY 19, Amdt. 3A
Buffalo, NY, Greater Buffalo Intl, RNAV or GPS RWY 32, Amdt. 5A
Calverton, NY, Calverton Naval Weapons Industrial Reserve Plant, VOR/DME OR TACAN or GPS–A, Amdt. 2
White Plains, NY, Westchester County, VOR/DME or TACAN or GPS–A, Amdt. 3A
White Plains, NY, Westchester County, VOR/DME RNAV or GPS RWY 34, Amdt. 6
Chandler, OK, Chandler Muni, NDB or GPS RWY 17, Amdt. 3 BECOMES—NDB or GPS RWY 35, Orig.
Clinton, OK, Clinton-Muni, NDB or GPS RWY 35, Amdt. 5
Clinton, OK, Clinton-Sherman, VOR–1 or GPS VOR RWY 35L, Amdt. 10—is RESCINDED.
Clinton, OK, Clinton-Sherman, NDB or GPS RWY 17R, Amdt. 10
Lamesa, TX, Lamesa Muni, NDB or GPS RWY 16, Amdt. 2
Laredo, TX, Laredo Intl, VOR/DME or TACAN or GPS RWY 14, Amdt. 8
San Angelo, TX, Mathis Field, VOR or GPS RWY 21, Amdt. 15
Sherman/Denison, TX, Grayson County, NDB or GPS RWY 17L, Amdt. 8
Galax-Hillsville, VA, Twin County, NDB or GPS–A, Amdt. 4
Galax-Hillsville, VA, Twin County, VOR/DME or GPS RWY 18, Amdt. 4
Bluefield, WV, Mercer County, VOR/DME or GPS RWY 23, Amdt. 2B
Greybull, WY, South Big Horn County, NDB or GPS RWY 33, Amdt. 1

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FEDERAL TRADE COMMISSION

16 CFR Part 305

Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act ("Appliance Labeling Rule")

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission amends its Appliance Labeling Rule by publishing the ranges of comparability to be used on required labels for central air conditioners and heat pumps and by updating the annual national average cost figure for electricity to be used in the cost calculation formula required on fact sheets and in directories. These cost figures are for consumers to use to calculate their own heating and cooling costs.

EFFECTIVE DATE: December 28, 1994.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, Division of Enforcement, Federal Trade Commission, Washington, DC 20580 (202–326–3035).

SUPPLEMENTARY INFORMATION: Section 324 of the Energy Policy and Conservation Act of 1975 (EPCA)[1] requires the Federal Trade Commission to consider labeling rules for the disclosure of estimated annual energy cost or alternative energy consumption information for at least thirteen categories of appliances. Central air conditioners (including heat pumps) are included as one of the categories. The statute also requires the Department of Energy ("DOE") to develop test procedures that measure how much energy the appliances use. In addition, DOE is required to determine the representative average cost a consumer pays for the different types of energy available.

On November 19, 1979, the Commission issued a final Rule covering seven of the thirteen appliance categories that were then covered by DOE test procedures: refrigerators and refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners and furnaces.[2] On December 10, 1987, the Commission amended the Appliance Labeling Rule by extending its coverage to central air conditioners and heat pumps. For these products, the Commission adopted a disclosure scheme that consists of labels showing simple energy efficiency and range information, together with a requirement to disclose further efficiency and cost information by means of either fact sheets or a listing in a general directory containing such information.[3]

Section 305.8(b) of the rule requires manufacturers, after filing an initial report, to report annually by specified dates for each product type.[4] These reports, which are to assist the Commission in preparing the ranges of comparability, contain the estimated annual cost or energy efficiency rating for the appliances derived from tests performed pursuant to the DOE test procedures. The reports also contain the model number, the number of tests performed on each model, and the capacity of each. Because the costs for the various types of energy change yearly, and because manufacturers regularly add new models to their lines, improve existing models and drop others, the data base from which the ranges of comparability are calculated is constantly changing. To keep the required information in line with these changes, the Commission is empowered, under § 305.10 of the rule, to publish new ranges (but not more often than annually) if an analysis of the new data indicates that the upper or lower limits of the ranges have changed by more than 15%. Otherwise, the Commission must publish a statement that the prior range or ranges remain in effect for the next year.

The annual reports for central air conditioners (including heat pumps) have been received and analyzed by the Commission. New ranges based upon them are herewith published. These ranges will supersede the current ranges, which were published on September 25, 1992.[5]

In addition, this Notice provides an updated figure for the annual national average cost of electricity. This figure, along with national average cost figures for natural gas, propane, heating oil and kerosene, is published annually by the Department of Energy for the industry's use in calculating the cost figures required by the Commission's Rule. The cost figure for electricity must be used in the cost calculation formulas that appear in Appendices H and I. These formulas must be provided on fact sheets and in directories so consumers can calculate their own costs of operation for the central air conditioners and heat pumps that they are considering purchasing. The updated figure, which DOE published on December 29, 1993,[6] and which the Commission published on February 8, 1994,[7] is 8.41 cents per kilowatt-hour. The formulas (and calculations) in both Appendices have been changed to reflect this.

In consideration of the foregoing, the Commission revises Appendices H(1) and (2) and I(1) and (2) of its Appliance Labeling Rule by publishing the following ranges of comparability and cost figures for use in the labeling and advertising of central air conditioners and heat pumps beginning December 28, 1994.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Accordingly, 16 CFR Part 305 is amended as follows:

PART 305—[AMENDED]

1. The authority citation for Part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

2. Appendix H of Part 305 is amended by revising section 1, "Range Information," to read as follows:

Appendix H—Cooling Performance and Cost for Central Air Conditioners

1. Range Information:

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[1] Pub. L. 94–163, 89 Stat. 871, 42 U.S.C. 6294 (Dec. 22, 1975).

[2] 44 FR 66466, 16 CFR Part 305 (Nov. 19, 1979). The Statement of Basis and Purpose for the final Rule describes the reasons the Commission declined to cover the other categories of covered products. *Id.* at 66467–69.

[3] 52 FR 46888.

[4] Reports for central air conditioners (including heat pumps) are due by July 1.

[5] 57 FR 44331.

[6] 58 FR 68901.

[7] 59 FR 5699.

Manufacturer's rated cooling capacity (Btu's/hr.)	Range of SEER's	
	Low	High
Single Package Units		
Central Air Conditioners (Cooling Only):		
All capacities	9.70	12.80
Heat Pumps (Cooling Function):		
All capacities	9.70	12.50
Split System Units		
Central Air Conditioners (Cooling Only):		
All capacities	10.00	17.00
Heat Pumps (Cooling Function):		
All capacities	10.00	16.40

* * * * *

Appendix H [Amended]

3. In section 2 of Appendix H of Part 305, the text and formulas are amended by removing the figure "8.25¢" wherever it appears and by adding, in its place, the figure "8.41¢". In addition, the text and formulas are amended by removing the figure "12.38¢" wherever it appears and by adding, in its place, the figure "12.62¢".

4. Appendix I of Part 305 is amended by revising section 1, "Range Information," to read as follows:

Appendix I—Heating Performance and Cost for Central Air Conditioners

1. Range Information:

Manufacturer's rated heating capacity (Btu's/hr.)	Range of HSPF's	
	Low	High
Single Package Units		
Heat Pumps (Heating Function):		
All capacities	6.60	7.90
Split System Units		
Heat Pumps (Heating Function):		
All capacities	6.80	10.20

The HSPF shall be the Region IV value based on the appropriate average design heat loss from the table below.

* * * * *

Appendix I [Amended]

5. In section 2 of Appendix I of Part 305, the text and formulas are amended by removing the figure "8.25¢" wherever it appears and by adding, in its place, the figure "8.41¢". In addition, the text and formulas are amended by removing the figure "12.38¢" wherever it appears and by adding, in its place, the figure "12.62¢".

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94–19137 Filed 8–4–94; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 42

[Public Notice 2045]

Visas: Documentation of Immigrants Under the Immigration and Nationality Act, As Amended

AGENCY: Bureau of Consular Affairs, State.

ACTION: Final rule.

SUMMARY: This rule amends immigrant visa regulations to make clear that the Department has the authority to determine where an alien's immigrant visa application shall be processed and to revise the text thereof for clarity and consistency of usage.

EFFECTIVE DATE: September 6, 1994.

FOR FURTHER INFORMATION CONTACT: Cornelius D. Scully, III, Director, Office of Legislation, Regulations, and Advisory Assistance, Visa Office, (202) 663–1184.

SUPPLEMENTARY INFORMATION:

On April 28, 1994, the Department published a proposed rule (59 FR 21948) to amend 22 CFR 42.61(a) to make explicit that the Department has the authority to make exceptions, for policy or operational reasons, to the general rules concerning where an application for an immigrant visa shall be made. The period for comment on the proposal ended on May 31, 1994.

The Department received one comment during the period. The commenter opposed promulgation of the proposed revision on several bases, one of which appears to derive from a misreading of the legislative history of the 1952 Act. Accordingly, it appears that a bit of the history of this provision may be appropriate.

The Immigration Act of 1924 did not contain a specific provision regarding place of application for an immigration visa. Instead, it simply authorized the Secretary of State to make regulations regarding the "form" in which such applications were to be made.

For many years the Department's instructions on the subject of place of application were included in Visa Supplement A, which contained a series of Notes for the guidance of consular officers in processing visa applications. As of November 1, 1940, Note 87 read as follows:

"Aliens will ordinarily make their applications for immigration visas to the consul in whose district they reside.

"The applications of nonquota immigrants may be accepted outside their home districts provided they present satisfactory evidence to the consul of their nonquota status under section 4 of the Act and of their admissibility to the United States under the immigration laws. If such satisfactory evidence is not produced the consul to whom the alien applies may request the assistance of the consul in the alien's home district in investigating the case or refer the applicant to that consul.

"The application of quota immigrants may be accepted outside their home districts provided—

"(1) A quota number is available or can be obtained for the issuance of the visa.

"(2) The consul is satisfied that in issuing the visa the alien will not be accorded undue priority over other applicants awaiting their turns in the alien's home district.

"(3) The alien presents satisfactory evidence to the consul of his admissibility into the United States under the immigration laws. If such satisfactory evidence is not produced the consul may request the assistance of the consul in the alien's home district in investigating the case, or refer the applicant to that consul."

In 1946 the Department promulgated formal regulations governing the visa process. After a redesignation of the regulations in 1948, the regulation concerning place of immigrant visa application read as follows:

"42.317 *Where immigration visa application may be made.* (a) An application for an immigration visa may be made at any American consular office, or other office specifically designated, which has been authorized to issue immigration visas. No consular agency may issue immigration visas.

"(b) An alien ordinarily should make his application for an immigration visa at the American consular office in his foreign home district. An alien who deliberately leaves his foreign home district for the purpose of making an application for an immigration visa elsewhere will be referred back to the American consular office in his home district. However, an alien may apply for an immigration visa at a consular office outside his foreign home district if the consular officer to whom he applies is satisfied:

"(1) That the alien has a bona-fide reason for applying outside of his foreign home district;

"(2) Of the alien's true identity;

"(3) That the alien has no adverse record in his foreign home district which would preclude the issuance of an immigration visa to him; and

"(4) That the alien is in possession of all the 'available' documents which can be obtained from his home district.

"(c) In no case of an adult who is not well and favorably known to the principal consular officer should an immigration visa be issued outside of the alien's home foreign district without notification to, and receipt of clearance from, the consular officer in the alien's foreign home district, the principal consular office in the foreign country of the alien's nationality, or the principal consular office in the foreign country of the alien's birth, whichever is the nearest office most likely to have a previous record regarding the alien.

"(d) For the purposes of this section an alien's foreign home district shall ordinarily be considered as that district of a foreign country in which the alien has a domicile, or in which he has lived for the last five years. However, an alien who has in good faith abandoned his domicile in his former home country without any purpose of circumventing the immigration laws of the United States may have his visa application accepted at an American consular office in the district in which he may be temporarily residing or sojourning while awaiting an opportunity to immigrate into the United States. In such cases, however, the provisions of paragraphs (b) and (c) of this section are applicable.

"(e) Questionable cases may be reported to the Department for a ruling on the question of jurisdiction."

This regulation remained in effect until promulgation of the revised visa regulations implementing the Immigration and Nationality Act of 1952.

The pertinent provision of the Immigration and Nationality Act—section 222(a)—is similar to its predecessor—section 7 of the Immigration Act of 1924—but is also different from it in very significant ways. Unlike its predecessor, which was silent on the subject of place of application, section 222(a) specifically authorizes the Secretary of State to provide by regulation for place of application. The legislative process which led to this provision is of interest because the commenter apparently encountered a portion of it and misunderstood what was occurring.

As introduced, both H.R. 5678 (Cong. Walter) and S. 2550 (Sen. McCarran) included in the proposed new section INA 222(a) the following sentence—"Such application shall be filed only with the consular officer in whose district the applicant shall have established his residence, except that an application for an immigrant visa under the Displaced Persons Act of 1948, as amended, and under INA 101(a)(27) may be filed with such consular officer as may be designated by regulations."

During the legislative process in the Senate, this sentence remained unchanged and was, thus, a part of the bill when it was approved by the Senate. In the House, however, the Judiciary Committee approved a series of amendments to Mr. Walter's original text, one of which (Amendment 9) deleted the sentence from H.R. 5678. The text of Amendment 9 appears at page 2 of House Report 1365 of February 14, 1952, which accompanied H.R. 5768, and there is, at page 54 of the Report, a paragraph which explains the amendment and the thinking of the Committee in making it. The paragraph, in its entirety, reads as follows:

"Amendment 9 (to sec. 222) reflects the committee's cognizance of the unprecedented number of persons who have been uprooted and dislocated during World War II or due to events subsequent thereto. The amendment is designed to alleviate hardship which might be caused by a rigid requirement that visa applications 'shall be filed only with the consular officer in whose district the applicant shall have established his residence.' It is believed that the Secretary of State will, by regulations provide for a more flexible requirement regarding the place of filing of visa applications in both nonimmigrant and immigrant cases. Existing regulations could very well serve as a pattern for the new rules to be promulgated."

As a result of this particular amendment, H.R. 5678, as approved by the House of Representatives, contained no statutory provision whatever regarding place of application. Thus, the question of how to deal with place of application for an immigrant visa had to be disposed of in the conference on the differing House and Senate versions. The Conference Report on H.R. 5678—House Report 2096 of June 9, 1952—sets forth the text of the Immigration and Nationality Act, as enacted. The sentence establishing the restrictive rule about place of application was dropped and the phrase "and at such place" was inserted in the first sentence of section 222(a). While the Statement of Managers on the Part of the House (at pp. 127–29 of House Report 2096) is silent on this subject and there is no statement of the Senate managers, the Department believes it fair to conclude that the Congress, after due consideration of the issue, consciously decided to leave the determination of place of immigrant visa application to the Secretary of State

and to make that decision explicit by codifying it.

The commenter contended that the purpose of the Congress was "to reduce the burden on displaced aliens in the visa application process" and quoted from the House Report statement reproduced above in support of this contention. The commenter omitted the last two sentences of the paragraph and appears to have misunderstood the point being made.

In reality, the Committee was acting to preserve the status quo insofar as the filing of immigrant visa applications was concerned. As is clear from the discussion above, the ultimate outcome was to preserve the status quo, but to make explicit the Secretary's authority to determine by regulations the place of immigrant visa application by codifying it in the first sentence of section 222(a) of the Act.

Thus, there is clear connection between the regulations implementing the Immigration Act of 1924 and those implementing the Immigration and Nationality Act, as amended. Moreover, it is clear that the basis of the regulations simply has not been that asserted by the commenter. The commenter sees the regulations governing place of application as intended to benefit alien visa applicants. Quite to the contrary, while the Department has attempted to give aliens broad notice of the procedures that will generally apply in "ordinary circumstances," it is clear that the regulations have always been intended for the benefit of the Government, giving it the flexibility to decide where immigrant visa applications will be processed. This flexibility has traditionally been important for two significant reasons.

First, there has always been a profound concern that an alien not avoid meaningful examination of his or her admissibility by having the visa application processed by a consular office in an area remote from his or her country of residence. Insofar as the constraints in the resources of a particular consular office render knowledgeable assessment of the application more difficult, the workload management issues discussed below are also relevant here.

Second, the Department has always had major concerns about the management of the consular function. There has never been a time when the Department has not had constraints on its resources. Consular staffing has been subject to those constraints as has every other aspect of the Department's operations. For that reason, it has always been of great importance to the Department both to have the authority to apportion available resources in a manner responsive to the level of demand for services and to have a basis for predicting levels of demand. The ability to specify where intending immigrants will be authorized to apply for an immigrant visa is crucial from both points of view.

In addition, it is noteworthy that the Department frequently has to adjust its handling of the visa workload because of world events. The statutory scheme, by leaving the place of application to be determined under Departmental regulations, allows this flexibility.

The commenter also expressed concern about the fact that the current regulation allows for the processing of an application by a consular office in an area where the alien is physically present but has no residence if the alien "expects" to remain in the area throughout the necessary processing time while the proposed regulation would require the alien to establish his or her ability to remain there for that time. The commenter sees that change as being of major significance.

The Department believes that this concern ignores reality and that the change in wording merely reflects that reality. A consular officer will not ordinarily accept an alien's assertion that he or she expects to remain in the area for the requisite period of time without a basis for believing the assertion to be true. Thus, the consular officer will ordinarily inquire further into the matter if the alien merely makes the bald assertion with no explanation for its basis. Moreover, it is the Department's position that a consular officer may properly decline to accept the application for processing if it reasonably appears that the alien's asserted expectation is unrealistic or otherwise ill-founded.

In light of the foregoing, the Department believes that the proposed change in wording does not have the significance the commenter apparently has ascribed to it.

The commenter asserts that incorporation into the proposed regulation of the phrase "Unless otherwise directed by the Department" has the effect of rendering the regulation meaningless. The Department strongly disagrees.

As pointed out in the commentary accompanying the proposed rule, the Department's position is that it has always had the authority reflected in this phrase and that this proposal does nothing more than make explicit what has always been implicit. Moreover, this comment presumes that the Department has in the past made, or intends in the future to make, frivolous use of this authority. The Department can find nothing objectionable in the establishment of a general rule, which will apply and guide consular officers in all normal circumstances, but which may be modified by the Department as necessary in those situations in which operational or policy considerations require it.

Finally, the commenter has asserted that the first and second sentences of the proposed regulation have the effect of requiring that an alien permitted to apply at the consular office in the area in which he or she is physically present also apply at the consular office in the area of the alien's residence. The Department wishes to ensure the commenter that it had no intention of producing such a state of affairs.

A review of prior versions of this regulation indicates that, prior to the 1987 recodification of the visa regulations, the concepts now set forth in several shorter sentences were included in a single long compound sentence. It is apparently the division of the regulations into shorter sentences which has created the doubt in the commenter's mind about the Department's intentions here. Accordingly, the Department has decided that the first two sentences of the proposed text should be editorially amended to read as follows:

"Unless otherwise directed by the Department, an alien applying for an immigrant visa shall make application at the consular office having jurisdiction over the alien's place of residence; except that, unless otherwise directed by the Department, an alien physically present in an area but having no residence therein may make application at the consular office having jurisdiction over that area if the alien can establish that he or she will be able to remain in the area for the period required to process the application."

While there appears to have arisen a general prejudice against the compound sentence in recent years, the Department trusts that, in this case, it will be seen as clarifying rather than obscuring the issue.

This rule is not expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. In addition, this rule would not impose information collection requirements under the provisions of the Paperwork Reduction Act of 1980. This rule has been reviewed as required under E.O. 12778 and certified to be in compliance therewith. This rule is exempt from review under E.O. 12866, but has been reviewed internally by the Department

to ensure consistency with the objectives thereof.

List of Subjects in 22 CFR Part 42

Aliens, Application, Immigrants, Visas.

Accordingly, 22 CFR Part 42 is amended as follows:

PART 42—[AMENDED]

1. The authority citation for Part 42 continues to read:

Authority: 8 U.S.C. 1104; 8 U.S.C. 1202.

2. Section 42.61 is amended by revising paragraph (a) to read as follows:

§ 42.61 Place of application.

(a) *Alien to apply in consular district of residence.* Unless otherwise directed by the Department, an alien applying for an immigrant visa shall make application at the consular office having jurisdiction over the alien's place of residence; except that, unless otherwise directed by the Department, an alien physically present in an area but having no residence therein may make application at the consular office having jurisdiction over that area if the alien can establish that he or she will be able to remain in the area for the period required to process the application. Finally, a consular office may, as a matter of discretion, or shall, at the direction of the Department, accept an immigrant visa application from an alien who is neither a resident of, nor physically present in, the area designated for that office for such purpose. For the purposes of this section, an alien physically present in the United States shall be considered to be a resident of the area of his or her last residence prior to entry into the United States.

* * * * *

Dated: August 1, 1994.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 94–19090 Filed 8–4–94; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 103

[Docket No. R–94–1744; FR–3754–F–01]

Fair Housing Complaint Processing

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This rule amends HUD's Fair Housing Complaint Processing regulations. The regulations govern the authority under sections 812(g) and (h) of the Fair Housing Act (the Act) to make and issue determinations of reasonable cause to believe that a discriminatory practice has occurred and issue charges detailing the determination, and the authority pursuant to section 810(c) of the Act to refer to the Attorney General matters involving breaches of conciliation agreements.

EFFECTIVE DATE: September 30, 1994.

FOR FURTHER INFORMATION CONTACT: Sara K. Pratt, Director, Office of Investigations, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, S.W., Room 5206, Washington, D.C. 20410–2000; telephone (202) 708–0836; TDD (202) 708–0015. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION: Sections 812(g) and (h) of the Fair Housing Act authorize the Secretary to make determinations of reasonable cause to believe that a discriminatory housing practice has occurred. Section 810(c) authorizes the Secretary to refer to the Attorney General matters involving possible breaches of conciliation agreements by respondents for enforcement. Regulations found at 24 CFR parts 103 and 104 govern the conduct of investigations under the Act by the Assistant Secretary and the taking of enforcement action in a number of situations.

This rule amends portions of 24 CFR part 103 to clarify that the Assistant Secretary for Fair Housing and Equal Opportunity (and the Deputy Assistant Secretary for Investigations and Enforcement), rather than the General Counsel, is authorized to make and issue determinations of reasonable cause to believe that a discriminatory housing practice has occurred and issue charges based on the determinations, and the authority to refer matters involving possible breaches of conciliation agreements to the Attorney General.

This authority was previously delegated to the General Counsel and Deputy General Counsel of the Department by the Secretary. Through this final rule, the Secretary has now revoked the delegation to the General Counsel and the Deputy General Counsel of this authority and delegated the authority to the Assistant Secretary.

Other Matters

Justification for final rule. In accordance with its own regulations on rulemaking in 24 CFR part 10, the Department generally publishes a rule for public comment before issuing a rule for effect. Part 10 provides, however, that notice and comment rulemaking may be omitted with respect to rules governing the Department's organization or its own internal practices or procedures. This final rule is one meeting that is standard, and is therefore issued without opportunity for prior public comment.

Environmental Impact. In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, the policies and procedures contained in this rule relate only to internal administrative procedures whose content does not constitute a development decision nor affect the physical condition of project areas or building sites and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

Regulatory Flexibility Act. The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this document before publication and by approving it certifies that the rule would not have a significant economic impact on a substantial number of small entities. The rule reflects a delegation of authority by the Secretary under the Fair Housing Act.

Executive Order 12606, The Family. The General Counsel, as the Designated Official under Executive Order 12606, *The Family,* has determined that this rule will not have a significant impact on family formation, maintenance, or well-being. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

Executive Order 12611, Federalism. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12611, *Federalism,* has determined that this rule does not involve the preemption of State law by Federal statute or regulation and does not have Federalism implications. Specifically, the rule will not substantially alter the established roles of HUD and the States and local governments. As a result, the rule is not subject to review.

Semiannual Regulatory Agenda. This rule was not listed on the Department's semiannual regulatory agenda published on April 25, 1994 at 59 FR 20424 under Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 103

Administrative practice and procedure, Aged, Fair housing, Individuals with disabilities, Intergovernmental relations, Investigations, Mortgages, Penalties, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, title 24 of the Code of Federal Regulations, part 103, is amended as follows:

PART 103—FAIR HOUSING—COMPLAINT PROCESSING

1. The authority citation for part 103 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 3601–3619.

§ 103.335 [Amended]

2. Section 103.335 is amended by removing the words "General Counsel" and inserting "Assistant Secretary" in their place.

3. Section 103.400 is amended by revising paragraphs (a)(2), (a)(3), (b), and (c), to read as follows:

§ 103.400 Reasonable cause determination.

(a) * * *

(2) If, based on the totality of the factual circumstances known at the time of the decision, the Assistant Secretary believes that reasonable cause may exist to believe that a discriminatory housing practice has occurred or is about to occur, the Assistant Secretary shall determine that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, in all cases not involving the legality of local land use laws or ordinances (except as provided in paragraph (b) of this section). The Assistant Secretary's determination shall be based solely on the facts concerning the alleged discriminatory housing practices provided by complainants and respondents and otherwise identified during the investigation in making this determination. In making this determination, the Assistant Secretary shall consider whether the facts concerning the alleged discriminatory housing practice are sufficient to warrant the initiation of a civil action in federal court.

(i) If the Assistant Secretary determines that reasonable cause exists, the Assistant Secretary will immediately issue a charge under § 103.405 on behalf of the aggrieved person, and shall notify the complainant and the respondent of this determination by certified mail or personal service.

(ii) If the Assistant Secretary determines that no reasonable cause exists, the Assistant Secretary shall: Issue a short and plain written statement of the facts upon which the Assistant Secretary has based the no reasonable cause determination; dismiss the complaint; notify the complainant and the respondent of the dismissal (including the written statement of facts) by mail; and make public disclosure of the dismissal. The complainant or respondent may request that no public disclosure be made. Notwithstanding such a request, the fact of dismissal, including the names of the parties, shall be public information available on request.

(3) If the Assistant Secretary determines that the matter involves the legality of local zoning or land use laws or ordinances, the Assistant Secretary, in lieu of making a determination regarding reasonable cause, shall refer the investigative material to the Attorney General for appropriate action under section 814(b)(1) of the Fair Housing Act, and shall notify the complainant and the respondent of this action by mail or personal service.

(b) The Assistant Secretary may not issue a charge under paragraph (a) of this section regarding an alleged discriminatory housing practice, if an aggrieved person has commenced a civil action under an Act of Congress or a state law seeking relief with respect to the alleged housing practice and the trial in the action has commenced. If a charge may not be issued because of the commencement of such a trial, the Assistant Secretary shall so notify the complainant and the respondent by certified mail or personal service.

(c)(1) A determination of reasonable cause or no reasonable cause by the Assistant Secretary shall be made within 100 days after filing of the complaint (or where the Assistant Secretary has reactivated a complaint, within 100 days after service of the notice of reactivation under § 103.115), unless it is impracticable to do so.

(2) If the Assistant Secretary is unable to make the determination within the 100-day period specified in paragraph (c)(1) of this section, the Assistant Secretary will notify the complainant and the respondent by mail of the reasons for the delay.

4. In § 103.405, paragraph (a)(1) is amended by removing the words "General Counsel" and inserting in their place the words "Assistant Secretary"; and paragraph (b) is amended by adding a new sentence at the beginning of the introductory text, to read as follows:

§ 103.405 Issuance of charge.

* * * * *

(b) Within one business day after the issuance of a charge, the Assistant Secretary shall notify the General Counsel of the issuance of the charge. * * *

* * * * * *

Dated: July 29, 1994.

Henry G. Cisneros,

Secretary.

[FR Doc. 94–19178 Filed 8–4–94; 8:45 am]

BILLING CODE 4210–32–P

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 204

[Docket No. R–94–1717; FR–3418–F–01]

Termination of FHA Single Family Coinsurance Program

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule terminates the authority of the FHA Commissioner, to insure mortgage loans made for the financing of single family homes on a coinsurance basis. The purpose of the rule is to terminate a program found by the Department to be one whose usefulness and utilization by lenders is outweighed by the demands it makes on limited departmental resources.

EFFECTIVE DATE: September 6, 1994.

FOR FURTHER INFORMATION CONTACT: Morris Carter, Director, Single Family Development Division, Room 9272, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; telephone (voice) (202) 708–2700; (TDD) (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: FHA Coinsurance was first authorized under the Housing and Urban Development Act of 1974 which added a new section 244 to the National Housing Act. In February of 1976, the Department implemented a program of coinsurance for the financing of single family homes—24 CFR part 204.

The intent of this new coinsurance program was to improve the quality of mortgage originations and servicing, to streamline HUD insurance processing, and to improve the quality and timeliness of service to the mortgage applicants. This was to be achieved through the sharing of risk between HUD and the mortgagees and through

the delegation of a significant portion of processing to mortgage originators, including the complete processing of appraisal and mortgage credit applications, and the disposition of property in the event of default and foreclosure.

The two main incentives for participation in the program were to be a lender's ability to choose its own appraisers and to share the premium income with the Department depending on the performance of the lender's book of business for coinsured loans.

Despite these incentives, the Department has endorsed very few coinsured single family mortgages. The combined volume for fiscal years 1990, 1991, 1992 and 1993 was 6,830 loans nationwide, with the bulk coming from one lender, Crown Mortgage, doing business in Illinois. The remainder of coinsured loans were originated by four lenders located in New York or Texas.

Contributing to this lack of lender interest in the program has been the advent of Direct Endorsement which has blunted many of the benefits attributable to the coinsurance program, especially the delegation of processing to the lenders. While the sharing of premium income is a substantial benefit, most lenders, due to their financial situation, are in no position to share even a 10 percent risk exposure. (A lender is not permitted to obtain reinsurance of its potential or actual loss.) Also, few, if any lenders, wish to be burdened with the task of disposing of foreclosed property.

A Secretarial task force on financial management has recommended that this coinsurance program be terminated giving the following reasons:

1. The demands the program makes on the Department's resources outweigh its usefulness and utilization by lenders. From a programmatic standpoint, it does not make sense to devote scarce staff resources to a program as rarely used as coinsurance. Mortgage Insurance and Accounting (MIAS) Staff spend about one half a staff year running this program. Coinsurance requires MIAS to maintain a separate computer system to track coinsurance reserves and administer claim payments. Reserve payouts must be calculated and processed each year as well. Furthermore, the Chicago Office, which handles most of the coinsurance program's volume, estimates that in FY 1991, one-half a staff year was used to run the program. At least this much staff time was consumed by the program for the remainder of the country.

2. One of the incentives for program participation, the lender's ability to choose its own appraisers, will be nullified when this feature is applied in the future to the Direct Endorsement program, through the Department's implementation of section 202(e)(3) of the National Housing Act.

3. Participating lenders tend to "cherry pick" loans for coinsurance processing, with the riskier loans assigned to the Direct Endorsement program. All participating coinsurance lenders are also participating in the Direct Endorsement program.

4. Elimination of this program will not result in a reduction of avenues of mortgage credit for first time and low- and -moderate income homebuyers.

Issuance of a Proposed Rule and Public Comment

On March 30, 1994, the Department published a proposed rule which would terminate FHA's single family coinsurance program (59 FR 14809). One written comment has been received by the public concerning this proposal. The Savings and Community Bankers of America, representing more than 1800 savings and community financial institutions, fully supported termination of the program citing essentially the same reasons as are set forth above under the heading Supplemental Information.

Other Matters

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Undersigned certifies that this rule does not have a significant economic impact on a substantial number of small entities. Experience under the coinsurance programs affected by this rule has not demonstrated any substantial impact on small entities.

Semiannual Agenda

This rule was listed under the Office of Housing (Sequence No. 1568) in the Department's Semiannual Regulatory Agenda published on April 25, 1994 (59 FR 20424, 20443) under Executive Order 12866 and the Regulatory Flexibility Act.

Environment

Under HUD regulations (24 CFR 50.20(k)), this rule is exempt from the requirements of the National Environmental Policy Act as set forth in 24 CFR Part 50. The rule relates to internal administrative procedures, the content of which does not involve development decisions, and does not affect the physical condition of project areas or building sites but only relates to the amount and manner of payment of FHA insurance claims and distributive shares.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive order 12612, *Federalism*, has determined that the policies contained in this rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government 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 will not affect the basic availability of FHA insured single family mortgage financing assistance—merely the methods under which such financing can be secured. No programmatic or policy changes would result from this rule's promulgation which affect existing relationships between the federal government and state and local governments.

Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. The rule is limited to terminating a specific means for delivery of FHA insurance which has proved to be unworkable and a drain on the FHA staff resources. Other single family programs of HUD, specifically the direct endorsement program, will be improved upon and reemphasized in conjunction with this rule.

(The Catalog of Federal Domestic Assistance program number is 14.117.)

List of Subjects in 24 CFR Part 204

Mortgage insurance.

Accordingly, 24 CFR part 204 is revised, in its entirety, to read as follows:

PART 204—COINSURANCE

Authority: 12 U.S.C. 1715z–9, 1715(b); 42 U.S.C. 3535(d).

§ 204.1 Termination of program.

Effective December 29, 1994, of final rule the authority to coinsure mortgages under this part is terminated, except that the Department will honor legally binding and validly issued borrower approvals issued by lenders before the termination date. This part 204, as it existed immediately before the termination date, will continue to govern the rights and obligations of coinsured lenders, mortgagors, and the Department of Housing and Urban

Development with respect to loans coinsured under this part.

Dated: July 15, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 94–19177 Filed 8–4–94; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8559]

RIN 1545–AQ88

Capitalization and Inclusion in Inventory of Certain Costs

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations under section 263A of the Internal Revenue Code of 1986 relating to accounting for costs incurred in producing property and acquiring property for resale. Section 263A was enacted as part of the Tax Reform Act of 1986. Changes to the applicable law were made by the Omnibus Budget Reconciliation Act of 1987, the Technical and Miscellaneous Revenue Act of 1988, and the Omnibus Budget Reconciliation Act of 1989. These final regulations primarily affect taxpayers subject to section 263A that acquire property for resale.

EFFECTIVE DATE: August 5, 1994.

FOR FURTHER INFORMATION CONTACT: Rosemary DeLeone or Harry-Todd Astrov of the Office of the Assistant Chief Counsel, Income Tax and Accounting, (202) 622–4970 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On March 30, 1987, and August 7, 1987, temporary regulations under section 263A were published in the **Federal Register** (TD 8131, 52 FR 10052 and TD 8148, 52 FR 29375). A public hearing was held on December 7, 1987. On August 9, 1993, final regulations under section 263A were published in the **Federal Register (TD 8482, 58 FR 42198). In addition, a notice of proposed rulemaking was published on August 9, 1993, (58 FR 42263) regarding certain provisions that were reserved in the final regulations. A public hearing was held on November 30, 1993, on these provisions. After consideration of the public comments regarding the proposed regulations, the regulations are adopted as revised by this Treasury decision.**

Explanation of Statutory Provisions

Section 263A (the uniform capitalization rules) was enacted as part of the Tax Reform Act of 1986, Pub. L. 99–514, 100 Stat. 2085, 1986–3 C.B. (Vol. 1) (the 1986 Act). The statute was amended as part of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100–203, 101 Stat. 1330, 1987–3 C.B. 1 (the 1987 Act), the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, 102 Stat. 3342, 1988–3 C.B. 1 (the 1988 Act), and the Omnibus Budget Reconciliation Act of 1989, Pub. L. 101–239, 103 Stat. 2106 (the 1989 Act), 1990–1 C.B. 210.

Section 263A provides a uniform set of rules that govern the capitalization of direct and indirect costs associated with property produced and property acquired for resale. Specifically, section 263A requires taxpayers to capitalize the direct and indirect costs properly allocable to real property and tangible personal property that they produce. Section 263A also requires taxpayers to capitalize the direct and indirect costs (including purchasing, handling, and storage costs) properly allocable to real property and personal property acquired for resale.

The final regulations under section 263A that were published on August 9, 1993, generally require handling costs to be capitalized. Handling costs include costs attributable to processing, assembling, repackaging, transporting, and other similar activities, provided these activities do not come within the meaning of the term "produce" as defined in § 1.263A–2(a)(1). However, the final regulations under section 263A also provide that certain handling costs are not required to be capitalized. For instance, handling costs incurred at a retail sales facility with respect to property sold to retail customers at the facility are not required to be capitalized. In addition, handling costs incurred at a dual-function storage facility with respect to property sold to customers from the facility are not required to be capitalized to the extent that the costs are incurred with respect to property sold in on-site sales.

The final regulations under section 263A that were published on August 9, 1993, reserve several provisions previously contained in the temporary regulations relating to certain other costs that were not considered handling costs. In particular, the regulations reserve provisions relating to distribution costs, custom-order delivery costs, and repackaging costs. After publishing a notice of proposed rulemaking and considering public comments, these final regulations provide rules concerning such costs. In addition, these final regulations provide rules that permit the District Director to require appropriate adjustments to the valuation of inventories and other property subject to section 263A if a transfer of property is made to another person for a principal purpose of avoiding the application of section 263A.

Public Comments

The Scope of Distribution Costs

The proposed regulations provide that distribution costs are not required to be capitalized. The proposed regulations define distribution costs as any transportation costs incurred outside a storage facility in delivering goods to an unrelated customer. For this purpose, the proposed regulations state that any costs incurred on a loading dock are treated as incurred outside a storage facility.

Several commentators argued that, in addition to transportation costs incurred outside a storage facility, distribution costs should also include all costs (i.e., labor, equipment, and occupancy costs) incurred after a sales order has been received, regardless of whether these costs are incurred inside or outside a storage facility. They stated that the costs of retrieving the goods and readying them for shipment are more in the nature of deductible selling and distribution costs and do not relate to the production, acquisition, or holding of property.

The preamble to the proposed regulations cites the Blue Book to the 1986 Act which states that deductible "distribution expenses are intended to include only external distribution costs, that is, those costs incurred in transporting goods from the taxpayer's warehouse or retail outlet to the customer, or to the customer's agent, a common carrier, or some other intermediary. Distribution expenses do not include costs of moving inventory from a taxpayer's warehouse to its retail store or other internal transportation costs." Joint Committee on Taxation Staff, General Explanation of the Tax Reform Act of 1986, 99th Cong., JCS–10–87, 510 n.61. Commentators contended that this reference was taken out of context and suggested that it should be used to define the nature of an activity (e.g., shipment to a customer vs. internal transfers) rather than the location of an activity (e.g., inside an

off-site storage facility vs. the loading dock).

These final regulations retain the definition of distribution costs contained in the proposed regulations. The Service and Treasury continue to believe that this definition of distribution costs provides for a better matching of income and related expenses because gross income is not typically recognized from the sale of an item when an order is placed, but rather when the item is shipped, delivered, or accepted, or when title to the item passes to the purchaser. Since costs incurred inside a storage facility are typically incurred prior to an item being shipped, delivered, or accepted, or when title passes, these costs should be capitalized until income is recognized.

Furthermore, the Conference Report to the 1986 Act specifically states that "processing, assembly, repackaging, and similar costs, including labor costs attributable to unloading goods (but not including labor costs attributable to loading of goods for final shipment to customers, or labor at a retail facility)" should be capitalized. H.R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II–306 (1986), 1986–3 (Vol. 4) C.B. 306. Thus, because Congress intended that costs incurred prior to loading goods for shipment be capitalized, distribution activities should not be construed to begin any earlier than at the loading dock.

Pick and Pack Costs and Repackaging Costs

Several commentators have expressed concern that the definition of distribution costs contained in the proposed regulations may result in some taxpayers abandoning the use of the simplified resale method. In response, these final regulations except "pick and pack" costs from the scope of capitalizable handling costs incurred inside a storage facility. These final regulations define pick and pack costs as those costs incurred inside a storage facility in preparing specific goods for imminent shipment to a particular customer after the customer has ordered those goods. Examples of pick and pack costs include costs incurred to move specific goods from a storage location in preparation for shipment to the customer, pack or repack those goods for shipment to the customer, and stage those goods for shipment to the customer.

Pick and pack costs, however, do not include occupancy costs, such as rent, depreciation, insurance, taxes, utilities, and maintenance. The Service and Treasury believe that the exclusion of these costs from the scope of pick and pack costs is consistent with Congressional intent that all off-site storage and warehousing costs be capitalized. See H. R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II–306 (1986), 1986–3 (Vol. 4) C.B. 306. Furthermore, this position is supported by the Conference Report to the 1986 Act. In a footnote to the Conference Report the conferees state that "[o]ffsite storage and warehousing costs generally include the cost of a facility whose primary function is the storage or warehousing of goods." H. R. Conf. Rep. No. 841, 99th Cong., 2d Sess. II–306 (1986), 1986–3 (Vol. 4) C.B. 306. Thus, because the primary function of an off-site storage facility is the storage or warehousing of goods, all occupancy costs incurred at an off-site storage facility must be capitalized.

Because the above rule for pick and pack costs essentially replaces the exception for repackaging costs contained in the proposed regulations, the separate exception for repackaging costs is unnecessary and has been eliminated.

Costs of Delivering Custom-Ordered Items

The proposed regulations provide that, notwithstanding the general requirement that costs incurred in transporting goods from a taxpayer's storage facility to its retail sales facility are required to be capitalized, costs incurred outside a storage facility in delivering custom-ordered items to a retail sales facility are not required to be capitalized. For this purpose, the proposed regulations provide that any costs incurred on a loading dock are treated as incurred outside a storage facility. The preamble to the proposed regulations also states that the Service is considering eliminating this exception altogether.

Commentators contended that the custom-order exception should not be eliminated because these delivery costs are more appropriately characterized as costs incurred to ship goods directly to a customer rather than as costs incurred to internally move inventory. In addition, commentators asserted that the custom-order exception should not be limited to costs incurred outside a storage facility in delivering custom-ordered items to a retail sales facility. These commentators believe that all costs incurred in delivering custom-ordered items to a retail sales facility should be deductible, regardless of whether they are incurred inside or outside a storage facility.

These final regulations retain the custom-order exception. The Service and Treasury believe that limiting this exception to costs incurred outside a storage facility in delivering custom-ordered items to a retail sales facility provides for a better matching of income and related expenses.

Costs of Transporting Goods to a Related Person

The proposed regulations provide that distribution costs do not include costs incurred by a taxpayer in delivering goods to a related person. The proposed regulations further provide that when a taxpayer sells goods to a related person, the costs of transporting the goods are included in determining the basis of the goods that are sold, and hence in determining the resulting gain or loss from such sale, for all purposes of the Internal Revenue Code and the regulations thereunder. For purposes of this provision, the proposed regulation states that persons are related if they are described in section 267(b) or section 707(b).

One commentator argued that the requirement to capitalize costs incurred by a taxpayer in delivering goods to a related person is contrary to the purported purpose of section 263A and can result in the permanent disallowance of the capitalized costs. The commentator noted that if the capitalization of costs incurred in transporting property between related parties produces or increases a loss, the loss disallowance rules in sections 267(a)(1) and 707(b)(1) may in some instances permanently disallow the loss. Thus, the commentator argued that the requirement to capitalize costs incurred by a taxpayer in delivering goods to a related person is unfair because it results in harsher treatment than the treatment of internal transportation costs carried on within a single entity.

These final regulations retain the rule contained in the proposed regulations. The Service and Treasury continue to believe that the cost of transporting goods between related parties is properly treated as a capitalizable handling cost for all purposes (i.e., not just for timing purposes, but also for character purposes). In addition, the very limited potential for loss disallowance under sections 267(a)(1) and 707(b)(1) could result from any one of a number of properly capitalizable costs (e.g., storage costs, production costs, etc.) other than handling costs associated with transporting goods to a related party. Moreover, the fact that sections 267(a)(1) and 707(b)(1) will result in loss disallowance only in unusual circumstances does not justify the additional complexity that would result to all taxpayers from the series of rules that would be necessary to

accommodate the treatment requested by the commentator.

Transfers for Tax Avoidance Purposes

The proposed regulations provide that the District Director may require appropriate adjustments to valuations of inventory and other property subject to section 263A if the transfer of property is made to another person for a principal purpose of tax avoidance. The example provided in the proposed regulations states that the District Director may require a taxpayer using the simplified production method (as described in § 1.263A–2(b)) to apply that method to transferred inventories immediately prior to a transfer under section 351 if a principal purpose of the transfer is tax avoidance. The Service and Treasury continue to believe that the Secretary has the authority to prescribe regulations to prevent taxpayers from using related parties, pass-thru entities, or intermediaries to avoid the application of section 263A. Therefore, the final regulations retain the anti-abuse rule contained in the proposed regulations with one clarifying modification that substitutes "a principal purpose to avoid the application of section 263A" for "a principal purpose of tax avoidance."

Effective Dates

These final regulations are applicable to costs incurred in taxable years beginning after December 31, 1993. In the case of property that is inventory in the hands of the taxpayer, however, these regulations are effective for taxable years beginning after December 31, 1993.

Accounting Method Changes

If a taxpayer must change its method of accounting as a result of these regulations, the taxpayer generally must file a Form 3115, Application for Change in Accounting Method, with the Commissioner in accordance with the requirements of § 1.446–1(e)(3)(i) and Rev. Proc. 92–20, 1992–1 C.B. 685. If, however, as a result of these regulations a taxpayer changes its method of accounting in its first taxable year beginning on or after January 1, 1994, then the change must be made pursuant to Rev. Proc. 94–49, 1994–30 I.R.B., dated July 25, 1994.

Special Analysis

It has been determined that these regulations are not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations. Therefore, a Regulatory Impact Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Rosemary DeLeone and Harry-Todd Astrov of the Office of Assistant Chief Counsel, Income Tax and Accounting, IRS. However, other personnel from the IRS and the Treasury Department assisted in developing these regulations on matters of both substance and style.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for "Section 1.263A–1T" and adding new entries in numerical order to read as follows:

Authority: Authority: 26 U.S.C. 7805.

* * *

Section 1.263A–1 also issued under 26 U.S.C. 263A. * * *

Section 1.263A–3 also issued under 26 U.S.C. 263A. * * *

Section 1.263A–4T also issued under 26 U.S.C. 263A. * * *

Section 1.263A–7T also issued under 26 U.S.C. 263A. * * *

Par. 2. Section 1.263A–4T is added to read as follows:

§ 1.263A–4T Rules relating to property produced in a farming business.

(a) through (c) [Reserved]

(d) This section is effective for costs incurred after December 31, 1986, in taxable years ending after such date. In the case of property that is inventory in the hands of the taxpayer, this section is effective for taxable years beginning after December 31, 1986.

§ 1.263A–1T [Amended]

Par. 3. Paragraph (c) of § 1.263A–1T is redesignated as paragraph (c) of 1.263A–4T.

Par. 4. Section 1.263A–7T is added to read as follows:

§ 1.263A–7T Rules relating to changes in methods of accounting.

(a) through (e) [Reserved]

(f) This section is effective for costs incurred after December 31, 1986, in taxable years ending after such date. In the case of property that is inventory in the hands of the taxpayer, this section is effective for taxable years beginning after December 31, 1986.

§ 1.263A–1T [Amended]

Par. 5. Paragraph (e) of § 1.263A–1T is redesignated as paragraph (e) of 1.263A–7T.

Par. 6. § 1.263A–7T(e) is amended as follows:

1. The first and fourth sentences of paragraph (e)(1)(i) are amended by removing the phrase "this section" and replacing it with "section 263A and the regulations thereunder".

2. The third sentence of paragraph (e)(1)(i) is amended by removing the phrase "this section" and replacing it with "the regulations thereunder".

3. Paragraph (e)(1)(ii) is amended by removing the phrase "this section" and replacing it with "section 263A and the regulations thereunder" every place that it appears.

4. The first sentence of paragraph (e)(1)(iii)(B) is amended by removing the phrase "this section" the first time it appears and replacing it with "section 263A and the regulations thereunder" and by removing "of this section".

5. The second sentence of paragraph (e)(1)(iii)(B) is amended by removing the phrase "of this section".

6. The first sentence of paragraph (e)(1)(iv) is amended by removing the phrase "this section" the first, second, and third time it appears and replacing it with "section 263A and the regulations thereunder".

7. The first sentence of paragraph (e)(2) is amended by removing the phrase "this section" and replacing it with "section 263A and the regulations thereunder".

8. Paragraph (e)(3)(i) is amended by removing the phrase "this section" and replacing it with "section 263A and the regulations thereunder"

9. The first sentence of paragraph (e)(4)(i) is amended by removing the phrase "this section" the first time it appears and replacing it with "section 263A and the regulations thereunder"

10. The third sentence of the *Example* of paragraph (e)(4)(ii) is amended by removing the phrase "this section" and replacing it with "section 263A and the regulations thereunder".

11. The first sentences of *Example (1)* and *Example (3)* of paragraph (e)(5) are amended by removing the phrase "this section" and replacing it with "section 263A and the regulations thereunder"

12. The first and last sentences of paragraph (e)(6)(i) are amended by removing the phrase "this section" and replacing it with "section 263A and the regulations thereunder".

13. The first and second sentences of paragraph (e)(6)(ii)(A) are amended by removing the phrase "this section" and replacing it with "section 263A and the regulations thereunder".

14. Paragraph (e)(6)(ii)(A)(*1*) is amended by removing the phrase "this section" and replacing it with "section 263A and the regulations thereunder".

15. In paragraph (e)(6)(ii)(C), the second sentence of *Example (1)*, the third sentence of *Example (3)*, and the first sentence of *Example (5)* are amended by removing the phrase "this section" and replacing it with "section 263A and the regulations thereunder".

16. The third sentence of paragraph (e)(6)(iii)(A) is amended by removing the phrase "this section" and replacing it with "section 263A and the regulations thereunder".

17. The second sentence of paragraph (e)(6)(iii)(B)(*1*) is amended by removing the phrase "this section" and replacing it with "section 263A and the regulations thereunder".

18. The fourth sentence of the *Example* of paragraph (e)(6)(iii)(B)(*2*) is amended by removing the phrase "this section" and replacing it with "section 263A and the regulations thereunder".

19. The second sentence of paragraph (e)(6)(iii)(C)(*1*) is amended by removing the phrase "this section" and replacing it with "section 263A and the regulations thereunder".

20. The eighth sentence of the *Example* of paragraph (e)(6)(iii)(C)(*2*) is amended by removing the phrase "this section" and replacing it with "section 263A and the regulations thereunder".

21. The third and fifth sentences of the *Example* of paragraph (e)(6)(iv)(C) are amended by removing the phrase "this section" and replacing it with "section 263A and the regulations thereunder".

22. The second sentence of paragraph (e)(7)(iii)(B) is amended by removing the phrase "this section" and replacing it with "section 263A and the regulations thereunder".

23. The fourth sentence of the *Example* of paragraph (e)(7)(v) is amended by removing the phrase "this section" and replacing it with "section 263A and the regulations thereunder".

24. Paragraph (e)(9)(i) is amended by removing the phrase "this section" and replacing it with "section 263A and the regulations thereunder" every place that it appears.

25. The third and sixth sentences of *Example 1*, the third sentence of *Example 2*, the fifth sentence of *Example 3*, the seventh sentence of *Example 4*, and the third sentence of *Example 5* of paragraph (e)(9)(ii) are amended by removing the phrase "this section" and replacing it with "section 263A and the regulations thereunder".

26. The first sentence of paragraph (e)(10)(i) is amended by removing "this section" and replacing it with "section 263A and the regulations thereunder."

27. The second sentence of paragraph (e)(10)(i) is amended by removing the phrase "this section" the first time it appears and replacing it with "the regulations thereunder" and removing the phrase "this section" the second time it appears and replacing it with "section 263A and the regulations thereunder".

28. Paragraph (e)(10)(ii)(A) is amended by removing the phrase "this section" and replacing it with "the regulations thereunder" every place that it appears.

29. The third sentence of paragraph (e)(10)(iii) is amended by removing the phrase "this section" and replacing it with "section 263A and the regulations thereunder".

30. The first sentence of paragraph (e)(11)(i) is amended by removing the phrase "this section" and replacing it with "section 263A and the regulations thereunder".

31. The first sentence of paragraph (e)(11)(ii) is amended by removing the phrase "this section" and replacing it with "section 263A and the regulations thereunder".

32. The first and second sentences of paragraph (e)(11)(iii) are amended by removing the phrase "this section" and replacing it with "section 263A and the regulations thereunder".

33. Paragraph (e)(11)(iv) is amended by removing the phrase "this section" and replacing it with "section 263A and the regulations thereunder".

34. Paragraph (e)(11)(v) is amended by removing the phrase "this section" and replacing it with "section 263A and the regulations thereunder" every place that it appears.

§ 1.263A–1T [Removed]

Par. 7. Section 1.263A–1T is removed.

Par. 8. Section 1.263A–1 is amended as follows:

1. The last sentence of paragraph (a)(2)(i) is amended by removing "1.263A–1T(e)" and replacing it with "1.263A–7T(e)".

2. Paragraph (a)(3)(v) is amended by removing "1.263A–1T(c)" and replacing it with "1.263A–4T(c)".

3. The second sentence of paragraph (b)(3) is amended by removing "1.263A–1T(c)" and replacing it with "1.263A–4T(c)".

4. The second sentence of paragraph (b)(4) is amended by removing "1.263A–1T(c)" and replacing it with "1.263A–4T(c)".

5. Paragraph (b)(10) is amended by removing the second sentence and by adding paragraphs (b)(10) (i) and (ii).

6. The text of paragraph (j)(4) is added.

7. The added text reads as follows:

§ 1.263A–1 Uniform capitalization of costs.

* * * * *

(b) * * *

(10) * * *

(i) For purposes of this section, substantial construction is deemed to have occurred if the lesser of—

(A) 10 percent of the total estimated costs of construction; or

(B) The greater of $10 million or 2 percent of the total estimated costs of construction, was incurred before March 1, 1986.

(ii) For purposes of the provision in paragraph (b)(10)(i) of this section, the total estimated costs of construction shall be determined by reference to a reasonable estimate, on or before March 1, 1986, of such amount. Assume, for example, that on March 1, 1986, the estimated costs of constructing a facility were $150 million. Assume that before March 1, 1986, $12 million of construction costs had been incurred. Based on the above facts, substantial construction would be deemed to have occurred before March 1, 1986, because $12 million (the costs of construction incurred before such date) is greater than $10 million (the lesser of $15 million; or the greater of $10 million or $3 million). For purposes of this provision, construction costs are defined as those costs incurred after construction has commenced at the site of the property being constructed (unless the property will not be located on land and, therefore, the initial construction of the property must begin at a location other than the intended site). For example, in the case of a building, construction commences when work begins on the building, such as the excavation of the site, the pouring of pads for the building, or the driving of foundation pilings into the ground. Preliminary activities such as project engineering and architectural design do not constitute the commencement of construction, nor are such costs considered construction costs, for purposes of this paragraph (b)(10).

* * * * *

(j) * * *

(4) * * * The District Director may require appropriate adjustments to valuations of inventory and other property subject to section 263A if a

transfer of property is made to another person for a principal purpose of avoiding the application of section 263A. Thus, for example, the District Director may require a taxpayer using the simplified production method of § 1.263A–2(b) to apply that method to transferred inventories immediately prior to a transfer under section 351 if a principal purpose of the transfer is to avoid the application of section 263A.

Par. 9. Section 1.263A–3(c)(4)(vi) is amended as follows:

1. The heading is revised.

2. The text of paragraphs (A) and (B) is added.

3. The heading for paragraph (C) is revised and the text is added.

4. The revised and added provisions read as follows:

§ 1.263A–3 Rules relating to property acquired for resale.

* * * * *

(c) * * *

(4) * * *

(vi) *Costs not required to be capitalized as handling costs*—(A) *Distribution costs*—(*1*) *In general.* Distribution costs are not required to be capitalized. Distribution costs are any transportation costs incurred outside a storage facility in delivering goods to a customer. For this purpose, any costs incurred on a loading dock are treated as incurred outside a storage facility.

(*2*) *Costs incurred in transporting goods to a related person.* Distribution costs do not include costs incurred by a taxpayer in delivering goods to a related person. Thus, for example, when a taxpayer sells goods to a related person, the costs of transporting the goods are included in determining the basis of the goods that are sold, and hence in determining the resulting gain or loss from the sale, for all purposes of the Internal Revenue Code and the regulations thereunder. See, e.g., sections 267, 707, and 1502. For purposes of this provision, persons are related if they are described in section 267(b) or section 707(b).

(B) *Delivery of custom-ordered items.* Generally, costs incurred in transporting goods from a taxpayer's storage facility to its retail sales facility must be capitalized. However, costs incurred outside a storage facility in delivering custom-ordered items to a retail sales facility are not required to be capitalized. For this purpose, any costs incurred on a loading dock are treated as incurred outside a storage facility. Delivery of custom-ordered items occurs when a taxpayer can demonstrate that a delivery to the taxpayer's retail sales facility is made to fill an identifiable order of a particular customer (placed by the customer before the delivery of the goods occurs) for the particular goods in question. Factors that may demonstrate the existence of a specific, identifiable delivery include the following—

(*1*) The customer has paid for the item in advance of the delivery;

(*2*) The customer has submitted a written order for the item;

(*3*) The item is not normally available at the retail sales facility for on-site customer purchases; and

(*4*) The item will be returned to the storage facility (and not held for sale at the retail sales facility) if the customer cancels an order.

(C) *Pick and pack costs*—(*1*) *In general.* Generally, handling costs incurred inside a storage or warehousing facility must be capitalized. However, costs attributable to pick and pack activities inside a storage or warehousing facility are not required to be capitalized. Pick and pack activities are activities undertaken in preparation for imminent shipment to a particular customer after the customer has ordered the specific goods in question. Examples of pick and pack activities include:

(*i*) Moving specific goods from a storage location in preparation for shipment to the customer;

(*ii*) Packing or repacking those goods for shipment to the customer; and

(*iii*) Staging those goods for shipment to the customer.

(*2*) *Activities that are not pick and pack activities.* Pick and pack activities do not include:

(*i*) Unloading goods that are received for storage;

(*ii*) Checking the quantity and quality of goods received;

(*iii*) Comparing the quantity of goods received to the amounts ordered and preparing the receiving documents;

(*iv*) Moving the goods to their storage location, e.g., bins, racks, containers, etc.; and

(*v*) Storing the goods.

(*3*) *Costs not attributable to pick and pack activities.* Occupancy costs, such as rent, depreciation, insurance, security, taxes, utilities, and maintenance costs properly allocable to the storage or warehousing facility, are not costs attributable to pick and pack activities.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: June 28, 1994.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 94–19079 Filed 8–2–94; 12:41 pm]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 26 and 162

[CGD 93–072]

RIN 2115–AE66

Vessel Bridge-to-Bridge Radiotelephone Regulations: Inland Waterways Navigation Regulations

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the Vessel Bridge-to-Bridge Radiotelephone Regulations to correct an inconsistency between the statutory and regulatory language; and amending the Inland Waterways Navigation Regulations to remove regulatory language that contradicts the Inland Navigation Rules.

EFFECTIVE DATE: October 4, 1994.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Epstein, Navigation Rules and Information Branch, Office of Navigation Safety and Waterway Services, (202) 267–0352 or (202) 267–0357.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Jonathan Epstein, Project Manager, Office of Navigation Safety and Waterway Services, and LT Ralph L. Hetzel, Project Counsel, Office of Chief Counsel.

Regulatory History

On April 8, 1994, the Coast Guard published a notice of proposed rulemaking entitled "Vessel Bridge-to-Bridge Radiotelephone Regulations: Inland Waterways Navigation Regulations" in the **Federal Register** (59 FR 16780). The Coast Guard received one letter commenting on the proposal. No public hearing was requested, and none was held.

Background and Purpose

This rule corrects two conflicts between statutory law and existing navigation safety regulations.

1. Vessel Bridge-to-Bridge Radiotelephone Regulations

This rule makes Vessel Bridge-to-Bridge Radiotelephone Regulations, specifically 33 CFR 26.05, consistent with the corresponding statutory authority, the Vessel Bridge-to-Bridge Radiotelephone Act, 1972, (33 U.S.C. 1204). The particular statutory language is important because it determines who may maintain the watch on the designated bridge-to-bridge calling channel (VHF–FM Channel 13 in U.S. territorial waters, except in the approaches to the lower Mississippi River where VHF–FM Channel 67 is the designated channel).

2. Inland Waterways Navigation Regulations

This rulemaking removes 33 CFR 162.65(b)(3)(iv) because it contradicts statutory provisions in the Inland Navigation Rules Act. Specifically it provided that a vessel being overtaken by another shall slacken speed sufficiently to permit the passage to be effected with safety to both vessels. This directly conflicted with Inland Navigation Rule 13 which places the responsibility for keeping clear on the overtaking vessel and Inland Rule 17 which requires the overtaken vessel to maintain course and speed.

Discussion of Comments and Changes

The Coast Guard received only one comment in response to the notice of proposed rulemaking. This comment strongly endorsed the correction to the bridge-to-bridge radiotelephone regulations, noting that one of the key elements of Bridge Resource Management is clear delegation of duties; and that only the master or conning officer should have authority to communicate intended ship movements to other vessels.

Because the only comment was positive no changes from the proposed language have been made.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a Full Regulatory Assessment is unnecessary. Since this rulemaking basically corrects inconsistencies and places no new requirements on the maritime community further Regulatory Evaluation was deemed unnecessary.

Small Entities

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

Because it expects the impact of this rule to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Under Federal law, authority to issue regulations to amend the Inland Waterways Navigation Regulations and the Vessel Bridge-to-Bridge Radiotelephone Regulations is vested in the Secretary of Transportation and delegated to the Coast Guard. Therefore, the Coast Guard intends it to preempt State action addressing this subject matter.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this rulemaking is categorically excluded from further environmental documentation as this administrative action clearly has no environmental effect. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "ADDRESSES."

List of Subjects

33 CFR Part 26

Communications equipment, Navigation (water), Marine safety, Radio, Telephone, Vessels.

33 CFR Part 162

Navigation (water), Waterways.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 26 as follows:

PART 26—[AMENDED]

1. The authority citation for part 26 is revised to read as follows:

Authority: 33 U.S.C. 1207; 49 CFR 1.46.

2. Section 26.05 is revised to read as follows:

§ 26.05 Use of radiotelephone.

Section 5 of the Act states that the radiotelephone required by this Act is for the exclusive use of the master or person in charge of the vessel, or the person designated by the master or person in charge to pilot or direct the movement of the vessel, who shall maintain a listening watch on the designated frequency. Nothing herein shall be interpreted as precluding the use of portable radiotelephone equipment to satisfy the requirements of this act.

PART 162—[AMENDED]

1. The authority citation for part 162 continues to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

§ 162.65 [Amended]

2. Section 162.65(b)(3)(iv) is removed.

Dated: July 12, 1994.

G.A. Penington,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 94–18790 Filed 8–4–94; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Parts 110, 126, and 160

46 CFR Parts 38, 78, 97, and 194

[CGD 92–050]

RIN 2115–AE27

Classifying and Handling Class 1 (Explosive) Materials

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending its regulations concerning the carriage and handling of explosives. These amendments are necessary because the United States has adopted a new system for classifying and labeling explosives. These amendments will align terminology in existing Coast Guard regulations with that used in the new system and update references to address the new system.

EFFECTIVE DATE: September 6, 1994.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street SW., room 3406, Washington, DC 20593–0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: LCDR Mark O'Malley, Port Safety and Security Division, (202) 267–0493.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are LCDR Mark O'Malley, Project Manager, Port Safety and Security Division, and Mr. Stephen H. Barber, Project Counsel, Office of Chief Counsel.

Regulatory History

On April 8, 1994, the Coast Guard published a notice of proposed rulemaking entitled Classifying and Handling Class 1 (Explosive) Materials in the **Federal Register** (59 FR 16783). The Coast Guard received no letters commenting on the proposal. No public hearing was requested, and none was held.

Background and Purpose

On December 21, 1990, the Research and Special Programs Administration (RSPA) published a final rule revising the Hazardous Material Regulations contained in 49 CFR parts 171 through 180 (December 21, 1990; 55 FR 55402). This final rule also revised the requirements previously found in 46 CFR part 146 concerning the transportation of military explosives by vessel and relocated them in 49 CFR part 176. Under this final rule, there is only one regulatory system common to all explosives. Therefore, the shipment of military explosives by vessel now must comply with the requirements of 49 CFR part 176. Furthermore, the old classification system for explosives was replaced by the United Nations system.

These comprehensive rules for commercial and other explosives treat military explosives as belonging to Division 1.1, 1.2, 1.3, and 1.4 of Class 1 (explosive) materials, as defined in 49 CFR 173.50. Under the old system, military explosives were categorized as Class A, B, or C. [For a comparison of old versus new classification schemes, see 49 CFR 173.53.]

Sections 78.80–10 and 97.70–10 of 46 CFR are being revised to align with the more recently revised 49 CFR 176.78. Section 176.78 of 49 CFR was revised to provide for the use of a power operated truck designated EE or EX to handle Class 1 (explosive) materials or other cargo in an area near Class 1 (explosive) materials on board a vessel. Additionally, paragraph (d) of 46 CFR 176.78 states that a power operated truck designated LPS, GS, D, or DS may be used under conditions acceptable to the Captain of the Port (COTP) rather than requiring Commandant approval. These sections are being revised to consolidate current regulations for the use of power operated vehicles on board vessels transporting hazardous materials.

Furthermore, on January 29, 1991, after consultation with the Coast Guard, RSPA published a final rulemaking revoking 46 CFR part 146 (January 29, 1991; 56 FR 3334).

The purpose of this rulemaking is to update terminology and cross-references throughout Coast Guard regulations to reflect this new classification system.

Discussion of Comments and Changes

There were no comments received by this NPRM; therefore, no changes were made.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has not been reviewed by the Office of Management and Budget under that order. It is not significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full evaluation is unnecessary. This rule conforms terminology and cross references throughout Coast Guard regulations with a new, already established classification system. It will have no economic impact.

Small Entities

This regulation is administrative in nature and conforms existing regulations to a new system for classifying and labeling explosives. It will have no economic impact on entities large or small. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

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

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This rule involves administrative changes in terminology and clearly does not have any environmental impact. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under "ADDRESSES."

List of Subjects

33 CFR Part 110

Anchorage grounds.

33 CFR Part 126

Explosives, Harbors, Hazardous substances, Reporting and recordkeeping requirements.

33 CFR Part 160

Administrative practice and procedure, Harbors, Hazardous materials transportation, Marine safety, Navigation (water), Vessels, Waterways, Reporting and recordkeeping requirements.

46 CFR Part 38

Cargo vessels, Fire prevention, Gases, Hazardous materials transportation, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 78

Marine safety, Navigation (water), Passenger vessels, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 97

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

46 CFR Part 194

Explosives, Hazardous materials transportation, Marine safety, Oceanographic research vessels.

For the reasons set out in the preamble, the Coast Guard amends 33

CFR parts 110, 126, and 160 and 46 CFR parts 38, 78, 97, and 194 as follows:

PART 110—ANCHORAGE REGULATIONS

1. The authority citation for part 110 is revised to read as follows:

Authority: 33 U.S.C. 471, 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in it are also issued under 33 U.S.C. 1223 and 1231.

§ 110.157 [Amended]

2. In § 110.157, in paragraph (c)(1), remove the words ", Title 46 Code of Federal Regulations, Part 146, or" and the words "46 CFR Part 146, and" and, in paragraph (c)(7), remove the words "or 'Subchapter N—Dangerous Cargoes' (46 CFR Part 146)".

3. In § 110.168, revise the section heading and paragraphs (b)(2), (c)(1), (d)(1) through (d)(5), (d)(7), (d)(8), (f)(4)(iv), and (f)(4)(v) to read as follows and, in paragraph (f)(6), remove the words "military explosives" wherever they appear and add, in their place, the words "Class 1 (explosive) materials":

§ 110.168 Hampton Roads, Virginia, and adjacent waters.

* * * * *

(b) * * *

(2) *Class 1 (explosive) materials* means Division 1.1, 1.2, 1.3, and 1.4 explosives, as defined in 49 CFR 173.50.

(c) *General regulations.* (1) Except as otherwise provided, this section applies to vessels over 20 meters long and vessels carrying or handling dangerous cargo or Class 1 (explosive) materials while anchored in an anchorage ground described in this section.

* * * * *

(d) *Regulations for vessels handling or carrying dangerous cargoes or Class 1 (explosive) materials.* (1) This paragraph (d) applies to every vessel, except a naval vessel, handling or carrying dangerous cargoes or Class 1 (explosive) materials.

(2) Unless otherwise directed by the Captain of the Port, each vessel handling or carrying dangerous cargoes or Class 1 (explosive) materials must be anchored or moored within Anchorage Berth E–1.

(3) Each vessel, including each tug and stevedore boat, used for loading or unloading dangerous cargoes or Class 1 (explosive) materials in an anchorage, must carry a written permit issued by the Captain of the Port.

(4) The Captain of the Port may require every person having business aboard a vessel handling or carrying dangerous cargoes or Class 1 (explosive) materials while in an anchorage, other than a member of the crew, to hold either a pass issued by the Captain of the Port or another form of identification prescribed by the Captain of the Port.

(5) Each person having business aboard a vessel handling or carrying dangerous cargoes or Class 1 (explosive) materials while in an anchorage, other than a member of the crew, shall present the pass or other form of identification prescribed by paragraph (d)(4) of this section to any Coast Guard boarding officer who requests it.

(6) * * *

(7) Each non-self-propelled vessel handling or carrying dangerous cargoes or Class 1 (explosive) materials must have a tug in attendance at all times while at anchor.

(8) Each vessel handling or carrying dangerous cargoes or Class 1 (explosive) materials while at anchor must display by day a red flag in a prominent location and by night a fixed red light.

* * * * *

(f) * * *

(4) * * *

(iv) A vessel may not anchor in Anchorage Berth E–1, unless it is handling or carrying dangerous cargoes or Class 1 (explosive) materials.

(v) A vessel may not anchor within 500 yards of Anchorage Berth E–1 without the permission of the Captain of the Port, if the berth is occupied by a vessel handling or carrying dangerous cargoes or Class 1 (explosive) materials.

* * * * *

4. In § 110.214, revise the section heading, paragraph (b)(12), and, in the note to paragraph (b)(12), the introductory text and paragraphs (ii), (iii), and (iv) to read as follows:

§ 110.214 Los Angeles and Long Beach Harbors, California.

* * * * *

(b) * * *

(12) No vessel, while carrying, loading, or unloading Division 1.1, 1.2, 1.3, or 1.4 (explosive) materials as defined in 49 CFR 173.50 or cargoes of particular hazard as listed by § 126.10 of this chapter, may be anchored in an anchorage without permission from the Captain of the Port.

Note: In granting permission, the Captain of the Port considers the current and future activities in the harbors and the safety problems relating to the anchorage. The Captain of the Port will advise the Port of Long Beach Authorities and the Port of Los Angeles Authorities of anchorage assignments under the following conditions:

* * * * *

(ii) Division 1.1 or 1.2 (explosive) materials (as defined in 49 CFR 173.50), any amount.

(iii) Division 1.3 (explosive) materials (as defined in 49 CFR 173.50), in excess of 1 net ton at any one time.

(iv) Division 1.4 (explosive) materials (as defined in 49 CFR 173.50), in excess of 10 net tons at any one time.

* * * * *

Part 126 [Amended]

5. The heading to part 126 is revised to read as follows:

PART 126—HANDLING OF CLASS 1 (EXPLOSIVE) MATERIALS OR OTHER DANGEROUS CARGOES WITHIN OR CONTIGUOUS TO WATERFRONT FACILITIES

6. The authority citation for part 126 continues to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46

§ 126.05 [Amended]

7. In § 126.05(a), remove the words "parts 146 and" and add, in their place, the word "part".

§ 126.07 [Amended]

8. In § 126.07(a), remove the words "parts 146 and" and add, in their place, the word "part".

9. Section 126.09 is revised to read as follows:

§ 126.09 Designated dangerous cargo.

The term *designated dangerous cargo* means Division 1.1 and 1.2 explosives, as defined in 49 CFR 173.50.

10. In § 126.10, paragraph (a) is revised to read as follows:

§ 126.10 Cargo of particular hazard.

* * * * *

(a) Division 1.1 or 1.2 explosives, as defined in 49 CFR 173.50.

* * * * *

§ 126.19 [Amended]

11. In § 126.19, remove the paragraph designation from paragraph (a) introductory text and redesignate paragraphs (a)(1), (a)(2), and (a)(3) as paragraphs (a), (b), and (c), respectively, and remove the words "military explosives" wherever they appear and add, in their place, the words "Class 1 (explosive) materials".

§ 126.21 [Amended]

12. In § 126.21(b), remove the words "military explosives" wherever they appear and add, in their place, the words "Class 1 (explosive) materials"

13. In § 126.27, paragraphs (b)(1), (b)(2), and (c) are revised to read as follows:

§ 126.27 General permit for handling dangerous cargo.

* * * * *

(b) * * *

(1) Division 1.3 (explosive) materials (as defined in 49 CFR 173.50), in excess of 1 net ton at any one time.

(2) Division 1.4 (explosive) materials (as defined in 49 CFR 173.50), in excess of 10 net tons at any one time.

* * * * *

(c) No Class 1 (explosive) materials (as defined in 49 CFR 173.50) or other dangerous cargoes prohibited from, or not permitted for, transportation by 46 CFR part 148 or 49 CFR parts 171 through 179 may be present on the waterfront facility.

* * * * *

PART 160—PORTS AND WATERWAYS SAFETY

14. The authority citation for part 160 continues to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

15. In § 160.203, paragraph (a) of the definition of *certain dangerous cargo* is revised to read as follows:

§ 160.203 Definitions.

* * * * *

Certain dangerous cargo includes any of the following:

(a) Division 1.1 or 1.2 (explosive) materials, as defined in 49 CFR 173.50.

* * * * *

PART 38—LIQUEFIED FLAMMABLE GASES

16. The authority citation for part 38 is revised to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

17. In § 38.01–2, revise paragraph (a)(9)(i) to read as follows:

§ 38.01–2 Transportation of portable cylinders or portable tanks containing or having previously contained liquefied flammable gases in dry cargo spaces—TB/ALL.

(a) * * *

(9) * * *

(i) Division 1.1, 1.2, 1.3, or 1.4 (explosive) materials, as defined in 49 CFR 173.50.

* * * * *

PART 78—OPERATIONS

18. The authority citation for part 78 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306, 6101; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243; 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

19. Section 78.80–10 is revised to read as follows:

§ 78.80–10 Use of power-operated industrial trucks in various locations.

(a) *Spaces containing hazardous materials.* The use of power-operated industrial trucks in spaces containing hazardous materials must be in accordance with 49 CFR 176.78.

(b) *Other spaces.* Any standard commercial type power-operated industrial truck in safe operating condition and having the minimum safety features of § 78.80–7(c) may be used in spaces, and for handling cargo in spaces, not otherwise prohibited by this subpart.

PART 97—OPERATIONS

20. The authority citation for part 97 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306, 6101; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243; 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

21. Section 97.70–10 is revised to read as follows:

§ 97.70–10 Use of power-operated industrial trucks in various locations.

(a) *Spaces containing hazardous materials.* The use of power-operated industrial trucks in spaces containing hazardous materials must be in accordance with 49 CFR 176.78.

(b) *Other spaces.* Any standard commercial type power-operated industrial truck in safe operating condition and having the minimum safety features of § 97.70–7(c) may be used in spaces, and for handling cargo in spaces, not otherwise prohibited by this subpart.

Part 194 [Amended]

22. The heading to part 194 is revised to read as follows:

PART 194—HANDLING, USE, AND CONTROL OF EXPLOSIVES AND OTHER HAZARDOUS MATERIALS

23. The authority citation for part 194 is revised to read as follows:

Authority: 46 U.S.C. 2103, 2113, 3306; 49 U.S.C. App. 1804; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

24. In § 194.05–7, paragraphs (a), (b), and (d) introductory text are revised to read as follows:

§ 194.05–7 Explosives—Detail requirements.

(a) Except as otherwise provided by this part, Division 1.1 and 1.2 (explosive) materials (as defined in 49 CFR 173.50) and blasting-caps must be carried in magazines specifically fitted for that purpose as described by subpart 194.10 of this part.

(b) Class 1 (explosive) materials (as defined in 49 CFR 173.50) must be identified by their appropriate DOT classification.

* * * * *

(d) On-deck stowage of unfused depth-charges or other unfused-case-type Class 1 (explosive) materials (as defined in 49 CFR 173.50) is authorized as follows:

* * * * *

Dated: August 1, 1994.

Joseph J. Angelo,

Acting Chief, Office of Marine Safety, Security, and Environmental Protection.

[FR Doc. 94–19172 Filed 8–4–94; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF DEFENSE

DEPARTMENT OF TRANSPORTATION

Coast Guard

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AE49

Reservists Education: Procedural Due Process and the Montgomery GI Bill—Selected Reserve; Correction

AGENCY: Department of Defense, Department of Transportation (Coast Guard) and Department of Veterans Affairs.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to the final regulations that were published Tuesday, October 5, 1993 (58 FR 51780). The regulations provided procedural due process to individuals filing claims for educational assistance under the Montgomery GI Bill—Selected Reserve.

EFFECTIVE DATE: October 5, 1993.

FOR FURTHER INFORMATION CONTACT: June C. Schaeffer, Assistant Director for Policy and Program Administration, Education Service, Veterans Benefits Administration (202) 273–7187.

Correction of Publication

On page 51780 the effective date is corrected to read as follows:

EFFECTIVE DATES: The revisions to § 21.7639 are effective July 31, 1990. The revisions to § 21.7532 are effective October 5, 1993.

Dated: July 27, 1994.

Donald L. Neilson,

Director, Records Management Service.

[FR Doc. 94–19087 Filed 8–4–94; 8:45 am]

BILLING CODE 8320–01–M

POSTAL SERVICE

39 CFR Part 111

Special Bulk Third-Class Eligibility Restrictions

AGENCY: Postal Service.

ACTION: Delayed implementation of final rule.

SUMMARY: On May 5, 1994, the Postal Service published in the **Federal Register** the final rule to implement the provisions of Public Law 103–123, the Treasury, Postal Service and General Appropriations Act for 1994, which enacted further restrictions on the advertisements and products mailable at the special bulk third-class rates. 59 FR 23158–23164. The final rule was scheduled to take effect September 4, 1994.

EFFECTIVE DATE: Effective August 5, 1994, the final rule published at 59 FR 23158 is delayed indefinitely.

FOR FURTHER INFORMATION CONTACT: Ernest J. Collins, (202) 268–5316.

SUPPLEMENTARY INFORMATION: On May 5, 1994, the Postal Service published in the **Federal Register** the final rule implementing the Revenue Forgone Reform Act of the Treasury, Postal Service and General Appropriations Act for 1994. 59 FR 23158–23164. This legislation created additional content-based restrictions for special bulk third-class mail by requiring certain products and services advertised in special bulk third-class mail to be substantially related to the purposes of the qualified organization and by restricting the products mailable at the special bulk third-class rates. The Postal Service postpones the effective date of the final rule until further notice.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 94–19156 Filed 8–4–94; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–5025–4]

Oregon; Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Oregon has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed Oregon's application and has made a decision, subject to public review and comment, that Oregon's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Oregon's hazardous waste program revisions. Oregon's application for program revision is available for public review and comment.

DATES: Final authorization for Oregon shall be effective on October 4, 1994 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Oregon's program revision application must be received by the close of business on September 14, 1994.

ADDRESSES: Copies of Oregon's program revision application are available during the business hours of 9 a.m. to 4:30 p.m. at the following addresses for inspection and copying: Oregon Department of Environmental Quality, Waste Management and Clean-up Division, Eighth Floor, 811 S.W. Sixth Avenue, Portland, Oregon 97204 (503) 229–6534; U.S. EPA Region 10, Library, 1200 Sixth Avenue, Seattle, Washington 98101 (206) 553–1289. Written comments should be sent to Renee Dagseth, HW–107, EPA, 1200 Sixth Avenue, Seattle, Washington, 98101, (206) 553–1889.

FOR FURTHER INFORMATION CONTACT: Renee Dagseth at the above address and phone number.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under Section 3006(b) of the Resource Conservation and Recovery Act ("RCRA or "the Act"), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Public Law 98–616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under Section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 260–266, 268, 124 and 270.

B. Oregon

Oregon initially received final authorization for its base RCRA program on January 30, 1986. Oregon received authorization for revisions to its program on May 29, 1990. On July 1, 1994, Oregon submitted a program revision application for additional program approvals. Today, Oregon is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(4).

EPA has reviewed Oregon's application, and has made an immediate final decision that Oregon's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant Oregon final authorization for the additional program modifications. The public may submit written comments on EPA's immediate final decision up until September 14, 1994. Copies of Oregon's application for program revision are available for inspection and copying at the locations indicated in the "**ADDRESSES**" section of this notice.

Approval of Oregon's program revision shall become effective in sixty (60) days unless adverse comments pertaining to the State's program revisions are received during the public comment period. If an adverse comment is received, EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

Oregon's revision application includes the majority of HSWA and non-HSWA federal provisions promulgated before July 1, 1993. The more substantive changes included in this revision application are: the Mining Waste Rules, the Land Disposal Restriction Rules, the Used Oil Rule, and the Permit Modification Rule. Oregon is applying for authorization for the following Federal hazardous waste regulations:

Federal requirement	State authority [1]
Non-HSWA Cluster III	
Revised Manual SW–846; Amended Incorporation by Reference, 52 FR 8072, 03/16/87	OAR 340–100–002(1)
Non-HSWA Cluster IV	
List (Phase I) of Hazardous Constituents for Ground-Water Monitoring, 52 FR 25942, 07/09/87	OAR 340–100–002(1)
Identification and Listing of Hazardous Waste (Container/Inner Liner Correction), 52 FR 26012, 07/10/87	OAR 340–100–002(1) " 340–109–020(1)
Liability Requirements for Hazardous Waste Facilities; Corporate Guarantee, 52 FR 44314, 11/18/87	OAR 340–100–002(1)
Hazardous Waste Miscellaneous Units, 52 FR 46946, 12/10/87	OAR 340–100–002(1) " 340–105–014
Technical Correction; Identification and Listing of Hazardous Waste (Technical Correction to Checklist 29 and Addition of Hazardous Waste Numbers), 53 FR 13382, 04/22/88.	OAR 340–100–002(1)
Non-HSWA Cluster V	
Identification and Listing of Hazardous Waste; Treatability Studies Sample Exemption, 53 FR 27290, 07/19/88	OAR 340–100–002(1)
Hazardous Waste Management System; Standards for Hazardous Waste Storage and Treatment Tank Systems (Non-HSWA Provisions, Revision to Checklist 28), 53 FR 34079, 09/02/88.	OAR 340–100–002(1)
Identification and Listing of Hazardous Waste; and Designation, Reportable Quantities, and Notification (Amendment to the Bevill Exclusion), 53 FR 35412, 09/13/88.	OAR 340–100–002(1)
Permit Modifications for Hazardous Waste Management Facilities, 53 FR 37912, 09/28/88	OAR 340–100–002(1)
Statistical Methods for Evaluating Groundwater Monitoring Data from Hazardous Waste Facilities, 53 FR 39720, 10/11/88.	OAR 340–100–002(1)
Identification and Listing of Hazardous Waste; Removal of Iron Dextran from the List of Hazardous Wastes, 53 FR 43878, 10/31/88.	OAR 340–100–002(1)
Identification and Listing of Hazardous Waste; Removal of Strontium Sulfide from the List of Hazardous Wastes, 53 FR 43881, 10/31/88.	OAR 340–100–002(1)
Standards for Generators of Hazardous Waste; Manifest Renewal, 53 FR 45089, 11/08/88	OAR 340–100–002(1)
Hazardous Waste Miscellaneous Units; Standards Applicable to Owners and Operators (Clarification of and Correction to CL 45, 54 FR 615, 01/09/89.	OAR 340–100–002(1) " 340–105–014
Amendment to Requirements for Hazardous Waste Incinerator Permits, 54 FR 4286, 01/30/89	OAR 340–100–002(1)
Non-HSWA Cluster VI	
Delay of Closure Period for Hazardous Waste Management Facilities, 54 FR 33376, 08/14/89	OAR 340–100–002(1)
Mining Waste Exclusion I, 54 FR 36592, 09/01/89	OAR 340–100–002(1) " 340–101–004(2)
Testing and Monitoring Activities, 54 FR 40260, 09/29/89	OAR 340–100–002 (1)
Changes to Part 124 Not Accounted for by Present Checklists, 54 FR 246, 01/04/89	OAR 340–100–002(1) " 340–106–003(2) " 340–106–004(1–3) " 340–106–005(1)(a–c) " 340–106–006 " 340–106–012
Mining Waste Exclusion II, 55 FR 2322, 01/23/90	OAR 340–100–002(1) " 340–101–004(2)
Modifications of F019 Listing, 55 FR 5340, 02/14/90	OAR 340–100–002(1)
Testing and Monitoring Activities; (Technical Correction to Checklist 67), 55 FR 8948, 03/09/90	OAR 340–100–002(1)
Criteria for Listing Toxic Wastes; Technical Amendment, 55 FR 18726, 05/04/90	OAR 340–100–002(1)
Land Disposal Restrictions for Third Third Scheduled Wastes (Non-HSWA Provisions), 55 FR 22520, 06/01/90	OAR 340–100–002(1)
HSWA Cluster I	
Hazardous and Used Oil Fuel Criminal Penalties	OAR 340–100–002(1) ORS 466.995
Sharing of Information with the Agency for Toxic Substances and Disease Registry, 07/15/85	OAR 340–100–005 ORS 192.410
HSWA Codification Rule; Delisting, 50 FR 28702, 07/15/85	OAR 340–100–002(1)
HSWA Codification Rule; Household Waste (Resource Recovery Facilities), 50 FR 28702, 07/15/85	OAR 340–100–002(1)
HSWA Codification Rule; Waste Minimization, 50 FR 28702, 07/15/85	OAR 340–100–002(1)
HSWA Codification Rule; Location Standards for Salt Domes, Salt Beds, Underground Mines and Caves, 50 FR 28702, 07/15/85.	OAR 340–100–002(1)
HSWA Codification Rule; Liquids in Landfills I,	OAR 340–100–002(1)
HSWA Codification Rule; Dust Suppression, 50 FR 28702, 07/15/85	OAR 340–100–002(1)
HSWA Codification Rule; Double Liners, 50 FR 28702, 07/15/85	OAR 340–100–002(1)
HSWA Codification Rule; Ground-Water Monitoring, 50 FR 28702, 07/15/85	OAR 340–100–002(1)
HSWA Codification Rule; Cement Kilns, 50 FR 28702, 07/15/85	OAR 340–100–002(1)
HSWA Codification Rule; Fuel Labeling, 50 FR 28702, 07/15/85	OAR 340–100–002(1)
HSWA Codification Rule; Permit Life, 50 FR 28702, 07/15/85	OAR 340–100–002(1)
HSWA Codification Rule; Omnibus Provision, 50 FR 28702, 07/15/85	OAR 340–100–002(1)
HSWA Codification Rule; Interim Status, 50 FR 28702, 07/15/85	OAR 340–100–002(1)

Federal requirement	State authority [1]
HSWA Codification Rule; Research and Development Permits, 50 FR 28702, 07/15/85	OAR 340–100–002(1)
HSWA Codification Rule; Hazardous Waste Exports, 50 FR 28702, 07/15/85	OAR 340–100–002(1)
HSWA Codification Rule; Exposure Information, 50 FR 28702, 07/15/85	OAR 340–100–002(1)
Listing of TDI, TDA, and DNT Wastes, 50 FR 42936, 10/23/85	OAR 340–100–002(1)
Burning of Waste Fuel and Used Oil Fuel in Boilers and Industrial Furnaces, 50 FR 49164, 11/29/85	OAR 340–100–002(1)
Listing of Spent Solvents, 50 FR 53315, 12/31/85	OAR 340–100–002(1)
Listing of EDB Waste, 51 FR 5327, 02/13/86	OAR 340–100–002(1)
Listing of Four Spent Solvents, 51 FR 6537, 02/25/86	OAR 340–100–002(1) " 340–101–033
Codification Rule; Technical correction (Paint Filter Test), 51 FR 19176, 05/28/86	OAR 340–100–002(1)
Biennial Report; Correction (Waste Minimization, Technical Correction to Checklist 17D), 51 FR 28556, 08/08/86	OAR 340–104–075
Exports of Hazardous Waste, 51 FR 28664, 08/08/86	OAR 340–100–002(1) " 340–102–041 " 340–102–050
Standards for Generators; Waste Minimization Certifications, 51 FR 35190, 10/01/86	OAR 340–100–002(1) " 340–102–060
Listing of EBDC, 51 FR 37725, 10/24/86	OAR 340–100–002(1)
Land Disposal Restrictions (Solvents and Dioxins), 51 FR 40572, 11/07/86	OAR 340–100–002(1) " 340–100–010 " 340–102–011(d)(e) " 340–105–014
Surface Impoundment Variance under § 3005 (j) (2)–(9) and 13	OAR 340–100–002(1)
HSWA Cluster II	
California List Waste Land Disposal Restrictions, 52 FR 25760, 07/08/87	OAR 340–100–002(1)
Exception Reporting for Small Quantity Generators of Hazardous Waste, 52 FR 35894, 09/23/87	OAR 340–100–102(1)
HSWA Codification Rule 2; Permit Modification, 52 FR 45788, 12/01/87	OAR 340–100–002(1)
HSWA Codification Rule 2; Permit as a Shield Provision, 52 FR 45788, 12/01/87	OAR 340–100–002(1)
HSWA Codification Rule 2; Permit Conditions to Protect Human Health and the Environment, 52 FR 45788, 12/01/87.	OAR 340–100–002(1)
HSWA Codification Rule 2; Post-Closure Permits, 52 FR 45788, 12/01/87	OAR 340–100–002(1)
Technical Correction to Checklist 23, Small Quantity Generators, 53 CFR 27162, 07/19/88	OAR 340–100–002(1)
Farmer Exemptions; Technical Corrections, 53 FR 27164, 07/19/88	OAR 340–100–002(1)
Land Disposal Restrictions for First Third Scheduled Wastes, 53 FR 31138, 08/17/88	OAR 340–100–002(1)
Hazardous Waste Management System; Standards for Hazardous Storage and Treatment Tank Systems (Revision to Checklist 28) (HSWA Provisions), 53 FR 34079, 09/02/88.	OAR 340–100–002(1)
Land Disposal Restriction Amendments to First Third Scheduled Wastes (Technical Correction to Checklist 50), 54 FR 18836, 05/02/89.	OAR 340–100–002(1)
Land Disposal Restrictions for Second Third Scheduled Wastes, 54 FR 26594, 06/23/89	OAR 340–100–002(1)
Land Disposal Restrictions; Correction to the First Third Scheduled Wastes, (Correction to Checklist 50), 54 FR 36967, 09/06/89.	OAR 340–100–002(1)
Reportable Quantity Adjustment Methyl Bromide Production Wastes, 54 FR 41402, 10/06/89	OAR 340–100–002(1)
Reportable Quantity Adjustment (F024 & F025), 54 FR 50968, 12/11/89	OAR 340–100–002(1)
Toxicity Characteristic Revisions, 55FR 11798, 03/29/90	OAR 340–100–002(1)
Listing of 1,1–Dimethylhydrazine Production Wastes, 55 FR 18496, 05/02/90	OAR 340–100–002(1)
HSWA Codification Rule: Double Liners; Correction (Correction to Checklist 17H), 55 FR 19262, 05/09/90	OAR 340–100–002(1)
Land Disposal Restrictions for Third Third Scheduled Wastes (HSWA Provisions), 55 FR 22520, 06/01/90	OAR 340–100–002(1)
Organic Air Emission Standards for Process Vents and Equipment Leaks, 55 FR 25454, 06/21/90	OAR 340–100–002(1)
RCRA Cluster I	
Toxicity Characteristic; Hydrocarbon Recovery Operations (HSWA), 55 FR 40834, 10/05/90	OAR 340–100–002(1)
Petroleum Refinery Primary and Secondary Oil/Water/Solids Separation Sludge Listings (F037 and F038) (HSWA), 55 FR 46354, 11/02/90.	OAR 340–100–002(1)
Wood Preserving Listings (HSWA/Non-HSWA), 55 FR 50450, 12/06/90	OAR 340–100–002(1) " 340–102–034
Land Disposal Restrictions for Third Third Scheduled Wastes; Technical Amendment (HSWA), 56 FR 3864, 01/31/91.	OAR 340–100–002(1)
Toxicity Characteristic; Chlorofluorocarbon Refrigerants (HSWA), 56 FR 5910, 02/13/91	OAR 340–100–002(1)
Burning of Hazardous Waste in Boilers and Industrial Furnaces (HSWA/Non-HSWA), 56 FR 7134, 02/21/91	OAR 340–100–002(1) " 340–101–004(2)
Removal of Strontium Sulfide From the List of Hazardous Waste; Technical Amendment (Non-HSWA), 56 FR 7567, 02/25/91.	OAR 340–100–002(1)
Organic Air Emission Standards for Process Vents and Equipment Leaks; Technical Amendment (HSWA), 56 FR 19290, 04/26/91.	OAR 340–100–002(1)
Administrative Stay for K069 Listing (Non-HSWA), 56 FR 19951, 05/01/91	OAR 340–100–002(1)
Revision to F037 and F038 Listings (HSWA), 56 FR 21955, 05/13/91	OAR 340–100–002(1)
Mining Exclusion III (Non-HSWA), 56 FR 27300, 06/13/91	OAR 340–101–004(2)
RCRA Cluster II	
Wood Preserving Listing; Technical Correction (HSWA/Non-HSWA), 56 FR 30192, 07/01/91	OAR 340–100–002(1)

Federal requirement	State authority [1]
Burning of Hazardous Waste in Boilers and Industrial Furnaces; Corrections and Technical Amendments I (HSWA/Non-HSWA), 56 FR 32688, 07/17/91.	OAR 340–100–002(1) " 340–101–004 " 340–105–010
Land Disposal Restrictions for Electric Arc Furnace Dust (K061) (HSWA), 56 FR 41164, 08/19/91	OAR 340–100–002(1)
Burning of Hazardous Waste in Boilers and Industrial Furnaces; Technical Amendments II (HSWA/Non-HSWA), 56 FR 42504, 08/27/91.	OAR 340–100–002(1) " 340–100–004
Exports of Hazardous Waste; Technical Correction (HSWA), 56 FR 43704, 09/04/91	OAR 340–100–002 " 340–102–050
Coke Ovens Administrative Stay, 56 FR 43754, 09/05/91	OAR 340–100–002(1)
Amendments to Interim Status Standards for Downgradient Ground-Water Monitoring Well Locations at Hazardous Waste Facilities (Non-HSWA), 56 FR 66365, 12/23/91.	OAR 340–100–002
Liners and Leak Detection Systems for Hazardous Waste Land Disposal Units, 57 FR 3462, 01/29/92	OAR 340–100–002(1) " 340–105–021
Hazardous Debris Case-by-Case Capacity Variance, 57 FR 20766, 05/15/92	OAR 340–100–002(1)
Used Oil Filter Exclusion, 57 FR 21524, 05/20/92	OAR 340–100–002(1)
Coke by-product Exclusion, 57 FR 27880, 06/22/92	OAR 340–100–002(1)
Lead-Bearing Hazardous Materials Case-by-Case Capacity Variance, 57 FR 28628, 06/26/92	OAR 340–100–002(1)
Administrative Stay for the Requirement That Existing Drip Pads be Impermeable, 57 FR 5859, 02/18/92	OAR 340–100–002(1)
Second Correction to the Third Third Land Disposal Restrictions, 57 FR 8086, 03/06/92	OAR 340–100–002(1)
RCRA Cluster III	
Toxicity Characteristics Revision; Technical Corrections, 57 FR 30657, 07/10/92	OAR 340–100–002(1)
Land Disposal Restrictions for Newly Listed Wastes and Hazardous Debris, 57 FR 37194, 08/18/92	OAR 340–100–002(1) " 340–105–013 " 340–105–014
Coke By-Product Listings, 57 FR 37284, 08/18/92	OAR 340–100–002(1)
Burning of Hazardous Waste in Boilers and Industrial Furnaces; Technical Amendment III, 57 FR 38558, 08/25/92	OAR 340–100–002(1)
Recycled Used Oil Management Standards, 57 FR 41566, 09/10/92	OAR 340–100–002(1)
Financial Responsibility for Third-Party Liability, Closure and Post-closure, 57 FR 42832, 09/16/92	OAR 340–100–002(1) " 340–104–143(7) " 340–104–145(5)
Burning of Hazardous Waste in Boilers and Industrial Furnaces; Amendment IV, 57 FR 44999, 09/30/92	OAR 340–100–002(1)
Chlorinated Toluene Production Waste Listing, 57 FR 47376, 10/15/92	OAR 340–100–002(1)
Hazardous Soil Case-By-Case Capacity Variance, 57 FR 47772, 10/20/92	OAR 340–100–002(1)
Liquids in Landfills II, 57 FR 54452, 11/18/92	OAR 340–100–002(1)
Toxicity Characteristic Revision; TCLP, 57 FR 55114, 11/24/92	OAR 340–100–002(1)
Wood Preserving; Amendments to Listings and Technical Requirements, 57 FR 61492, 12/24/92	OAR 340–100–002(1)
Recycled Used Oil Management Standards; Technical Amendments and Corrections, 58 FR 26420, 05/03/93	OAR 340–100–002(1) " 340–111–010 " 340–111–020 " 340–111–030 " 340–111–032 " 340–111–035 " 340–111–037 " 340–111–040 " 340–111–050 " 340–111–060 " 340–111–070
Land Disposal Restrictions; Renewal of the Hazardous Waste Debris Case-by-Case Capacity Variance, 58 FR 28506, 05/14/93.	OAR 340–100–002(1)
Land Disposal Restrictions for Ignitable and Corrosive Characteristic Wastes Whose Treatment Standards Were Vacated, 58 FR 29860, 06/17/93.	OAR 340–100–002(1)

[1] The rules referenced are in the Oregon Administrative Rules. State authorities: ORS 183.355, as amended in 1991; ORS 466.020, as amended in 1989; ORS 466.086, enacted in 1987, and OAR 166–510–010, effective 1993.

Some portions of Oregon's revised program are broader in scope than the federal program, and thus are not federally enforceable. The broader in scope rules are OAR Chapter 340: 100–011, 101–033, 102–044, 102–070, 104–075, 105–013, 105–014, 105–040, 105–041, 105–051, 111–020, 111–030, and 111–037. Broader information requirements characterize 100–011, 102–070, 105–013, and 105–014 (in some cases the last two rules may be more stringent depending on the type of information required). State-only siting standards make 105–040, 105–041, and 120–001 broader. Permit conditions are modified under 105–051. State-only hazardous wastes are added by 101–033. Small quantity generators must comply with large quantity generator requirements under 102–044. Non-RCRA permitted recycling facilities are required to comply to provide biennial report information by 104–075 (in some cases this rule may be more stringent depending on the information required). Oregon's used oil rule adds regulated and prohibited activities to the Federal rule in 111–020 and 111–030. Used oil generators are allowed to transport oil in leased vehicles under 111–037.

EPA will administer the enforcement, modification, revocation, reissuance, and termination of portions of joint State/EPA permits for which the State is not yet authorized until such time that the State is granted authorization. Oregon is not seeking authorization to operate on Indian lands.

C. Decision

I conclude that Oregon's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Oregon is granted final authorization to operate its hazardous waste program as revised.

Oregon now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of HSWA. Oregon also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under Section 3007 of RCRA and to take enforcement actions under Sections 3008, 3013, and 7003 of RCRA.

Compliance with Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Certification under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Oregon's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

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

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

Dated: July 20, 1994.

Chuck Clarke,

Regional Administrator.

[FR Doc. 94–18721 Filed 8–4–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 271

[FRL–5027–4]

Wisconsin: Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Wisconsin has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act of 1976, as amended (hereinafter RCRA). The Environmental Protection Agency (EPA) has reviewed Wisconsin's application and has reached a decision, subject to public review and comment, that these hazardous waste program revisions satisfy all the requirements necessary to qualify for final authorization. Thus, EPA intends to grant final authorization to Wisconsin to operate its expanded program, subject to authority retained by EPA under the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98–616, November 8, 1984, hereinafter HSWA).

EFFECTIVE DATE: Final authorization for Wisconsin shall be effective on October 4, 1994, unless EPA publishes a prior **Federal Register** (FR) action withdrawing this immediate final rule. All comments on Wisconsin's final authorization must be received by 4:30 p.m. central time on September 6, 1994. If an adverse comment is received, EPA will publish either (1) a withdrawal of this immediate final rule or (2) a notice containing a response to the comment which either affirms that the immediate final decision takes effect or reverses the decision.

ADDRESSES: Copies of Wisconsin's final Authorization Revision Application are available from 9 a.m. to 4 p.m., at the following addresses for inspection and copying: Mr. Al Matano, Wisconsin Department of Natural Resources, 101 S. Webster, Third Floor, Madison, Wisconsin 53707, Phone 608/267–3531; Ms. Margaret Millard, U.S. EPA Region V, Office of RCRA, 77 W. Jackson, Seventh Floor, Chicago, Illinois 60604, Phone 312/353–1440. Written comments should be sent to Ms. Margaret Millard, U.S. EPA Region V, Office of RCRA, 77 W. Jackson (HRM–7J), Chicago, Illinois, 60604, Phone 312/353–1440.

FOR FURTHER INFORMATION CONTACT: Margaret Millard, Wisconsin Regulatory Specialist, U.S. EPA Region V, HRM–7J, 77 West Jackson Blvd., Chicago, Illinois, 60604, (312) 353–1440.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under section 3006(b) of RCRA, 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program.

In accordance with 40 CFR 271.21, revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR Parts 124, 260–266, 268, and 270.

B. Wisconsin

Wisconsin initially received final authorization for its program effective January 31, 1986 (51 *FR* 3783). Subsequently, Wisconsin received authorization for revisions to its program, which became effective on June 6, 1989 (54 *FR* 22278), January 22, 1990 (54 *FR* 48243), April 24, 1992 (57 *FR* 15029), and August 2, 1993 (58 *FR* 31344). On March 16, 1994, Wisconsin submitted a program revision application for additional program approvals. Today, Wisconsin is seeking approval of its program revision in accordance with 40 CFR 271.21(b)(3).

EPA reviewed Wisconsin's application, and has made an immediate final decision that Wisconsin's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Wisconsin. The public may submit written comments on EPA's immediate final decision up until September 6, 1994. Copies of Wisconsin's application for program revision are available for inspection and copying at the locations indicated in the "Addresses" section of this notice.

Approval of Wisconsin's program revision shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received, EPA will publish either (1) a withdrawal of the immediate final decision or (2) a notice containing a response to comments

which either affirms that the immediate final decision takes effect or reverses the decision.

On October 4, 1994, (unless EPA publishes a prior FR action withdrawing this immediate final rule), Wisconsin will be authorized to carry out, in lieu of the Federal program, those provisions of the State's program which are analogous to the following provisions of the Federal program:

Federal requirement	Analogous state authority
Toxicity Characteristic Revisions, March 29, 1990, (55 FR 11798)*.	Wisconsin Administrative Code (WAC) NR 605.05(1)(a)5,9,17; 605.13; 605.08(5)(a),(b); 605.09(1)(b); 605.11; effective September 1, 1992.
Land Disposal Restrictions for Third Third Scheduled Wastes, June 1, 1990, (55 FR 22520)*.	WAC NR 605.08(1)(b),(2)(b),(3)(b),(4)(b), and (5)(b); 605.09(2)(a),(3)(a)3 and (5)(b); 605 Appendix III; 610.05(3); 615.06(3); 660.13(8)(c)6; 675.22(4) and (4)(a)–(d); 675.22(5); and 680.22(25); 615.05(4)(a)5; 660.13(3); 655.09; 680.22(32); 600.03; 675.03; 600.03(85),(89),(112),(149),(162),(239)(a)–(c); 600.03(109)(a)–(h); 675.06(1) and (2); 675.07(1)(c)1.b,(1)(d)1.b and (1)(e)1.b; 675.07(1)(i),(1)(i)1–3; 675.07(1)(j) and (k); 675.07(2)(d)1.b; 675.07(2)(e)1 and 3; 675.07(2)(g); 675.09(1)–(5); 675.16(1)(a)–(e), (2)–(8); 675.20(1) and (3); 675.21(1); 675.22(1) and (1)(b); 675.22(1)(b) Tables 1,2, and 3; 675.22(2)(a); 675.23(1); 675.23(1) Table CCW; 675.23(3),(3)(a)–(c); 675 Appendices III,IV,V,VI, and VII; effective September 1, 1992.

*Indicates HSWA Requirement.

EPA shall administer any RCRA hazardous waste permits, or portions of permits, that contain conditions based upon the federal program provisions for which the State is applying for authorization, and which were issued by EPA prior to the effective date of this authorization. EPA has previously suspended issuance of permits for the other provisions on January 31, 1986, June 6, 1989, January 22, 1990, April 24, 1992, and August 2, 1993, the effective dates of Wisconsin's final authorization for the RCRA base program, and for subsequent program revisions.

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

C. Decision

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

D. Codification in Part 272

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

Compliance with Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Wisconsin's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

Paperwork Reduction Act

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

List of Subjects in 40 CFR Part 271

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

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

Dated: June 30, 1994.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 94–19164 Filed 8–4–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7102]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (100-year) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base (100-year) flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director, Mitigation Directorate, reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base (100-year) flood elevations for each community are available for inspection

at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The modified base (100-year) flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base (100-year) flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to Section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 et seq., and with 44 CFR Part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base (100-year) flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for Part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and County	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Hawaii: Hawaii	Unincorporated Areas.	May 19, 1994, May 26, 1994, *Hawaii Tribune Herald.*	The Honorable Stephen K. Yamashiro, Mayor, Hawaii County, 25 Aupuni Street, Room 202, Hilo, Hawaii 96720–4252.	Apr. 26, 1994	155166
Kansas: Barton	City of Great Bend	May 19, 1994, May 26, 1994, *Great Bend Tribune.*	The Honorable George F. Drake, Mayor, City of Great Bend, P.O. Box 1168, Great Bend, Kansas 67530.	Apr. 18, 1994	200019
Louisiana: St. Mary Parish.	City of Patterson	May 20, 1994, May 27, 1994, *Daily Review.*	The Honorable C.A. "Gus" Lipari, Mayor, City of Patterson, 203 Park Street, Patterson, Louisiana 70392.	May 3, 1994	220197
Montana: Blaine	Unincorporated Areas.	May 18, 1994, May 25, 1994, *Chinook Opinion.*	The Honorable Arthur Kleinjan, Chairman, Blaine County Board of Commissioners, P.O. Box 278, Chinook, Montana 59523.	Apr. 7, 1994	300144
Texas: Collin	City of Plano	May 24, 1994, May 31, 1994, *Dallas Morning News.*	The Honorable James N. Muns, Mayor, City of Plano, P.O. Box 860358, Plano, Texas 75086–0358.	Apr. 4, 1994	480140
Texas: Bexar	City of San Antonio	May 24, 1994, May 31, 1994, *San Antonio Express News.*	The Honorable Nelson W. Wolff, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, Texas 78283–3966.	Apr. 21, 1994	480045

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: July 26, 1994.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 94–19141 Filed 8–4–94; 8:45 am]

BILLING CODE 6718–03–P

DEPARTMENT OF DEFENSE

48 CFR Part 225

Defense Federal Acquisition Regulation Supplement; North American Free Trade Agreement Implementation Act

AGENCY: Defense.

ACTION: Correction to interim regulations.

SUMMARY: This document contains a correction to an interim rule on North American Free Trade Agreement, that was published in the **Federal Register** on January 10, 1994 (59 FR 1288). This action is necessary to correct the amendatory language.

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Lucile Martin at (703) 604–5929.

Claudia L. Naugle,

Deputy Director, Defense Acquisition Regulations Council.

Accordingly, FR Doc. 94–447 published January 10, 1994 (58 FR 1288) is corrected as follows:

§ 225.402 [Corrected]

On page 1289, the third column, the amendatory language at Item 7. should read: "Section 225.402 is amended by revising paragraph (c) (i) and (ii) introductory text to read:"

[FR Doc. 94–19124 Filed 8–4–94; 8:45 am]

BILLING CODE 5000–04–M

Proposed Rules

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

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Parts 1710, 1714, and 1785

RIN 0572–AA69

Pre-loan Policies and Procedures for Electric Loans

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to amend its pre-loan regulations for electric loans. Key provisions of this proposed regulation include: lengthening the allowable loan period for insured and guaranteed electric loans for distribution, transmission, and improvements to generation facilities to 4 years; clarifying REA requirements for supplemental financing concurrent with municipal rate loans; substantially modifying the requirement that borrowers develop and maintain certain levels of equity; and clearly setting forth the documents required for a complete loan application. This regulation is intended to facilitate the application process for borrowers and reduce administrative costs to the government.

DATES: Written comments must be received by REA or carry a postmark or equivalent by October 4, 1994.

ADDRESSES: Written comments should be addressed to Sue Arnold, Program Support Staff, U.S. Department of Agriculture, Rural Electrification Administration, room 2230–s, 14th Street and Independence Avenue, SW., Washington, DC 20250–1500. REA requires a signed original and three copies of all comments (7 CFR 1700.30 (e)). Comments will be available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Sue Arnold, Financial Analyst, U.S. Department of Agriculture, Rural Electrification Administration, room 2230–s, 14th Street & Independence Avenue, SW., Washington, DC 20250–1500. Telephone: 202–720–0736. FAX 202–742–4120.

SUPPLEMENTARY INFORMATION: This proposed rule has been determined to be not significant for the purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB). The Administrator of REA has determined that the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply to this proposed rule. The Administrator of REA has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment. The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850 Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325. This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A Notice of Final Rule titled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts REA electric loans and loan guarantees from coverage under this Order. This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If adopted, this proposed rule: (1) Will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule; (2) Will not have any retroactive effect; and (3) Will not require administrative proceedings before any parties may file suit challenging the provisions of this rule.

Information Collection and Recordkeeping Requirements

The existing recordkeeping and reporting burdens contained in this proposed rule were approved by OMB pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), under control numbers 0572–0017, 0572–0032, and 0572–0103.

Send questions or comments regarding these burdens or any other aspect of these collections of information, including suggestions for reducing the burden, to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for USDA, room 3201, NEOB, Washington, DC 20503.

Background

REA is proposing several amendments to pre-loan regulations affecting both insured and guaranteed loans. These amendments are intended to enhance the delivery of customer service by facilitating the application process for borrowers, and reducing administrative costs to the Government.

Loan Period

The first of the proposed amendments would lengthen the allowable loan period to 4 years for both insured and guaranteed loans for the construction of distribution and transmission facilities and for improvements to generation facilities. The loan period, sometimes referred to as the financing period, means the period of time during which the facilities included in a loan application will be constructed. Currently loans to distribution borrowers are limited to a 2 year loan period, and loans to power supply borrowers are limited to a 3 year period. Some borrowers must apply for loans every 2 or 3 years in order to meet their financing needs. REA believes that allowing a longer loan period will, in the long run, significantly reduce loan application costs to Agency customers, including REA borrowers and supplemental lenders, as well as loan processing costs to the Government. Borrowers would still have the option of applying for loans for a shorter period, if they so desire, and REA reserves the right to limit loans to a period of less than 4 years under certain circumstances (§ 1710.106).

To accomplish this policy change, REA is proposing to amend the definition of "loan period" (§§ 1710.2 and 1710.106) and the construction period required to be covered by the borrower's REA construction work plan (§ 1710.251). On December 20, 1993, at 58 FR 66260, REA published a rule setting forth policies and procedures for municipal rate loans pursuant to the Rural Electrification Loan Restructuring Act of 1993. This regulation at 7 CFR

1714.6(a)(2) allows not more than 6 advances of funds on any municipal rate loans. To provide flexibility to borrowers, REA proposes increasing this number to 8 advances if the loan period is longer than 2 years.

In conjunction with lengthening the allowable loan period, REA proposes amendments to the requirements for automatic termination of the Government's obligation to advance funds from insured loans. Current regulations at 7 CFR 1785 subpart A, provide that funds from insured loans approved on or after June 1, 1984, may be advanced for a period of no more than 4 years from the date of the loan contract as amended unless the borrower applies for, and the Administrator approves an extension of the Government's obligation. Subpart A of part 1785 was originally published May 29, 1984, at 49 FR 22266. As stated in its preamble, the rule was intended to help assure that REA's loan funds are used effectively and efficiently.

To allow borrowers to complete construction projects based on a loan period of more than 2 years, REA proposes, in § 1714.56, that funds from insured loans approved on or after the effective date of the rule proposed today may be advanced for a period of 1 year longer than the loan period, provided that the fund advance period may not be shorter than 4 years. For example, if the loan period is 2 or 3 years, the period during which funds may be advanced would terminate after 4 years; if the loan period is 4 years, the fund advance period would terminate after 5 years.

To provide borrowers with a fixed date for automatic termination, REA is proposing that the date of the automatic termination be computed from the date of the loan note, rather than the date of the loan contract. On April 7, 1993, at 58 FR 18043, REA published a proposed amendment to part 1785 that would, in effect, redesignate 7 CFR 1785 subpart A as 7 CFR 1785 subpart F. Since automatic termination of insured electric loans is more closely related to the subject matter of part 1714 than of part 1785, REA has determined that setting out the requirements in detail in part 1714 would better serve the public. It is, therefore, proposed that existing subpart A (proposed subpart F) of part 1785 be removed.

Supplemental Financing

REA is proposing amendments to clarify policy on supplemental financing requirements. Existing 7 CFR 1710.110 states that, except in cases of financial hardship, applicants for a municipal rate insured loan are required to obtain a portion of their loan funds from a supplemental source without an REA guarantee. The method for determining the supplemental financing percentage for each individual loan is set forth in existing §§ 1710.110(c)(1) and (2). For most borrowers, this percentage is based on the borrower's plant revenue ratio (PRR), as defined in § 1710.2. To clarify the requirement for those borrowers whose PRR changes between the time of the loan application and the time of loan approval, REA is proposing to codify the policy of using the PRR based on the most recent year-end data available on the date of loan approval.

Consistent with longstanding REA policy, if termination or rescission of an insured loan, or its associated supplemental loan substantially affects the overall proportion of REA and supplemental financing to a borrower, the amount of supplemental financing required on that borrower's next municipal rate loan is adjusted to maintain the overall proportion. Since REA loans generally carry a lower interest rate than supplemental loans from private lenders, this policy is intended to avoid (1) Penalizing borrowers following a loan rescission and (2) Allowing a borrower to receive a disproportionate amount of low interest REA financing.

The proposed amendment will clarify that the adjustment will only be made following rescission or termination of more than 5 percent of an insured loan subject to supplemental financing. No adjustment will be made based on rescission of a hardship rate loan where no supplemental financing was required. The amendment will also set forth the formula used to compute the adjustment.

Amortization of Principal

Under current procedures, amortization of principal begins 2 years after the date of the note for advances made during the first and second years of the loan, and 4 years after the date of the note for advances made during the third and fourth years. REA proposes to continue existing policy with respect to advances made during the first 2 years of the loan. In conjunction with lengthening the allowable loan period, REA is proposing, in § 1714.58, that principal amortization of advances made more than 2 years after the date of the note begin with the loan payment billed in the next full month after the month of the advances. For example, principal amortization on funds advanced any time during the month of June of the third year after the date of the note would begin with the bill sent to the borrower in July of that year. In cases of financial hardship, the Administrator may approve a principal deferment period of up to 2 years for any advances made after the second year of the loan.

The initial 2 year deferment period allows the borrower to make significant improvements to existing facilities and, in addition, to place most of the new plant in service, earning revenues with which to repay the loan. REA believes that any increase in scheduled payments after the second year of the loan will represent only a fraction of a borrower's total scheduled debt service payments and an even smaller fraction of its total costs. Any increase in principal payments during these later years will be offset by reduced principal payments in subsequent years.

Final Maturity

REA proposes a technical change in the method used to evaluate final maturity of loans. Pursuant to § 1710.115, REA loans must be repaid with interest within a period, up to 35 years, that approximates the expected useful life of the facilities financed. The existing rule bases expected useful life on the weighted average of the depreciation rates proposed by the borrower. The proposed amendment will base final maturity on useful life, rather than on depreciation rates. Although depreciation rates and useful life are closely related, REA believes that basing loan maturity directly on useful life is a more straightforward approach.

Equity Development Plans

On January 9, 1992, at 57 FR 1053, REA published regulations requiring at 7 CFR 1710.116, that a borrower whose total equity as a percentage of total assets is, or is projected to be, less than certain target levels, prepare and agree to follow an equity development plan as a condition of obtaining an REA loan. For distribution borrowers the target equity level is 40 percent; for power supply borrowers the target level is 20 percent. The equity development plan must be designed to make reasonable progress toward meeting the applicable target level during a 10-year period without, as stated in the existing rule at 7 CFR 1710.116(d), raising power costs or retail rates for electricity unreasonably, placing an unreasonable burden on rate payers, or substantially reducing the borrower's ability to compete with neighboring utilities or other energy sources.

The requirement that borrowers develop and maintain equity was intended to strengthen the Agency's credit policies and protect the value of

its loan portfolio. In accordance with the RE Act, REA may make a loan only if the Administrator determines that the security therefor is reasonably adequate and such loan will be repaid in full within the time agreed. Since a borrower's total capitalization is equal to the sum of its equity and its debt, a low ratio of equity to total assets indicates a correspondingly high level of debt. The equity targets were designed to minimize cases where over leverage could jeopardize a borrower's ability to meet its financial obligations.

While REA still believes that low levels of equity present risks to lenders, two years of experience with the equity development plan requirement has demonstrated that such plans are an unnecessary and burdensome means of achieving the desired result. As stated in the preamble to the 1992 regulation, the target level of 40 percent for distribution borrowers was based on the experience of REA borrowers, typical industry standards, and the long established threshold in the REA mortgage for determining whether REA approval is required for borrowers to retire capital credits.

At the time the rule was published, about 48 percent of distribution borrowers had equity levels of 40 percent or more, and an additional 31 percent had between 30 and 40 percent equity levels. At the end of 1992, before borrowers were significantly impacted by the new requirement, the percentage of distribution borrowers with equity levels of 40 percent or more had increased to 53 percent, and the percentage with levels between 30 and 40 percent had increased to about 32 percent. For power supply borrowers, the percentage of borrowers with equity levels less than 10 percent dropped from about 60 percent to about 50 percent between the time the 1992 rule was published and the end of 1992.

At the same time, there has been a great deal of confusion as to what constitutes an acceptable plan that will demonstrate reasonable progress toward increasing equity and have no significant adverse effects on rate payers or on the borrower's competitive position.

Consequently, REA is proposing to drop the requirement that an equity development plan be submitted as part of a loan application. REA does, however, continue to support and encourage borrower efforts to achieve and maintain sound levels of equity. REA will continue to review the borrower's total capital structure based on the borrower's audited financial reports submitted pursuant to 7 CFR Part 1773; on financial and statistical reports (REA Form 7 for distribution borrowers and REA Form 12 for power supply borrowers) submitted by the borrower to REA; the Long-Range Financial Forecast submitted in support of the loan, and on other information known to REA. Capital structure will be a factor in REA's evaluation of loan feasibility pursuant to § 1710.112, in determining borrower eligibility for advance approval of a lien accommodation pursuant to 7 CFR 1717.854, and in evaluating certain other borrower requests under the REA mortgage.

Credit Reform

A policy change mandated by the Federal Credit Reform Act of 1990 (2 U.S.C. 661f), affects loans approved on or after October 1, 1991. The Federal Credit Reform Act requires Federal agencies to match funds obligated, disbursed, and collected with their intended purposes. Therefore, this rule proposes, in § 1710.106(f), that advances of funds from a loan made on or after that date be made only for primary budget purposes included in that particular loan, unless the borrower applies for and REA approves a budget transfer. Primary budget purposes as listed in REA Bulletin 26–1, Budgetary Control and Advance of Loan Funds, and on REA Form 595, Financial Requirement and Expenditure Statement, are (1) Distribution, (2) Transmission, (3) Generation, (4) Headquarters Facilities, (5) Acquisitions, and (6) All Other.

Loan Application Documents

Finally, REA proposes to add new subpart I to part 1710 to set forth the documents and procedures required for a loan application. REA has determined that publishing the entire list of loan application and primary support documents in a single regulation would facilitate the application process for borrowers and supplemental or other lenders. The general requirement to submit each of the documents is set forth in existing part 1710 or in other REA regulations. The proposed new subpart I is simply a summary list for the convenience of the public. To avoid imposing any unnecessary burdens, REA proposes, in some cases, to accept copies of forms the borrower is required to submit to the Department of Energy, instead of requiring the borrower to follow a different format. REA is exploring possibilities for electronic submission of certain documents.

Other Issuances

This proposed rule consolidates, updates, and, in some instances, revises information contained in REA's Electric Operations Manual, EOM–1 Guide for the Preparation of Electric Distribution Loan Applications and in the following existing REA Bulletins:

20–5 Extensions of Payments of Principal and Interest
20–9 Loan Payments and Statements
26–1 Budgetary Control and Advance of Electric Loan Funds
86–3 Headquarters Facilities for Electric Borrowers

When this regulation and other related rules are effective, these publications will be rescinded, in whole or in part, or revised. In the future, REA bulletins will be used to provide certain procedural information, illustrative examples, and other guidance to assist borrowers in complying with REA's published rules.

REA believes the amended parts 1710 and 1714 will clarify pre-loan policies and requirements, bring them up to date, facilitate understanding and compliance by borrowers, and improve program effectiveness.

List of Subjects

7 CFR Part 1710

Electric power, Electric utilities, Loan programs—energy, Rural areas.

7 CFR Part 1714

Electric power, Loan programs—energy, Rural areas.

7 CFR Part 1785

Electric power, Loan programs—energy, Rural areas.

For the reasons set out in the preamble, REA proposes to amend 7 CFR Chapter XVII as follows:

PART 1710—GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

1. The authority citation for part 1710 continues to read as follows:

Authority: 7 U.S.C. 901–950(b); Public Law 99–591, 100 Stat, 3341–16; Delegation of Authority by the Secretary of Agriculture, 7 CFR 2.23; Delegation of Authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72.

2. Section 1710.2 is amended by removing the existing definition of "Loan Period" and adding two new definitions in alphabetical order to read as follows:

§ 1710.2 Definitions and rules of construction.

(a) * * *

Fund advance period means the period of time during which the

Government may advance loan funds to the borrower. See 7 CFR 1714.56.

* * * * *

Loan period means the period of time during which the facilities included in a loan application will be constructed. It commences with the date shown on page 1, in the block headed "Cost Estimates as of," of REA Form 740c, Cost Estimates and Loan Budget for Electric Borrowers, which is the same as the date on the Financial and Statistical Report submitted with the loan application. The loan period may be up to 4 years for distribution borrowers and, except in the case of a loan for new generating and associated transmission facilities, up to 4 years for the transmission facilities and improvements or replacements of generation facilities for power supply borrowers. The loan period for new generating facilities is determined on a case by case basis.

* * * * *

3. Section 1710.106 is amended by redesignating paragraph (d) as paragraph (e) and adding new paragraphs (d) and (f) to read as follows:

§ 1710.106 Uses of loan funds.

* * * * *

(d) A distribution borrower may request a loan period of 2, 3 or 4 years. Except in the case of loans for new generating and associated transmission facilities, a power supply borrower may request a loan period of not more than 4 years for transmission and substation facilities and improvements or replacements of generation facilities. The loan period for new generating facilities is determined on a case by case basis. The loan period for DSM activities will be determined in accordance with § 1710.355. The Administrator may approve a loan period shorter than the period requested by the borrower, if in the Administrator's sole discretion, a loan made for the longer period would fail to meet REA requirements for loan feasibility and loan security set forth in §§ 1710.112 and 1710.113, respectively.

* * * * *

(f)(1) For borrowers having one or more loans approved on or after October 1, 1991, advances of funds will be made only for the primary budget purposes included in the loan as shown on REA Form 740c as amended and approved by REA, or on a construction work plan or a construction work plan amendment approved by REA. Each advance will be charged to the oldest outstanding note(s) having unadvanced funds for the primary budget purpose for which the request for advances was made, regardless of whether such notes are associated with loans approved before or after October 1, 1991, unless any conditions on advances under any of these notes have not been met by the borrower.

(2) For borrowers whose most recent loan was approved before October 1, 1991, advances will be made on the oldest outstanding note having unadvanced funds, unless any conditions on advances under such note have not been met by the borrower.

4. Section 1710.110 is amended by revising paragraph (c)(1)(ii) and adding a new paragraph (c)(3) to read as follows:

§ 1710.110 Supplemental financing.

* * * * *

(c) *Supplemental financing required for municipal rate loans.—(1) Distribution borrowers.*

* * * * *

(ii) All other distribution borrowers must obtain supplemental financing according to their plant revenue ratio (PRR), as defined in § 1710.2, based on the most recent year-end data available on the date of loan approval, as follows:

PRR	Supplemental loan percentage
9.00 and above	10
8.01–8.99	20
8.00 and below	30

* * * * *

(3) *Subsequent loans.* (i) If more than 5 percent of an insured loan made prior to November 1, 1993, or of a municipal rate loan is terminated or rescinded, the amount of supplemental financing required in the borrower's next loan after the rescission for which supplemental financing is required, pursuant to paragraph (a) of this section, will be adjusted to average the actual supplemental financing portion on the terminated or rescinded loan with the supplemental financing portion that would have been required on the new loan according to paragraphs (c) (1) and (2), in accordance with the formulas set forth in paragraphs (c)(3) (ii) and (iii) of this section.

(ii) If a borrower's supplemental financing requirement as set forth in paragraphs (a), (c)(1), and (c)(2) of this section has not changed between the most recent loan and the loan being considered, then the amount of supplemental financing required for the new loan will be computed as follows:

$$\text{Supplemental financing amount, new loan} = [(A + B) \times C] - D$$

where:

A = The total funds ($) actually advanced from the first loan, including both REA loan funds and funds from the supplemental loan, plus any unadvanced funds still available to the borrower after the rescission.

B = The total amount ($) for facilities of the new loan request, including both REA loan funds and funds from supplemental loans.

C = The proportion (%) of supplemental financing required on the loans according to paragraphs (a), (c)(1) and (c)(2) of this section.

D = The amount ($) of supplemental funds actually advanced on the first loan, plus any unadvanced supplemental funds still available to the borrower after the rescission.

(iii) If a borrower's supplemental financing requirement as set forth in paragraphs (a), (c)(1), and (c)(2) of this section has changed between the most recent loan and the loan being considered, then the amount of supplemental financing required for the new loan will be the weighted average of the portions otherwise applicable on the two loans and will be computed as follows:

$$\text{Supplemental financing amount, new loan} = (A \times C_1) + (B \times C_2) - D$$

where:

A = The total funds ($) actually advanced from the first loan, including both REA loan funds and funds from the supplemental loan, plus any unadvanced funds still available to the borrower after the rescission.

B = The total amount ($) for facilities of the new loan request, including both REA funds and funds from supplemental loans.

C_1 = The proportion (%) of supplemental financing required on the old loan according to paragraphs (a), (c)(1) and (c)(2) of this section.

C_2 = The proportion (%) of supplemental financing required on the new loan according to paragraphs (a), (c)(1) and (c)(2) of this section.

D = The amount ($) of supplemental funds actually advanced on the first loan, plus any unadvanced supplemental funds still available to the borrower after the rescission.

* * * * *

5. Section 1710.112 is amended by adding a new paragraph (b)(10) to read as follows:

§ 1710.112 Loan feasibility.

* * * * *

(b) * * *

(10) The borrower's projected capitalization, measured by its equity as a percentage of total assets, is adequate to enable the borrower to meet its

financial needs and to provide service consistent with the RE Act. Among the factors to be considered in reviewing the borrower's projected capitalization are the economic strength of the borrower's service territory, the inherent cost of providing service to the territory, the disparity in rates between the borrower and neighboring utilities, the intensity of competition faced by the borrower from neighboring utilities and other power sources, and the relative amount of new capital investment required to serve existing or new loads.

6. Section 1710.115 is amended by revising paragraph (b) to read as follows:

§ 1710.115 Final maturity.

* * * * *

(b) Loans made or guaranteed by REA for facilities owned by the borrower generally must be repaid with interest within a period, up to 35 years, that approximates the expected useful life of the facilities financed. The expected useful life shall be based on the weighted average of the useful lives that the borrower proposes for the facilities financed by the loan, provided that the proposed useful lives are deemed appropriate by REA. The proposed useful lives proposed by the borrower for the facilities financed must be consistent with the borrower's proposed depreciation rates for these facilities. In states where the borrower must obtain state regulatory authority approval of depreciation rates for rate making purposes, the depreciation rates used for the purposes of this paragraph shall be the rates currently approved by the state authority or rates for which the borrower plans to seek state authority approval, provided that these rates are deemed appropriate by REA. In other states, if the rates proposed by the borrower are not deemed appropriate by REA, REA will base expected useful life on the depreciation rates listed in Bulletin 183–1, or its successor, revising such rates as necessary to reflect current industry practice. Final maturities for loans for the implementation of programs for demand side management and energy resource conservation and on and off grid renewable energy sources not owned by the borrower will be determined by REA.

* * * * *

§ 1710.116 [Removed and Reserved]

7. Section 1710.116 is removed and reserved.

8. Section 1710.251 is amended by revising paragraph (b) to read as follows:

§ 1710.251 Construction work plans—distribution borrowers.

* * * * *

(b) A distribution borrower's CWP shall cover a construction period of between 2 and 4 years, and include all facilities to be constructed which are eligible for REA financing, whether or not REA financial assistance will be sought or be available for certain facilities. Any REA financing provided for the facilities will be limited to a 4-year loan period. The construction period covered by a CWP in support of a loan application shall not be shorter than the loan period requested for financing of the facilities.

* * * * *

9. Section 1710.252 is amended by revising paragraph (b) to read as follows:

§ 1710.252 Construction work plans—power supply borrowers.

* * * * *

(b) Normally a power supply borrower's CWP shall cover a period of 3 to 4 years. While comprehensive CWP's are desired, if there are extenuating circumstances REA may accept a single-purpose transmission or generation CWP in support of a loan application or budget reclassification. The construction period covered by a CWP in support of a loan application shall not be shorter than the loan period requested for financing of the facilities.

* * * * *

10. Subpart I is added to part 1710 to read as follows:

Subpart I—Application Requirements and Procedures for Insured and Guaranteed Loans

Sec.

1710.400 Initial contact.
1710.401 Loan application documents.
1710.402–1710.403 [Reserved]
1710.404 Additional requirements.
1710.405 Supplemental financing documents.
1710.406 Loan approval.
1710.407 Loan documents.

Subpart I—Application Requirements and Procedures for Insured and Guaranteed Loans

§ 1710.400 Initial contact.

(a) Loan applicants that do not have outstanding loans from REA should write to the Rural Electrification Administration, United States Department of Agriculture, Washington, D.C. 20250–1500. A field or headquarters staff representative may be assigned by REA to visit the applicant and discuss its financial needs and eligibility. Borrowers that have outstanding loans should contact their assigned REA general field representative (GFR) or, in the case of a power supply borrower, the Director, Power Supply Division. Borrowers may consult with REA field representatives and headquarters staff, as necessary.

(b) Before submitting an application for an insured loan the borrower shall ascertain from REA the amount of supplemental financing required, as set forth in § 1710.110.

§ 1710.401 Loan application documents.

(a) *All borrowers.* All applications for electric loans shall include the documents listed in this paragraph. The first page of the application shall be a list of the documents included in the application. The borrower may use REA Form 726, Checklist for Electric Loan Application, as this list.

(1) *Transmittal letter.* A letter signed by the borrower's manager indicating the actual corporate name and taxpayer identification number of the borrower and addressing the following items:

(i) The need for flood hazard insurance;

(ii) Breakdown of requested loan funds by state;

(iii) A listing of the counties served by the borrower;

(iv) A listing of threatened actions by third parties that could adversely affect the borrower's financial condition, including annexations or other actions affecting service territory, loads, or rates; and

(v) A listing of pending regulatory proceedings pertaining to the borrower.

(2) *Board resolution.* This document is the formal request by the borrower's board of directors for a loan from REA. The board resolution shall include:

(i) The requested loan amount, loan term, final maturity, and method of amortization (§ 1710.110(b));

(ii) The sources and amounts of any supplemental or other financing;

(iii) Authorization for REA to release appropriate information to supplemental or other lender(s), and authorization for these lenders to release appropriate information to REA; and

(iv) For an insured loan, a statement of whether the application is for a municipal rate loan, with or without the interest rate cap, or a hardship loan. If the application is for a municipal rate loan, the board resolution must indicate whether the borrower intends to elect the prepayment option. See 7 CFR 1714.4(c).

(3) *REA Form 740c, Cost Estimates and Loan Budget for Electric Borrowers.* This form together with its attachments lists the construction, equipment, facilities and other cost estimates from the construction work plan or engineering and cost studies, and the sources of financing for each component. The date on page 1 of the form is the beginning date of the loan

period and shall be the same as the date on the Financial and Statistical Report submitted with the application (paragraph (a)(5) of this section). Form 740c also includes the following information, exhibits, and attachments:

(i) *Description of funds and materials.* This description details the availability of materials and equipment, any unadvanced funds from prior loans, and any general funds the borrower designates, to determine the amount of such materials and funds to be applied against the capital requirements estimated for the loan period.

(ii) *Reimbursement schedule.* This schedule lists the date, amount, and identification number of each inventory of work orders and special equipment summary that form the basis for the borrower's request for reimbursement of general funds on the REA Form 740c. See § 1710.109. If the borrower is not requesting reimbursement, this schedule need not be submitted.

(iii) *Location of consumers.* If the application is for a municipal rate loan subject to the interest rate cap, or for a loan at the hardship rate, and the average number of consumers per mile of the total electric system exceeds 17, Form 740c must include, as a note, a breakdown of funds included in the proposed loan to furnish or improve service to consumers located in an urban area. See 7 CFR 1714.7(c) and 1714.8(d). This breakdown must indicate the method used by the borrower for allocating loan funds between urban and non urban consumers.

(4) *REA Form 740g, Application for Headquarters Facilities.* This form lists the individual cost estimates from the construction work plan or other engineering study that support the need for REA financing for any warehouse and service type facilities included, and funding requested for such facilities shown on REA Form 740c. If no loan funds are requested for headquarters facilities, Form 740g need not be submitted.

(5) *Financial and statistical report.* Distribution borrowers shall submit these data on REA Form 7; power supply borrowers shall use REA Form 12. The form shall contain the most recent data available, which shall not be more than 60 days old when received by REA.

(6) *Pending litigation statement.* A statement from the borrower's counsel listing any pending litigation, including levels of related insurance coverage and the potential effect on the borrower.

(7) *Mortgage information.* A new mortgage will be required if this is a borrower's first application for a loan under the RE Act. A restated mortgage, or a mortgage supplement will be required if there has been a material change to the real property owned by the borrower since the most recent REA loan, loan guarantee, or lien accommodation, if the requested loan would cause the borrower to exceed its previously authorized debt limit, or if REA otherwise determines it necessary. If there has been no material change to the real property owned by the borrower since the most recent REA loan or loan guarantee, the borrower must submit an opinion of its counsel to that effect. If a new or restated mortgage or a mortgage supplement is required, the borrower must provide the following:

(i) *Property schedule.* For a new or restated mortgage or for a mortgage supplement, the following information shall be submitted in a form satisfactory to REA:

(A) A listing of the counties where the borrower's existing electric facilities and new facilities are or will be located;

(B) A listing and description of all real property owned by the borrower; and

(C) An opinion of the borrower's counsel certifying that the property schedule is complete and adequate for inclusion in a security instrument to be executed by the borrower to secure an REA loan.

(ii) *Maximum debt limit.* For a new mortgage, or if the proposed loan would result in the borrower's existing mortgage debt limit being exceeded, a resolution of the borrower's board of directors, and any other authorizations or certifications required by State law, certifying that a new debt limit has been legally established that is adequate to accommodate existing indebtedness and the proposed new financing, including any concurrent loans.

(8) *Rate disparity and consumer income data.* If the borrower is applying under the rate disparity and consumer income tests for either a municipal rate loan subject to the interest rate cap or a hardship rate loan, the application must provide a breakdown of residential consumers either by county or by census tract. In addition, if the borrower serves in 2 or more states, the application must include a breakdown of all ultimate consumers by state. This breakdown may be a copy of Form EIA 861 submitted by the Borrower to the Department of Energy or in a similar form. See 7 CFR 1714.7(b) and 1714.8(a). To expedite the processing of loan applications, REA strongly encourages distribution borrowers to provide this information to the GFR prior to submitting the application.

(9) *Standard Form 100 - Equal Employment Opportunity Employer Report EEO–1.* This form, required by the Department of Labor, sets forth employment data for borrowers with 100 or more employees. A copy of this form, as submitted to the Department of Labor, is to be included in the application for an insured loan if the borrower has more than 100 employees. See § 1710.122.

(10) *Form AD–1047, Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions.* This statement certifies that the borrower will comply with certain regulations on debarment and suspension required by Executive Order 12549, Debarment and Suspension (3 CFR, 1986 Comp., p. 189). See 7 CFR part 3017 and § 1710.123.

(11) *Uniform Relocation Act assurance statement.* This assurance, which need not be resubmitted if previously submitted, provides that the borrower shall comply with 49 CFR Part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended by the Uniform Relocation Act Amendments of 1987 and 1991. See § 1710.124.

(12) *Lobbying.* The following information on lobbying is required pursuant to 7 CFR part 3018 and § 1710.125. Borrowers applying for both insured and guaranteed financing should consult REA before submitting this information.

(i) *Certification regarding lobbying.* This statement certifies that the borrower shall comply with certain requirements with respect to restrictions on lobbying activities.

(ii) *Standard Form LLL—Disclosure of Lobbying Activities.* This disclosure form is required from those borrowers engaged in lobbying activities.

(13) *Federal debt delinquency requirements.* See § 1710.126. The following documents are required:

(i) *Report on Federal debt delinquency.* This report indicates whether or not a borrower is delinquent on any Federal debt.

(ii) Certification Regarding Federal Government Collection Options. This statement certifies that a borrower has been informed of the collection options the Federal government may use to collect delinquent debt. The Federal government is authorized by law to take any or all of the following actions in the event that a borrower's loan payments become delinquent or the borrower defaults on its loans:

(A) Report the borrower's delinquent account to a credit bureau;

(B) Assess additional interest and penalty charges for the period of time that payment is not made;

(C) Assess charges to cover additional administrative costs incurred by the Government to service the borrower's account;

(D) Offset amounts owed directly or indirectly to the borrower under other Federal programs;

(E) Refer the borrower's debt to the Internal Revenue Service for offset against any amount owed to the borrower as an income tax refund;

(F) Refer the borrower's account to a private collection agency to collect the amount due; and

(G) Refer the borrower's account to the Department of Justice for collection.

(14) *Articles of incorporation and bylaws.* The following are required if either document has been amended since the last loan application was submitted to REA, or if this is a borrower's first application for a loan under the RE Act:

(i) The borrower's articles of incorporation currently in effect, as filed with the appropriate state office, setting forth the borrower's corporate purpose; and

(ii) The bylaws currently in effect, as adopted by the borrower's board of directors, setting forth the manner by which the borrower's organization will be governed and regulated.

(15) *State regulatory approvals.* In states in which regulatory authorities have jurisdiction over the borrower's rates, the borrower must provide satisfactory evidence, pursuant to §§ 1710.105 and 1710.151(f), based on the information available, such as an opinion of counsel or of another qualified source, that the state regulatory authority will not exclude from the borrower's rate base any of the facilities included in the loan request, or otherwise prevent the borrower from charging rates sufficient to repay with interest the debt incurred for the facilities.

(16) *Seismic safety certifications, if required under 7 CFR part 1792.*

(17) *Rates.* (i) A distribution borrower shall explain any recent or planned changes in retail rates, the status of any pending rate cases before a state regulatory authority, or other pertinent rate information.

(ii) A power supply borrower shall submit a schedule of its wholesale rates currently in effect. Any changes in this schedule are subject to REA approval.

(18) *Additional supporting data.* Additional supporting data may be required by REA depending on the individual application or conditions. Examples of such additional supporting data include information about acquisitions, headquarters facilities, generation or transmission facilities, large power loads or special loads.

(b) *Distribution borrowers.* In addition to the items in paragraph (a) of this section, applications for loans submitted by distribution borrowers shall include the borrower's area coverage and line extension policies. If there have been any amendments to area coverage or line extension policies since the last loan application submitted to REA, or if this is a borrower's first application for a loan under the RE Act, the borrower shall submit the board of directors' approved policies on area coverage and line extensions. See §§ 1710.103 and 1710.151(a).

(c) *Primary support documents.* In addition to the loan application, consisting of the documents required by paragraphs (a) and (b) of this section, all borrowers must also provide REA with the following primary support documents pursuant to § 1710.152:

(1) Along with the loan application, the borrower shall submit to REA a Long-Range Financial Forecast (LRFF), that meets the requirements of subpart G of this part and shall include the borrower's proposed schedule of useful life of the facilities financed. The forecast shall include any sensitivity analysis or analysis of alternative scenarios required by subpart G of this part, and shall be accompanied by a certified board resolution adopting, and indicating the board of directors' approval of, the LRFF, and directing management to take whatever steps may be necessary, including the filing for rate increases, to achieve the TIER goals set forth in the LRFF.

(2) Prior to REA's acceptance of the loan application, the borrower shall submit to REA and receive approval of:

(i) Power Requirements Study (PRS) that meets the requirements of subpart E of this part, and is accompanied by a certified board resolution adopting, and indicating the board of directors' approval of, the PRS.

(ii) Construction Work Plan (CWP) and/or related engineering and cost studies that meets the requirements of subpart F of this part, and is accompanied by a certified board resolution adopting, and indicating the board of directors' approval of, the CWP and/or engineering and cost studies.

(iii) Borrower's Environmental Report (BER), or other environmental information as required by 7 CFR part 1794.

(iv) Demand Side Management Plan and/or Integrated Resource Plan, if required by subpart H of this part.

(d) *Submission of documents.* (1) Generally, all information required by paragraphs (a), (b), and (c)(1) of this section is submitted to REA in a single application package. The information required by paragraph (c)(2) of this section is generally submitted to, and approved by REA before the application is submitted.

(2) To facilitate loan review, REA urges borrowers to ensure that their applications contain all of the information required by this section before submitting the application to REA. Borrowers may consult with REA field representatives and headquarters staff as necessary for assistance in preparing loan applications.

(3) REA may, in its discretion, return an application to the borrower if the application is not materially complete to the satisfaction of REA within 10 months of receipt of any of the items listed in paragraph (a) or (b) of this section. REA will generally advise the borrower in writing at least 2 months prior to returning the application as to the elements of the application that are not complete.

(4) If an application is returned, an application for the same loan purposes will be accepted by REA if satisfactory evidence is provided that all of the information required by this section will be submitted to REA within a reasonable time. An application for loan purposes included in an application previously returned to the borrower will be treated as an entirely new application.

(e) *Complete applications.* An application is complete when all information required by REA to approve a loan is materially complete in form and substance satisfactory to REA.

(f) *Change in borrower circumstances.* A borrower shall, after submitting a loan application, promptly notify REA of any changes in its circumstances that materially affect the information contained in the loan application or in the primary support documents.

(g) *Interest rate category.* For pending loans, REA will promptly notify the borrower if its eligibility for an interest rate category changes pursuant to new information from the Department of Energy or the Bureau of the Census. See 7 CFR 1714.

(Approved by the Office of Management and Budget under control numbers 0572–0017, 0572–0032 and 0572–1013.)

§§ 1710.402–1710.403 [Reserved]

§ 1710.404 Additional requirements.

Additional requirements are set forth in 7 CFR part 1712 for guaranteed

electric loans and 7 CFR part 1714 for insured electric loans.

§ 1710.405 Supplemental financing documents.

(a) The borrower is responsible for ensuring that the loan documents required for supplemental financing pursuant to § 1710.110 are executed in a timely fashion. These documents are subject to REA approval.

(b) Security. Any security offered by the borrower to a supplemental lender is subject to REA approval.

§ 1710.406 Loan approval.

(a) A loan is approved when the Administrator signs the administrative findings.

(b) If the loan is not approved, REA will notify the borrower.

§ 1710.407 Loan documents.

Following approval of a loan, REA will forward the loan documents to the borrower for execution, delivery, recording, and filing, as directed by REA.

PART 1714—PRE-LOAN POLICIES AND PROCEDURES FOR INSURED ELECTRIC LOANS

11. The authority citation for part 1714 continues to read as follows:

Authority: 7 U.S.C. 901–950(b); Pub. L 99–591, 100 Stat. 3341; Delegation of Authority by the Secretary of Agriculture, 7 CFR 2.23; Delegation of Authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72.

12. Section 1714.6 is amended by revising paragraph (a)(2) to read as follows:

§ 1714.6 Interest rate term.

(a) * * *

(2) The following limits apply to the number of advances of funds that may be made to the borrower on any municipal rate loan:

(i) If the loan period is 2 years or less, no more than 6 advances;

(ii) If the loan period is greater more than 2 years, not more than 8 advances.

* * * * *

13. Subpart B is added to part 1714 to read as follows:

Subpart B—Terms of Insured Loans

Sec.

1714.50–1714.54 [Reserved]
1714.55 Advance of funds from insured loans.
1714 56 Fund advance period.
1714.57 Sequence of advances.
1714.58 Amortization of principal.
1714.59 Rescission of loans.

Subpart B—Terms of Insured Loans

§ 1714.50–1714.54 [Reserved]

§ 1714.55 Advance of funds from insured loans.

The borrower shall request advances of funds as needed. Advances are subject to REA approval and must be requested in writing on REA Form 595 or an REA approved equivalent. Funds will not be advanced until the Administrator has received satisfactory evidence that the borrower has met all applicable conditions precedent to the advance of funds, including evidence that the supplemental financing required under 7 CFR part 1710 and any concurrent loan guaranteed by REA are available to the borrower under terms and conditions satisfactory to REA.

§ 1714.56 Fund advance period.

(a) For loans approved on or after [the effective date of the final rule], the fund advance period begins on the date of the loan note and is one year longer than the loan period, but not less than 4 years. For example, the fund advance period for a loan with a 2-year loan period terminates automatically 4 years after the date of the loan note; a loan with a 4-year loan period terminates automatically 5 years after the date of the loan note. The Administrator may extend the fund advance period on any loan if the borrower meets the requirements of paragraph (c) of this section. As defined in 7 CFR 1710.2, the loan period begins on the date shown on page 1 of REA Form 740c submitted with the loan application.

(b) For loans approved between June 1, 1984, and [the effective date of the final rule], the fund advance period begins on the date of the loan contract, or the most recent amendment thereto, and terminates automatically 4 years from the date of the loan contract, or the most recent amendment thereto, except as provided in paragraph (c) of this section.

(c) The Administrator may agree to an extension of the fund advance period for loans approved on or after June 1, 1984, if the borrower demonstrates to the satisfaction of the Administrator that the loan funds continue to be needed for approved loan purposes (i.e., facilities included in an REA-approved construction work plan).

(1) To apply for an extension, the borrower must send to REA, at least 120 days before the automatic termination date, the following:

(i) A certified copy of a board resolution requesting an extension of the Government's obligation to advance loan funds;

(ii) Evidence that the unadvanced loan funds continue to be needed for approved loan purposes; and

(iii) Notice of the estimated date for completion of construction.

(2) In the case of financial hardship, as determined by the Administrator, REA may agree to an extension of the fund advance period even though the borrower has failed to meet the 120-day requirement of paragraph (c)(1) of this section.

(3) If the Administrator approves a request for an extension, REA will notify the borrower in writing of the extension and the terms and conditions thereof. An extension will be effective only if it is obtained in writing prior to the automatic termination date.

(d) Advances of funds from loans approved before June 1, 1984, are generally made during the first 6 years of the note.

(e) REA will rescind the balance of any loan funds not advanced to a borrower as of the final date approved for advancing funds.

§ 1714.57 Sequence of advances.

(a) Except as set forth in paragraph (b) of this section, concurrent loan funds will be advanced in the following order:

(1) 50 percent of the REA insured loan funds;

(2) 100 percent of the supplemental loan funds;

(3) The remaining amount of the REA insured loan funds.

(b) At the borrower's request and with REA approval, all or part of the supplemental loan funds may be advanced before funds in paragraph (a)(1) of this section.

§ 1714.58 Amortization of principal.

(a) For insured loans approved on or after [the effective date of this section]:

(1) Amortization of funds advanced during the first 2 years after the date of the note shall begin no later than 2 years from the date of the note. Except as set forth in paragraph (a)(2) of this section, amortization of funds advanced 2 years or more after the date of the note shall begin with the scheduled loan payment billed in the month following the month of the advance.

(2) For advances made 2 years or more after the date of the note, the Administrator may authorize deferral of amortization of principal for a period of up to 2 years from the date of the advance if the Administrator determines that failure to authorize such deferral would adversely affect either the government's financial interest or the achievement of the purposes of the RE Act.

(b) For insured loans approved before [the effective date of this section],

amortization of principal shall begin 2 years after the date of the note for advances made during the first and second years of the loan, and 4 years after the date of the note for advances made during the third and fourth years.

§ 1714.59 Rescission of loans.

(a) A borrower may request rescission of a loan with respect to any funds unadvanced by submitting a certified copy of a resolution by the borrower's board of directors.

(b) REA may rescind loans pursuant to § 1714.56.

(c) Borrowers who prepay REA loans at a discounted present value pursuant to 7 CFR part 1786, subpart F, are required to rescind the unadvanced balance of all outstanding electric notes pursuant to 7 CFR 1786.158(j).

PART 1785—LOAN ACCOUNT COMPUTATIONS, PROCEDURES AND POLICIES FOR ELECTRIC AND TELEPHONE BORROWERS

14. The authority citation for part 1785 is revised to read as follows:

Authority: 7 U.S.C. 901 *et seq.*; Title 1, Subtitle D, sec. 1403, Pub. L. 100–203, 101 Stat. 1330; Delegation of Authority by the Secretary of Agriculture, 7 CFR 2.23; Delegation of Authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72.

Subpart A [Removed and Reserved]

15. Subpart A of part 1785 is removed and reserved.

Dated: July 27, 1994.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 94–18772 Filed 8–4–94; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR–94–17]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received September 6, 1994.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591. The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on August 1, 1994.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Docket No.: 27803

Petitioner: Air Transport Association of America Regulations Affected: 14 CFR [not specified]

Description of Rulechange Sought: To establish regulation requiring quality/inspection systems for all aircraft parts distributors, supplies, sellers, brokers, and surplus dealers.

Petitioner's Reason for the Request: The petitioner feels that this change would mandate a quality system that ensures all parts sold for installation on a type-certificated aircraft are properly documented and provide adequate traceability to the approved manufacturing source or regulated agency.

[FR Doc. 94–19121 Filed 8–4–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 94–ANE–10]

Airworthiness Directives; AlliedSignal, Inc. TPE331 Series Turboprop and TSE331 Series Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to AlliedSignal, Inc. (formerly Allied-Signal, Inc., Garrett Engine Division, Garrett Turbine Engine Company, and AiResearch Manufacturing Co. of Arizona) TPE331 series turboprop and TSE331 series turboshaft engines. This proposal would require a record check of engine records to determine if any repair, assembly, modification, or installation work was performed by Fliteline Maintenance, or Mr. Eugene E. Shanks, or Mr. Carl Ramirez. In addition, for engines determined to have repair, assembly, modification, or installation work performed by Fliteline Maintenance, or Mr. Eugene E. Shanks, or Mr. Carl Ramirez, this action would require verification of all life-limited components, inspection of affected components, and verification of compliance with all applicable AD's. This proposal is prompted by the results of a Federal Aviation Administration (FAA) investigation involving engines repaired, assembled, modified, or installed by Fliteline Maintenance. The actions specified by the proposed AD are intended to prevent uncontained failure of turbine rotors, fire, or loss of aircraft control.

DATES: Comments must be received by September 6, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–ANE–10, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, CA 90806–2425; telephone (310) 988–5246; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

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

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 94–ANE–10." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 94–ANE–10, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) received a report of an aircraft accident involving an Ayres S2R–600 aircraft, with a modified AlliedSignal, Inc. (formerly Allied-Signal, Inc., Garrett Engine Division, Garrett Turbine Engine Company, and AiResearch Manufacturing Co. of Arizona) Model TPE331–1–151A turboprop engine installed. The FAA has determined that the engine installed on the accident aircraft was a model not approved for that aircraft and was improperly configured. Maintenance on that engine was performed by Mr. Eugene E. Shanks, mechanic certificate number 1914482, the owner of Fliteline Maintenance, domestic repair station certificate number GR2R856K. Since this accident, the FAA conducted further investigation of other AlliedSignal, Inc. TPE331 series engines repaired or maintained by Mr. Eugene E. Shanks under the name of Fliteline Maintenance. On these engines, the FAA found that the requirements of some applicable airworthiness directives (AD's) had not been performed when the engine records indicated that the work had been performed, the records for life-limited turbine components indicated more useful life than the components actually had remaining, parts were installed that are not approved for aircraft use, and modifications that had been performed without approved data. In addition, the FAA has determined that the records maintained by Fliteline Maintenance on the engines it repaired, assembled, modified, or installed do not identify all of the suspect engine models and serial numbers. These conditions, if not corrected, could result in uncontained failure of turbine rotors, fire, or loss of aircraft control.

Since unsafe conditions have been identified that are likely to exist or develop on other AlliedSignal, Inc. TPE331 series turboprop and TSE331 series turboshaft engines of the same type design, the proposed AD would require a check of engine records to determine if any repair, assembly, modification, or installation work was performed by Fliteline Maintenance, or Mr. Eugene E. Shanks, or his associate, Mr. Carl Ramirez, mechanic certificate number 466432551. In addition, this proposed AD would require operators to accomplish a verification procedure for life-limited turbine components and to verify that the requirements of all applicable AD's have actually been accomplished.

The FAA estimates that 500 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 80 work hours per engine to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $2,200,200.

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

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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:

AlliedSignal, Inc.: Docket No. 94–ANE–10.

Applicability: AlliedSignal, Inc. (formerly Allied-Signal, Inc., Garrett Engine Division, Garrett Turbine Engine Company, and AiResearch Manufacturing Co. of Arizona), TPE331–25, –43, –1, –2, –3, –5, –6, –8, –10, –11, and –12 series, and –55B and –61A Model turboprop engines; and TSE331–3U Model turboshaft engines. These engines are installed on but not limited to Mitsubishi MU–2B series (MU–2 series) Solitaire/Marquise; Construcciones Aeronauticas, S.A. (CASA) C–212 series; British Aerospace (BAe) Jetstream 3101 and 3201 (31 and 32) series; Fairchild SA226 and SA227 series (Swearingen Merlin and Metro series); Prop-Jets, Inc. Model 400; Cessna Model 441 (Conquest); Twin Commander 680, 690, 695 (Jetprop Commander); Rockwell Commander or Ayres Corp. S–2R; Shorts Brothers and Harland, Ltd. SC7 (Skyvan); Dornier 228 Series; Beech 18 and 45 series and Models JRB–6, 3N, 3NM, 3TM, and B100; Pilatus PC–6 series (Fairchild Porter, Peacemaker); DeHavilland DH 104 Dove series; Grumman Model TS–2A; Grumman American Model G–164C; and Schweitzer Model G–164 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncontained failure of turbine rotors, fire, or loss of aircraft control, accomplish the following:

(a) Within the next 20 hours time in service (TIS) after the effective date of this airworthiness directive (AD), review engine records and other pertinent information to identify any repair, assembly, modification, or installation work that was performed by Fliteline Maintenance, domestic repair station certificate number GR2R856K; or Mr. Eugene E. Shanks, mechanic certificate number 1914482; or Mr. Carl Ramirez, mechanic certificate number 466432551.

(b) For engines with repair, assembly, modification, or installation work identified in accordance with paragraph (a) of this AD, within the next 100 hours TIS after the effective date of this AD, accomplish the following:

(1) If records or other pertinent information indicate that the engine was disassembled beyond shaft nut removal from the tie bolt, by Fliteline Maintenance, or Mr. Eugene E. Shanks, or Mr. Carl Ramirez, verify life-limited turbine components and take appropriate action by the following methods:

(i) Remove, disassemble the engine, compare, and match each component's part number (P/N) and serial number (S/N) against that engine's issued life-limit log cards.

(ii) Validate all life-limit log card entries by utilizing the component's hourly and cyclic life as determined by records of the engine manufacturer or FAA-certified repair stations other than Fliteline Maintenance, or Mr. Eugene E. Shanks, or Mr. Carl Ramirez. Photocopied life-limit log cards may be used provided component history can be established.

(iii) If the P/N, S/N, hourly and cyclic lives or the life-limit log card of each life-limited turbine component do not match or can not be validated, remove the component from service prior to further flight and replace with a serviceable component.

(2) Verify that any requirements of AD's signed off by Fliteline Maintenance, or Mr. Eugene E. Shanks, or Mr. Carl Ramirez were actually accomplished by visual examination or reinspection of the affected components in accordance with the applicable 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. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

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

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

Issued in Burlington, Massachusetts, on July 29, 1994.

Jay J. Pardee,

Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94–19126 Filed 8–4–94; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 348

[Docket No. RM94–1–000]

Market-Based Ratemaking for Oil Pipelines; Notice of Proposed Rulemaking

July 28, 1994.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission is proposing to amend its regulations to adopt filing requirements and procedures with respect to an application by an oil pipeline for a determination that it lacks significant market power in the markets in which it proposes to charge market-based rates.

DATES: Comments are due no later than September 6, 1994.

ADDRESSES: An original and 14 copies of written comments must be filed. All filings should refer to Docket No. RM94–1–000 and should be addressed to Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Jeffrey A. Braunstein, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–2114.

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

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

I. Introduction

On October 22, 1993, the Federal Energy Regulatory Commission (Commission) issued Order No. 561 [1] in which the Commission promulgated regulations pertaining to its jurisdiction over oil pipelines under the Interstate Commerce Act (ICA) [2] to fulfill the requirements of Title XVIII of the Energy Policy Act of 1992 (Act of 1992).[3]

In Order No. 561, the Commission adopted a simplified and generally applicable ratemaking methodology for oil pipelines. This methodology is an indexing system to establish ceilings on oil pipeline rates. The Commission, however, will also permit, under defined circumstances, the use of two alternative methodologies. Those are the use of a cost-of-service methodology and the use of settlement rates. In addition, in Order No. 561, the Commission continued its policy of allowing an oil pipeline "to attempt to show that it lacks significant market power in the market in which it proposes to charge market-based rates." [4]

Also, on October 22, 1993, the Commission issued a Notice of Inquiry (NOI) about market-based rates for oil pipelines.[5] In the NOI, the Commission first inquired whether it should continue to permit oil pipelines to seek market-based rates on a showing that they do not have significant market power in the relevant markets. The Commission also inquired about how it should make a market power determination and, in that connection, raised a number of substantive and procedural issues. The Commission's

[1] Revisions to Oil Pipeline Regulations pursuant to Energy Policy Act, Order No. 561, 58 FR 58,753 (November 4, 1993), III FERC Stats. & Regs. ¶ 30,985 (1993), *order on reh'g and clarification*, Order No. 561–A, issued contemporaneously with this Notice of Proposed Rulemaking.

[2] 49 U.S.C. app. 1 (1988).

[3] 42 U.S.C.A. 7172 note (West Supp. 1993).

[4] 18 CFR 342.4(b), to be effective January 1, 1995

[5] Market-Based Ratemaking for Oil Pipelines, Notice of Inquiry, 58 FR 58,814 (November 4, 1993) IV FERC Stats. & Regs. Notices ¶ 35,527 (October 22 1993).

intent was to adopt standards to be used in determining whether an oil pipeline lacks significant market power in the relevant markets, if consensus existed as to the standards. The Commission received comments from fifteen commenters listed in the Appendix.[6] The present Notice of Proposed Rulemaking (NOPR) as set forth and discussed below is the Commission's response to the NOI. In brief, the Commission is proposing to adopt procedural rules governing an oil pipeline's application for a Commission finding that the oil pipeline lacks significant market power in the relevant markets. The Commission is not proposing to adopt any substantive rules governing the making of that finding.

II. Public Reporting Requirement

The Commission estimates the public reporting burden for this collection of information under the proposed rule will increase the existing reporting burden associated with FERC–550 by an estimated 500 hours annually,—an average of 250 hours per response based on an estimated 2 responses. The information filed by the oil pipelines will be collected by the Commission under FERC–550 "Oil Pipeline Rates: Tariff Filings". FERC–550 is a designation covering oil pipeline tariff filings made to the Commission. The estimates include the time for reviewing instructions, researching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The current annual reporting burden is 5,350 hours based on an estimated 535 responses from approximately 140 respondents.

Interested persons may send comments regarding these burden estimates or any other aspect of this information collection, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 941 North Capitol Street, N.E., Washington, D.C. 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415]; and to the Office of Information and Regulatory Affairs of OMB (Attention: Desk Officer for Federal Energy Regulatory Commission).

III. Conclusions From the NOI

The oil pipeline industry commenters[7] and the United States Department of Justice (Justice) maintain that the Commission should continue to allow market-based rates for oil pipelines without any constraints on prices or duration. Several shippers or shipper groups[8] and the Alberta Petroleum Marketing Commission (Alberta) support or do not oppose the continuation of market-based rates for oil pipelines, but with qualifications, such as price constraints or limits on duration.[9] Other shippers or shipper groups oppose the continuation of market-based rates for oil pipelines as inappropriate under the cost-based, just and reasonable standard or as unnecessary in light of Order No. 561's methodologies.[10]

Upon consideration of the comments to the NOI, the Commission concludes that oil pipelines may continue to seek market-based rates on a showing that they do not have significant market power in the relevant markets. The Commission believes that this approach comports with the spirit of the Act of 1992 by retaining a light-handed regulatory method as a complement to the Commission's generally applicable indexing approach. In addition, as the Commission stated in Order No. 561, a market-based approach "is clearly within the Commission's authority under the ICA, as the Commission held in *Buckeye*."[11] Further, market-based pricing has been found by the United States Court of Appeals for the District of Columbia Circuit to comport with the just and reasonable standard of the Natural Gas Act,[12] which is the standard under the ICA.[13] The Commission will consider the need for any constraints in individual cases.

However, there is no consensus now on the substantive standards to be used in determining whether an oil pipeline lacks significant market power in the relevant markets. This lack of consensus is shown by the divergent views expressed by the commenters on key issues such as the appropriate geographic market and the use of screens and rebuttable presumptions. For example, the oil pipeline industry supports the use of BEAs (see *infra*) as the appropriate geographic markets, while some shippers[14] oppose the use of BEAs, and Justice states that it can no longer recommend the use of BEAs. In addition, while there is a consensus in support of the use of the Herfindahl-Hirschman Index (HHI) (see *infra*) as an appropriate market concentration measure, there is no consensus with respect to details about the HHI[15] or about the threshold for creating a rebuttable presumption.[16] This lack of consensus about those and other issues has convinced the Commission that the appropriate course of action is to develop oil pipeline precedents on a case-by-case basis. Accordingly, the Commission concludes that it should not go forward with a rulemaking to establish substantive standards determining whether a pipeline lacks significant market power.

While the Commission believes it is not the time to propose substantive rules about market power determinations, it concludes that it is appropriate to propose procedural rules to govern applications by oil pipelines for market-based rates. The Commission's analysis of the comments to the NOI indicates that a sufficient consensus exists about the issues that are germane to a market-based rate proceeding. It is in the public interest to establish by rule the information that must be filed by an oil pipeline seeking a determination that it lacks significant market power, enabling it to charge market-based rates. This should streamline the process of resolving market power issues and thereby minimize unnecessary regulatory costs and delays as contemplated by Section 1802(a) the Act of 1992.

IV. The Proposed Rule—Summary

The Commission is proposing to amend subchapter P of its regulations, Regulations Under the Interstate Commerce Act, by adding a new Part 348 to those regulations. In this new part, the Commission will establish the kind of information that an oil pipeline

[6] The motions to file comments and reply comments in the NOI out-of-time are granted.

[7] The Association of Oil Pipe Lines, Williams Pipe Line Company, Marathon Pipe Line Company, ARCO Pipe Line Company, Four Corners Pipeline Company, and Buckeye Pipe Line Company, L.P

[8] Total Petroleum, Inc. (Total), the Petrochemical Energy Group (PetroChemical), and The City of Long Beach (Long Beach).

[9] Total, Long Beach, Petrochemical, and Alberta would subject the market based rates to price constraints and Petrochemical and Total would require that market-based rates exist for a limited duration. The Canadian Association of Petroleum Producers support market-based rates, but only if the ratepayer requests them or the pipeline requires the flexibility to lower the price of its services to meet competition.

[10] Sinclair Oil Corporation, Chevron U.S.A. Products Company, and the National Council of Farmer Cooperatives.

[11] Order No. 561, III FERC Stats. & Regs. ¶ 30,985 at p. 30,958, *citing* Buckeye Pipe Line Co., 44 FERC ¶ 61,068 (1988) (Order Granting Interluctory Appeals); 53 FERC ¶ 61,473 (1990) (opinion and Order on Initial Decision).

[12] Elizabethtown Gas Co. v. FERC, 10 F.3d 866 (D.C. Cir. 1993). ("[W]hen there is a competitive market the FERC may rely upon market-based prices in lieu of cost-of-service regulation to assure a 'just and reasonable' result." Id. at 870).

[13] 49 U.S.C. 1(5) ("All charges ... shall be just and reasonable"); Farmers Union Central Exchange v. FERC, 734 F.2d 1486, 1500 (D.C. Cir. 1984).

[14] E.g., Alberta, Petrochemical, and Total.

[15] For example, whether the HHI should be based on capacity (the pipeline industry except for Marathon) or delivery shares of the market (Marathon, Total, and Sinclair).

[16] That is, the level at which the concentration screen for a rebuttable presumption should be set.

must include in its application for a market power determination, along with procedural requirements applicable to the filing of and responses to the application. In Parts V and VI below, the Commission will discuss the information requirements. In brief, an oil pipeline would be required to file a statement of position in support of its application for a market power determination, along with information that supports its statement of position, and additional information that will be desirable in a market power proceeding in order to minimize the need for discovery. In Part VII below, the Commission will discuss the procedural requirements applicable to applications for market power determinations.

The Commission is not proposing at this time to implement generic proceedings or to make market determinations that would apply to pipelines other than the specific pipeline seeking such a determination. The necessity to examine both origin and destination markets in analyzing the market power of any given pipeline may make such generic determinations difficult. Also, some pipelines may lack market power in a specified market, whereas others may not. However, the Commission is still interested in ways it could more efficiently process market-power cases that may be filed. For example, should pipelines be able to join together to pursue market-power determinations in order to share the costs of such a proceeding? Should pipelines be able to unilaterally "join" a proceeding that is established by a competing pipeline in a given market? What would be the benefits and drawbacks to such joinder? Are there other ways in which the Commission could facilitate market power determinations in this regard?

V. The Statement of Position

Section 348.1(a) of the proposed regulations requires the oil pipeline seeking a market power determination to include with its application a statement of position as to its market power. Section 348.1(b) of the proposed regulations provides that the oil pipeline's statement of position must include a summary and a statement of material facts. The latter must include citation to the supporting statements, exhibits, affidavits, and prepared testimony. In its statement of position, the oil pipeline would be expected to present its arguments in favor of its position that it lacks significant market power in the relevant markets.

VI. The Supporting Statements

Section 348.1(a) of the proposed regulations requires the oil pipeline seeking a market power determination to include with its application the information required by proposed section 348.1(c). Under that proposed regulation, the oil pipeline must include certain designated information. The information required is mostly factual and is relevant to measuring the oil pipeline's ability to exercise market power in the relevant markets. That measurement will enable the Commission to determine whether the oil pipeline can exercise significant market power by profitably maintaining its prices significantly above competitive levels for a significant period. If a record has been established in an oil pipeline proceeding, another oil pipeline may make use of all or part of that record in satisfying its burden to present information to the extent the other record contains relevant public information which is not out-of-date.[17] The Commission is proposing the information to be provided in Statements A through I, which are discussed below.

A. Statement A—Geographic Market

In Statement A, the Commission is proposing that the oil pipeline describe the geographic markets in which it seeks to make a showing that it lacks significant market power. The oil pipeline would have to explain why its method for selecting the geographic markets is appropriate.

The Commission is proposing to require the oil pipeline to include both relevant origin and destination markets in its evidentiary presentation. This will provide interested parties with complete information about competition at the supply and delivery ends of the pipeline system. The Commission is not requiring the oil pipeline to file a market analysis of each point-to-point corridor. In light of the significant point-to-point traffic in the oil pipeline industry, this would be too onerous a requirement at the filing stage.[18] In addition, a point-to-point corridor analysis may exclude competitive alternatives to the relevant service and, in some instances, it could provide an inaccurate picture of market concentration.

The Commission is not proposing to require a pipeline to file pursuant to any particular geographic market definition. The Commission expects that oil pipelines will propose to use BEAs as their geographic markets.[19] In the past, the Commission itself has used BEAs as the appropriate geographic markets.[20] However, as indicated above, Justice stated that it could no longer recommend the use of arbitrary markets such as BEAs because there may not be a high degree of correlation between the size of the relevant markets and BEAs. The burden will be on the oil pipeline to explain why its use of BEAs or any other definition of the geographic market is appropriate. If a pipeline uses BEAs, it must show that each BEA represents an appropriate geographic market.

The information provided in the various statements should help the protestants assess whether a particular BEA does in fact represent an appropriate market. Of course, the oil pipeline may choose to define its relevant geographic markets at a sub-BEA level, such as by a given radius around its terminals. As with BEAs, the oil pipeline must explain why this geographic market definition is appropriate.

B. Statement B—Product Market

In Statement B, the Commission is proposing that the oil pipeline identify the product market or markets for which it seeks to establish that it lacks significant market power. The oil pipeline would have to explain why the particular product definition is appropriate.

Under the ICA, the Commission regulates the transportation of oil by pipeline.[21] In a market power analysis, the Commission must determine the oil pipeline's ability to exercise market power over this transportation service. However, a market power analysis in general cannot be made solely in the context of transportation rates.[22] Where competing alternatives constrain the applicant's ability to raise transport prices, the effect of such constraints are ultimately reflected in the price of the commodity being transported. Hence, the delivered commodity price (relevant product price plus transportation charges) generally will be the relevant

[17] *See* 18 CFR 385.508 (c).

[18] A protestant may, as part of its response to the oil pipeline's application, seek to prove that in its circumstances a point-to-point corridor approach should be used to determine the appropriate geographic market.

[19] The term BEA refers to United States Department of Commerce, Bureau of Economic Analysis Economic Areas. BEAs are geographic regions surrounding major cities that are intended to represent areas of actual economic activity.

[20] *See* Buckeye Pipe Line Co., 53 FERC ¶ 61,473 (1990).

[21] 49 U.S.C. 1(1)(b).

[22] In some instances, such as for origin markets or crude oil pipelines, it may be appropriate to make a case based only on transportation rates. The pipeline may elect to file such a case.

price to be analyzed for making a comparison of the alternatives to a pipeline's services.

The Commission is not proposing a specific way to define the product markets. The relevant product market first would be distinguished between the transportation of crude oil and the transportation of refined products. Crude oil transportation could further be divided to include transportation of natural gas liquids while products transportation could be delineated by type, such as motor gasoline, distillates, or jet fuel. The oil pipeline should, in the first instance, select its product market. The information provided in the various statements should help the protestants assess whether the oil pipeline's definition of the product market is appropriate. The burden is on the oil pipeline to justify its choice.

C. Statement C—The Oil Pipeline's Facilities and Services

In Statement C, the Commission is proposing that the oil pipeline describe its own facilities and services in the relevant markets. Statement C would have to include all pertinent data about the pipeline's facilities and services in those markets. For example, without limitation, the oil pipeline would have to include data on the capacity of its facilities, on its throughput, on its receipts in its origin markets, on its deliveries in its destination markets and to its major consuming markets, and the mileage between its terminals and its major consuming markets. Data should be supplied for each commodity carried, such as jet fuel, gasoline, etc.

D. Statement D—Competitive Alternatives

In Statement D, the Commission is proposing that the oil pipeline describe available transportation alternatives in competition with the oil pipeline in the relevant markets and other competition constraining the oil pipeline's rates in those markets. Statement D would have to include all pertinent data about transportation alternatives and other constraining competition.[23] For example, without limitation, the oil pipeline would have to include data similar to that provided for its own facilities and services in Statement C, including cost and mileage data in specific reference to the oil pipeline's terminals and major consuming markets.

The NOI listed the following forms of transport and other competition that might be included in a market power calculation:[24] other pipelines, including private pipelines and those passing through the geographic market but without terminals, pipelines passing near the geographic market, barges, trucks, and refineries within the geographic market.[25] The Commission does not propose to exclude any alternative form of transport or other competition, including, for example, local consumption in origin markets. However, the burden is on the oil pipeline to justify its inclusion of transportation alternatives and other competition in its market power analysis.

E. Statement E—Potential Competition

In Statement E, the Commission is proposing that the oil pipeline describe potential competition in the relevant markets. Statement E would have to include data about the potential competitors such as a potential entrant's costs and mileage in reference to the oil pipeline's terminals and major consuming markets.

F. Statement F—Maps

Statement F would consist of a map or maps showing the principal oil pipeline facilities and the points at which service is rendered under its tariff, the direction of flow of each line, the location of each of the oil pipeline's terminals, the location of each of its major consuming markets (cities, airports, and the like, as appropriate), and the location of alternatives to the oil pipeline, including their distance in miles from the oil pipeline's terminals and major consuming markets. The map may be on separate pages and must include a general system map and maps by geographic markets.

G. Statement G—Market Power Measures

In Statement G, the Commission is proposing that the oil pipeline set forth the calculation of the HHI[26] and its market share with respect to the relevant markets and the calculation of other market power measures relied on by the oil pipeline, along with complete particulars about those calculations.

The Commission believes that it is useful to obtain a showing of market concentration using the HHI. The HHI would include the oil pipeline and the competitive alternatives set forth in Statements D and E. The burden is on the oil pipeline to justify the individual market shares used in calculating the HHIs. In addition, the Commission is not proposing any particular HHI level, such as 1800 or 2500, as a screen or presumption, rebuttable or otherwise. All factors must be considered in determining whether an oil pipeline lacks significant market power.

The Commission also is proposing to require the oil pipeline to submit a market share calculation based on its receipts in its origin markets and its deliveries in its destination markets, if the HHIs are not based on those factors. For example, if the destination HHIs are based on capacity determined market shares, the oil pipeline would have to submit a market share calculation for itself based on deliveries in the respective destination markets. The Commission is not proposing any screen or presumption, rebuttable or otherwise, about particular market share levels. All factors must be considered in determining whether an oil pipeline lacks significant market power.

The oil pipeline may also include other indicators of the lack of significant market power. For example, it could present evidence about water transportation as an indication that the oil pipeline lacks significant market power.

H. Statement H—Other Factors

In Statement H, the oil pipeline would describe any other factors that bear on the issue of whether it lacks significant market power in the relevant markets. The oil pipeline would have to explain why those other factors are pertinent.

The NOI listed the following possible other factors: Exchanges, Excess Capacity, Competition with vertically integrated companies, buyer power, and profitability.[27] The Commission is not excluding any factor. The Commission is not limiting the factors to those listed in the NOI. For example, an oil pipeline might want to show that it has been losing markets over a period of years or that the relevant market is expanding. However, the burden is on the oil pipeline to show the relevance of any factor to its lack of significant market power.

I. Statement I—Proposed Testimony

In Statement I, the oil pipeline would present the proposed testimony in support of its application. This would

[23] If the oil pipeline seeks to include competitive alternatives from outside a BEA, it would have to show that any such alternative is a competitive factor.

[24] *E.g.*, in calculating its Herfindahl-Hirschman Index, discussed *infra*.

[25] Potential Competition included in the list is discussed *infra*.

[26] The HHI calculates market concentration by summing the squares of individual market shares of all the firms included in the market. For example, if each of four firms has a 25 percent share of the market, the HHI for the market would be .2500 ((.25x.25)4) or 2500 in 12 nontechnical terms.

[27] Market share and potential entry included in the list are referred to *supra*.

serve as its case-in-chief, if the Commission sets the application for hearing.

VII. Procedural Requirements

The Commission is proposing in section 348.2 several procedural requirements in connection with applications for a market power determination. These new procedural requirements are necessary because the applications are not rate filings. Under Order No. 561, an oil pipeline must show that "it lacks significant market power in the relevant market in which it proposes to charge market-based rates." [28] Only after the Commission concludes that the oil pipeline lacks significant market power in the relevant markets may the pipeline charge market-based rates. Until that time, the pipeline's rates are determined by the Commission's indexing or cost-of-service provisions.

The first proposal is that the oil pipeline would not have to initially provide its entire application to its shippers and subscribers. Rather, it would only have to provide its letter of transmittal to its shippers and subscribers. The letter of transmittal would describe the application for a market power determination and identify each rate that would be market-based, if the oil pipeline shows that it lacks significant market power in the relevant market. This will enable persons to determine if they want to examine the complete application. Under the proposed regulations, a person must make a written request to the pipeline for a copy of the complete application within 15 days after the filing of the application with the Commission. The oil pipeline would have to provide that person with a copy of its complete application within seven days after receipt of the written request. This will enable a person to determine if it wants to protest the oil pipeline's application for a market power determination. A protestant must file its protest to the application within 60 days after the filing of the application. At that time, the protestant must set forth in detail its grounds for opposing the oil pipeline's application, including responding to its statement of position and information, and, if the protestants desires, presenting information of its own pursuant to Statements A–I. The Commission, after examination of the oil pipeline's application and any protests, would issue an order in which it would rule summarily on the application or, if appropriate, establish future procedures and the scope of the investigation. Future procedures may or may not involve a hearing before an administrative law judge.

The Commission is not proposing any regulations with respect to complaints against market-based rates under Section 13(1) of the ICA. However, the Commission would expect a complainant to allege and to present evidence that the pipeline has developed significant market power. In particular, the Commission would expect a complainant to describe any circumstances that have changed since the Commission made the determination that the oil pipeline lacks significant market power and could charge market-based rates.

Last, the Commission is proposing to require the oil pipelines to file their applications with the Commission on an electronic medium in addition to the paper filing. The formats for the electronic filing and the paper copy will be obtainable at the Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 941 North Capitol Street, N.E., Washington, D.C. 20426. The Commission intends to establish the formats in cooperation with the oil pipeline industry.

VIII. Environmental Analysis

The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[29] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[30] The action proposed here is procedural in nature and therefore falls within the categorical exclusions provided in the Commission's regulations.[31] Therefore, neither an environmental impact statement nor an environmental assessment is necessary and will not be prepared in this rulemaking.

IX. Reporting Flexibility Certification

The Regulatory Flexibility Act (RFA) [32] generally requires the Commission to describe the impact that a proposed rule would have on small entities or to certify that the rule will not have a significant economic impact on a substantial number of small entities. An analysis is not required if a proposed rule will not have such an impact.[33] Most oil pipelines to whom the proposed rule would apply do not fall within the definition of small entity.[34] Consequently, pursuant to section 605(b) of the RFA, the Commission certifies that the proposed regulations, if promulgated, will not have a significant impact on a substantial number of small entities.

X. Information Collection Requirements

The Office of Management and Budget's (OMB) regulations [35] require that OMB approve certain information and recordkeeping requirements imposed by an agency. The information collection requirements in this proposed rule are contained in FERC–550 "Oil Pipeline Rates: Tariff Filings" (1902–0089).

The Commission's Office of Pipeline Regulation uses the data collected in these information requirements to investigate the rates charged by oil pipeline companies subject to its jurisdiction, to determine the reasonableness of rates, and when appropriate prescribe just and reasonable rates. In addition, the information to be required by the proposed rule would allow the Commission to determine if an oil pipeline lacks significant power in the relevant markets when it proposes to charge market-based rates.

Because the adoption of the proposed procedural rules would create an expected increase in the public reporting burden under FERC–550, the Commission is submitting a copy of the proposed rule to OMB for its review and approval. Interested persons may obtain information on these reporting requirements by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street, N.E., Washington, D.C. 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415], Comments on the requirements of this rule can be sent to the Office of Information and Regulatory Affairs of OMB (Attention: Desk Officer for Federal Energy Regulatory Commission).

XI. Comment Procedures

The Commission invites interested persons to submit written comments on the proposals of this NOPR. As much as

[28] 18 CFR 342.4(b), to be effective January 1, 1995.

[29] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47,897 (Dec. 17, 1987), FERC Statutes and Regulations, Regulations Preambles 1986–1990 ¶ 30,783 (1987).

[30] 18 CFR 380.4.

[31] See 18 CFR 380.4(a)(2)(ii).

[32] 5 U.S.C. 601–612.

[33] 5 U.S.C. 605(b).

[34] Section 601(c) of the RFA defines a "small entity" as a small business, a small not-for-profit enterprise, or a small governmental jurisdiction. A "small business" is defined by reference to section 3 of the Small Business Act as an enterprise which is "independently owned and operated and which is not dominant in its field of operation." 15 U.S.C. 632(a).

[35] 5 CFR 1320.14.

possible, the comments should be keyed to the topic headings of this NOPR. An original and 14 copies of the written comments must be filed with the Commission no later than 30 days after the date of publication in the **Federal Register**. Comments should be submitted to the Office of the Secretary, Federal Energy Regulation Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, and should refer to Docket No. RM94–1–000.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 941 North Capitol Street, N.E., Washington, D.C., 20426, during regular business hours.

List of Subjects in 18 CFR Part 348

Pipelines, Reporting and recordkeeping requirements.

By direction of the Commission.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, the Commission proposes to add Part 348, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

PART 348—OIL PIPELINE APPLICATIONS FOR MARKET POWER DETERMINATIONS

Sec.

348.1 Content of Application for a Market Power Determination
348.2 Procedures

Authority: 42 U.S.C. 7101–7352; 49 U.S.C. 1–27.

§ 348.1 Content of application for a market power determination.

(a) If, under § 342.4(b) of this chapter, a carrier seeks to establish that it lacks significant market power in the market in which it proposes to charge market-based rates, it must file and provide an application for such a determination. An application must include a statement of position and the information required by paragraph (c) of this section.

(b) The carrier's statement of position required by paragraph (a) of this section must include a summary and a statement of material facts. The statement of material facts must include citation to the supporting statements, exhibits, affidavits, and prepared testimony.

(c) The carrier must include with its application the following information:

(1) *Statement A—geographic market.* This statement must describe the geographic markets in which the carrier seeks to establish that it lacks significant market power. The carrier must include the origin market and the destination market related to the service for which it proposes to charge market-based rates. The statement must explain why the carrier's method for selecting the geographic markets is appropriate.

(2) *Statement B—product market.* This statement must identify the product market or markets for which the carrier seeks to establish that it lacks significant market power. The statement must explain why the particular product definition is appropriate.

(3) *Statement C—the carrier's facilities and services.* This statement must describe the carrier's own facilities and services in the relevant markets. This statement must include all pertinent data about the pipeline's facilities and services.

(4) *Statement D—competitive alternatives.* This statement must describe available transportation alternatives in competition with the carrier in the relevant markets and other competition constraining the carrier's rates in those markets. The statement must include all pertinent data about transportation alternatives and other constraining competition.

(5) *Statement E—potential competition.* This statement must describe potential competition in the relevant markets. The statement must include data about the potential competitors, including costs, and mileage in reference to the carrier's terminals and to major consuming markets.

(6) *Statement F—maps.* This statement must consist of a map or maps showing the carrier's principal carrier facilities, the points at which service is rendered under its tariff, the direction of flow of each line, the location of each of its terminals, the location of each of its major consuming markets, and the location of the alternatives to the carrier, including their distance in miles from the carrier's terminals and major consuming markets. The map may be on separate pages and must include a general system map and maps by geographic markets.

(7) *Statement G—market power measures.* This statement must set forth for the relevant markets the calculation of the Herfindahl-Hirschman Index; the carrier's market share based on receipts in its origin markets and deliveries in its destination markets, if the Herfindahl-Hirschman Index is not based on those factors; and the calculation of other market power measures relied on by the carrier; along with complete particulars about its calculations.

(8) *Statement H—other factors.* This statement must describe any other factors that bear on the issue of whether the carrier lacks significant market power in the relevant markets. The description must explain why those other factors are pertinent.

(9) *Statement I—prepared testimony.* This statement must include the proposed testimony in support of the application and will serve as the carrier's case-in-chief, if the Commission sets the application for hearing.

§ 348.2 Procedures.

(a) A carrier must file, as provided in § 341.1 of this chapter, fourteen copies of its application, including its statement of position, statements, and related material, and a letter of transmittal and must submit its application on an electronic medium. The formats for the electronic filing and the paper copy can be obtained at the Federal Energy Regulatory Commission, Division of Public Information, 825 North Capitol Street, N.E., Washington, D.C. 20426.

(b) A carrier must provide a copy of its letter of transmittal to each shipper and subscriber on or before the day the material is transmitted to the Commission for filing.

(c) A letter of transmittal must describe the market-based rate filing, including an identification of each rate that would be market-based, and the pertinent tariffs or supplement numbers, state if a waiver is being requested and specify the statute, section, subsection, regulation, policy or order requested to be waived. Letters of transmittal must be certified pursuant to § 341.2(c)(2) of this chapter and acknowledgement must be requested pursuant to § 341.2(c)(3) of this chapter.

(d) A person must make a written request to the carrier for a copy of the carrier's complete application within 15 days after the filing of the application.

(e) The carrier must provide a copy of the complete application to the requesting person within 7 days after receipt of the written request.

(f) A carrier must provide copies as required by paragraph (b) and (e) by first-class mail or by other means of transmission agreed upon in writing.

(g) Any intervention or protest to the application must be filed within 60 days after the filing of the application and must be filed pursuant to §§ 343.2(a) and (b) of this chapter. A protest must also be telefaxed if required by § 343.3(a) of this chapter.

(h) A protest filed against an application for a market power determination must set forth in detail the grounds for opposing the carrier's application, including responding to its position and information and, if desired,

presenting information pursuant to section 348.1(c) of this part.

[FR Doc. 94–18872 Filed 8–4–94; 8:45 am]

BILLING CODE 6717–01–P

DELAWARE RIVER BASIN COMMISSION

18 CFR Part 420

Proposed Amendments to Comprehensive Plan and Basin Regulations—Water Supply Charges; Proposed Rule and Public Hearing

AGENCY: Delaware River Basin Commission.

ACTION: Proposed rule and public hearing.

SUMMARY: Notice is hereby given that the Delaware River Basin Commission will hold a public hearing to receive comments on proposed amendments to its Comprehensive Plan and Basin Regulations—Water Supply Charges concerning the transfer of Certificates of Entitlement. Holders of Certificates of Entitlement are exempted from the payment of water charges until such Certificates are transferred. The amendments would 1) define "transfer"; 2) delete two categories of exemptions from the existing general rule that terminates Certificates of Entitlement upon transfer and 3) revise a third such category.

DATES: The public hearing will be held on October 26, 1994 at 3:00 p.m. Persons wishing to testify are requested to register with the Secretary in advance.

ADDRESSES: The hearing will be held in the Goddard Conference Room of the Commission's offices at 25 State Police Drive, West Trenton, New Jersey. Written comments should be submitted to Susan M. Weisman, Delaware River Basin Commission, P. O. Box 7360, West Trenton, New Jersey 08628.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission Secretary, Telephone (609) 883–9500 ext. 203.

SUPPLEMENTARY INFORMATION:

Background

The regulations of the Delaware River Basin Commission require, upon transfer, the termination of certificates of entitlement which permit the withdrawal of water from the basin without charge. The U.S. Court of Appeals for the Third Circuit has confirmed the Commission's power under its Compact to terminate certificates of entitlement when a transfer has occurred. The court also ruled that the Commission's interpretation of its existing regulation that limited the extent to which certain transfers were exempt from termination was not consistent with the specific wording of the regulations.

Pursuant to the court ruling, the Commission proposes to amend its Basin Regulations—Water Supply Charges, so that transfer exceptions are consistent with existing Commission policy to terminate certificates of entitlement when a transfer of ownership and/or control of a water using facility occurs.

The amendments inter alia define a transfer to include the sale of corporate stock. They also delete existing exceptions to the transfer rule for corporate merger transactions and certain transactions under the Internal Revenue Code.

The subject of the hearing will be as follows: Amendments to the Comprehensive Plan and Basin Regulations—Water Supply Charges.

List of Subjects in 18 CFR Part 420

Water supply policy.

Part 420 is proposed to be amended as follows:

PART 420—[AMENDED]

1. The Authority citation for Part 420 continues to read as follows:

Authority: Pub. L. 87–328 [75 Stat.688].

2. In section 420.31 paragraphs (d) and (f) are revised to read as follows:

* * * * *

(d) A certificate of entitlement is not transferable, except as provided in paragraphs (e) and (f) of this section. For the purposes of this section, "transfer" shall mean any sale or other conveyance by a holder of a certificate of entitlement involving a specific facility and shall include any transfer which results in a change of ownership and/or control of the facility or of the stock, or other indicia of ownership of a corporation which holds title to the facility.

* * * * *

(f) A certificate of entitlement may be transferred in connection with a corporate reorganization within any of the following categories:

(1) Whenever property is transferred to a corporation by one or more persons solely in exchange for stock or securities of the same corporation, provided that immediately after the exchange the same person or persons are in control of the transferee corporation; that is, they own 80 percent of the voting stock and 80 percent of all other stock of the corporation.

(2) Where such transfer is merely a result of a change of the name, identity, internal corporate structure or place of organization of a corporate holder of a certificate of entitlement and does not affect ownership and/or control.

Delaware River Basin Compact, 75 Stat. 688.

Dated: July 29, 1994.

Susan M. Weisman,

Secretary.

[FR Doc. 94–19083 Filed 8–4–94; 8:45 am]

BILLING CODE 6360–01–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AB99

Training of Lessee and Contractor Employees Engaged in Oil and Gas and Sulphur Operations in the Outer Continental Shelf (OCS)

AGENCY: Minerals Management Service, Interior.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Minerals Management Service (MMS) intends to revise regulations governing the training of lessee and contractor employees engaged in drilling, well-completion, well-workover, well-servicing, or production operations in the OCS. Current requirements may restrict the ability of companies to use new technology and innovative programs to meet the needs of a changing industry. The revisions will attempt to provide more flexibility to companies and provide them with the ability to better integrate their training program into their overall operations.

DATES: Comments should be received or postmarked by September 19, 1994 to be considered for this rulemaking.

ADDRESSES: Mail or hand-carry comments to the Department of the Interior; Minerals Management Service; Mail Stop 4700; 381 Elden Street; Herndon, Virginia 22070–4817; Attention: Chief, Engineering and Standards Branch.

FOR FURTHER INFORMATION CONTACT: Jerry Richard, Information and Training Branch, telephone (703) 787–1582 or FAX (703) 787–1575.

SUPPLEMENTARY INFORMATION: Section 3 of the OCS Lands Act establishes that operations in the Outer Continental Shelf should be conducted in a safe manner by well-trained personnel using technology, precautions, and techniques

sufficient to prevent or minimize the likelihood of blowouts, loss of well control, fires, spillages, physical obstruction to other users of the waters or subsoil and seabed, or other occurrences which may cause damage to the environment or to property, or endanger life or health. (43 U.S.C. 1332)

The MMS implements this authority largely through the establishment and enforcement of the regulations in 30 CFR part 250, Subpart O, Training. These regulations require that lessees and contractors properly train employees engaged in drilling, well-completion, well-workover, well servicing, or production operations in the OCS. Current training requirements include the proper operation of equipment, operating procedures, and techniques to avoid hazards to people, property, and the environment.

This training takes place at MMS approved training schools. To obtain MMS approval, training schools submit all training programs to MMS for approval. The MMS reviews the program for compliance with requirements of the regulations and conducts an onscene review of a class and training equipment. Based on the findings, MMS either certifies that the school meets MMS requirements or informs the training company of the deficiencies. Once a school is approved, MMS conducts unannounced audits of classes to ensure that the schools continue to comply with the regulations.

Workers must successfully complete an approved course in the appropriate area (e.g., drilling well control) and then must repeat the basic course or an advanced course once every 4 years. Additionally, drilling, well-completion, well-workover, and well-servicing workers must successfully complete a well control refresher course each year between the required basic courses. Production workers must successfully complete a refresher course 2 years after completion of the basic course.

The existing regulations at 30 CFR part 250, Subpart O, Training, determine the content and set the length of courses. These are either basic, advanced, or refresher courses in drilling, well completion, well workover, well servicing, or production safety systems. Drilling, well-completion, and well-workover courses include an option for surface or subsea operations. Well servicing is a term used to refer to coil tubing, small tubing, and snubbing operations. Courses may address one of the well-servicing areas, a combination of two of the areas, or all three areas.

Although MMS has never done so, the existing regulations allow MMS to test workers at the worksite or trainees at the training facility to evaluate the effectiveness of the approved training programs.

The MMS established minimum requirements for training of drilling operation workers in December 1977. For production operation workers, MMS established fewer minimum requirements leaving more latitude to the training companies to determine what a training course would include and how often courses would be repeated.

Some production companies developed training programs for production workers that provided training at a level equivalent to that mandated for drilling. Other production companies developed minimal courses and did not require their workers to repeat training on a periodic basis. In January 1991, MMS expanded the training provisions to establish requirements for well-completion, well-workover, well-servicing, and production operation workers which were similar to requirements for drilling operation workers.

The current system ensures that minimum standards are met by all workers in the OCS and requires submittal of training courses from schools to MMS for review and approval. The MMS reviews plans and attends one of the courses to ensure that the course properly implements the submitted plan. While the system has provided for the training of offshore workers, it may also limit the flexibility available to lessees and contractors and their ability to integrate their training requirements into their overall safety program.

The MMS is seeking ways to ensure that lessees and contractors continue to properly train offshore workers, while reducing paperwork and providing more flexibility. This notice is the first step in that process. To help generate comments, MMS has identified five approaches to modifications of the regulations—listed below as options 1 through 5. Questions follow each option to solicit specific information. These options and questions are intended to provide a basis for comments and are not intended to limit ideas. In addition to comments on the five options and answers to questions, interested parties are encouraged to submit other approaches which will meet the needs of MMS and of lessees and contractors, other ideas, and any available information to support the ideas.

Option 1. The MMS is aware of other training standards based solely on testing. Under Option 1, MMS would eliminate its current system of school certification in favor of a more performance-based system and measure the performance of the school through testing of students. The system could either provide for testing by schools, testing by an independent third party, or testing by MMS.

1. If approach 1 is used, how can MMS measure the performance of a school? Are written tests and hands-on testing conducted at a facility the best way to measure performance of schools?

2. If MMS-developed tests are used to determine performance, should tests be prepared by MMS and administered either by schools or by an independent third party, or should the tests be developed and administered by MMS?

3. Are there aspects of training that need to be included but cannot be adequately tested?

Option 2. As with option 1, MMS would eliminate its current system of school certification in favor of a more performance-based system. This would require MMS to assess the ability of a worker to safely perform in the OCS. This option might include testing of personnel at an offshore location (including use of a simulator) or the use of drills with MMS personnel observing the actions of workers during these drills. If deficiencies are found, MMS would require lessees and contractors to determine the changes needed to provide for safety in the OCS. Changes may include more training, better training, better simulators and training facilities, or different operational conditions that better match the training to the operation. Identifying deficiencies in a given school would then be the responsibility of the lessees and contractors.

4. What methods should MMS use to assess the effectiveness of the training that has been received by offshore personnel?

5. Is testing at the worksite practical? Is it a good measure of the effectiveness of training? Should individuals or teams be tested?

6. If MMS specialists are used to observe operations and to determine the need for further training of personnel, can the process be sufficiently objective to be fair to lessees and contractors?

Option 3. Under option 3, MMS would retain the current training system—i.e., submission of programs to MMS for review and approval and onsite review of programs by MMS personnel—but would modify requirements, where possible, to replace prescriptive requirements with performance requirements. In other words, standards would attempt to

specify the performance that was necessary rather than specifying detailed requirements for courses. If MMS chooses this option, lessees, operators, and training institutions need to identify possible changes to the current regulations.

7. What specific changes should MMS make to current training regulations contained in 30 CFR part 250, Subpart O, Training?

8. Individualized or self-paced training programs allow each worker to learn at his or her own pace and allows training to be customized to meet a worker's specific need. The availability of computers and the rapid development of interactive computer technology may make individualized, self-paced training more effective. Since responding to emergencies during drilling or other operations is a team effort, interaction between personnel has always been an important aspect of training and drills. Does individualized training impede the ability of a worker to learn to work as a member of a team? Should MMS allow the use of individualized training (such as in an interactive computer format) as a means of complying with these training requirements, and if so, how should MMS ensure that workers are properly trained in working as a team member?

Option 4. Under option 4, an independent third party would certify training institutions using MMS standards or standards established by other organizations. The third party could establish a program for the United States, or it could establish an international program. Workers who completed a training course at a school approved by the third party would be considered to be properly trained for work in the OCS. The MMS would review the standards established to ensure the system established properly addressed areas of concern to MMS.

9. Should a single independent third party be the only group that could certify training schools or should MMS establish a system that allows other groups to establish alternative training certification programs?

10. Under current training requirements, courses cover MMS regulations as part of the required curriculum. Will having courses approved on a broader basis make it impractical to ensure that workers are adequately trained in MMS regulations governing OCS operations?

Opton 5. Option 5 is intended to be used in combination with one of the other options and would provide that any lessee or operator, on a case-by-case basis, could develop and document a training program and petition MMS to be exempt from MMS requirements. Option 5 would take advantage of the fact that many companies are developing safety and environmental management plans. The objective of a safety and environmental management program is to reduce the risk of accidents and pollution from OCS operations by incorporating safety management practices into facility management and procedures. A safety and environmental management program could describe the syllabus and responsibilities of a company's training program and provide the means for ensuring compliance with MMS regulations. If MMS approved the company's program, MMS would use that program as a standard and would require that the company follow its own program.

11. If MMS allows companies to develop their own training program, how will MMS monitor performance?

12. If MMS allows companies to develop their own training program, would problems occur if a worker transfers from one company to another?

The MMS seeks responses to the questions and an assessment of which option is considered to be the most effective and efficient. After analyzing the comments received from this notice, MMS will determine the need for a public workshop to further exchange ideas. The MMS encourages all interested parties to respond to these questions and to provide comments on the various options.

Dated: July 22, 1994.

Nancy K. Hayes,

Acting Assistant Secretary, Land and Minerals Management.

[FR Doc. 94–19127 Filed 8–4–94; 8:45 am]

BILLING CODE 4310–MR–M

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 935

Ohio Regulatory Program

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

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: OSM is reopening the public comment period for proposed Program Amendment Number 65 Revised (PA 65R) to the Ohio permanent regulatory program (hereinafter referred to as the Ohio program) under the Surface Mining Control and Reclamation Act of 1977. The amendment was initiated by Ohio and is intended to make the Ohio program as effective as the corresponding Federal regulations. The amendment concerns the availability of Ohio's permit, inspection, and enforcement records to the public.

DATES: Written comments must be received by 4:00 p.m., E.D.T., on August 22, 1994.

ADDRESSES: Written comments should be mailed or hand-delivered to Richard J. Seibel, Director, Columbus Field Office, at the address listed below.

Copies of the Ohio program, the proposed amendment, and all written comments received in response to this document will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Columbus Field Office.

Office of Surface Mining Reclamation and Enforcement, Columbus Field Office, 4480 Refugee Road, Suite 201, Columbus, Ohio 43232, Telephone: (614) 866–0578.

Ohio Department of Natural Resources, Division of Reclamation, 1855 Fountain Square Court, Building H–3, Columbus, Ohio 43224, Telephone: (614) 265–6675.

FOR FURTHER INFORMATION CONTACT: Richard J. Seibel, Director, Columbus Field Office, (614) 866–0578.

SUPPLEMENTARY INFORMATION:

I. Background

On August 16, 1982, the Secretary of the Interior conditionally approved the Ohio program. Background information on the Ohio program, including the Secretary's findings, the disposition of comments, and the conditions of approval can be found in the August 10, 1992, **Federal Register** (47 FR 34688). Subsequent actions concerning the conditions of approval and program amendments can be found at 30 CFR 935.11, 935.12, 935.15, and 935.16.

II. Description of the Proposed Amendment

The Ohio Department of Natural Resources, Division of Reclamation (Ohio), submitted proposed Program Amendment Number 65 (PA 65) by letter dated February 23, 1994 (Administrative Record No. OH–1990). In this amendment, Ohio proposed to revise two rules in the Ohio Administrative Code (OAC) to correct outdated rule references and to adopt language similar to corresponding Federal regulations concerning the availability of documents for public review.

OSM announced its receipt of proposed PA 65 in the **Federal Register**

on March 10, 1994 (59 FR 11227). The public comment period ended on April 11, 1994. The public hearing scheduled for April 4, 1994, was not held because no one requested an opportunity to speak.

By letter dated June 17, 1994 (Administrative Record No. OH–2029), OSM provided its comments to Ohio on the February 23, 1994, submission of PA 65. By letter dated July 20, 1994 (Administrative Record No. OH–2033), Ohio resubmitted Program Amendment Number 65 Revised (PA 65R) which is intended to resolve the requirements in OSM's June 17, 1994, letter. The new revisions proposed by Ohio in PA 65R are summarized briefly below:

1. Ohio is revising OAC section 1501:13–1–10 paragraphs (B)(2) and (B)(2)(b) to clarify that the provisions for availability of records shall apply to both existing and proposed mining operations.

2. Ohio is revising its draft of the public notice document to clarify that public comments on applicable permitting, inspection, enforcement, and regulatory documents shall also be available for public inspection and copying. Ohio is also listing in the public notice the Ohio counties which are under the jurisdiction of each of its five coal-regulatory district offices.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Ohio program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Columbus Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12778

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

National Environmental Policy Act

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

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

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

List of Subjects in 30 CFR Part 935

Intergovernmental regulations, Surface mining, Underground mining.

Dated: August 1, 1994.

Patricia P. Acker,

Acting Assistant Director, Eastern Support Center.

[FR Doc. 94–19147 Filed 8–4–94; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN32–1–6373; FRL–5028–4]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: On November 10, 1992, the Minnesota Pollution Control Agency (MPCA) submitted a SIP revision which included two elements: (1) a commitment from the Governor or his designee to the timely adoption and implementation of an I/M program meeting all requirements of the I/M regulation; and (2) a schedule of implementation. On December 15, 1993, the MPCA fulfilled its commitment by submitting proposed revisions to its State Implementation Plan (SIP) for carbon monoxide (CO) to USEPA for approval. The submittal requests approval of its basic inspection and maintenance (I/M) program which applies to the Twin Cities seven county metropolitan area. The Twin Cities seven county metropolitan area, which includes Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington Counties, has been classified as moderate nonattainment for carbon monoxide. Therefore, Section 187 of the Clean Air Act (CAA) requires the State to submit a basic I/M SIP. In this action, the USEPA is proposing conditional approval of the State's basic I/M program submittal.

DATES: Comments on this requested revision and on the proposed USEPA action must be received by September 6, 1994.

ADDRESSES: Copies of the SIP revision request and USEPA's analysis are available for inspection at the following address: (It is recommended that you telephone Gina Smith at (312) 886–7018, before visiting the Region 5 office.) U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Written comments should be sent to: William L. MacDowell, Chief, Regulation Development Section, Air Enforcement Branch (AE–17J), U.S.

Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Gina Smith, Regulation Development Section, Air Enforcement Branch (AE–17J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–7018.

SUPPLEMENTARY INFORMATION:

I. Background

Section 187(a)(4) of the CAA, as amended in 1990, requires States with areas designated moderate nonattainment for CO to make changes to improve existing I/M programs or implement new ones. Section 182(a)(2)(B) requires USEPA to review, revise, update, and republish in the **Federal Register** guidance for State motor vehicle I/M programs. On November 5, 1992, (57 FR 52950), USEPA published a final rule establishing performance standards and other requirements for basic and enhanced I/M programs.

The November 5, 1992, I/M Regulation required each State that must implement an I/M program to submit by November 15, 1992, a SIP revision including two elements: (1) A commitment from the Governor or his designee to the timely adoption and implementation of an I/M program meeting all requirements of the I/M regulation; and (2) a schedule of implementation. A memorandum dated December 11, 1992, from Phil Lorang, Director, Emission Planning and Strategies Division outlines the elements that a State's schedule of implementation must include for acceptability. These elements include:

1. Passage of enabling statutory or other legal authority;
2. Proposal of draft regulations and promulgation of final regulations;
3. Issuance of final specifications and procedures;
4. Issuance of final request for Proposals (if applicable);
5. Licensing or certification of stations and inspectors;
6. The date mandatory testing will begin for each model year to be covered by the program;
7. The date full-stringency cut-points will take effect; and
8. All other relevant dates.

Following publication of the I/M program final rule (57 FR 52950), the USEPA also made available to States a document entitled, *Checklist for Completing the Inspection/Maintenance SIP (Checklist).* The *Checklist* was developed to assist States in the development of I/M SIPs and outlines in detail the criteria the I/M SIP submittals must satisfy in order to be approved for incorporation into a State's federally approved SIP.

II. Summary of State Submittal

In 1988 the MPCA was authorized and directed by the State legislature to adopt rules establishing an I/M program in the Twin Cities seven county metropolitan area. As required by Minnesota Statute Section 116.62, the MPCA adopted Minnesota Rules parts 7023.1010 to 7023.1105, which established standards and criteria governing the testing and inspection of motor vehicles for CO and hydrocarbon emissions in the Twin Cities seven county metropolitan area. Vehicle testing began on July 1, 1991.

Upon publication of the USEPA's final rule for I/M Programs (57 FR 52950), the MPCA recognized the need to amend the rules for operation of the State's I/M program. The State submitted a committal SIP on November 10, 1992. Additional information was provided on December 14, 1992, on January 6, 1993, and on February 22, 1993. A public hearing on the committal SIP was held by the State on February 22, 1993. The submittal includes a commitment for the adoption and implementation of an I/M program meeting all requirements of the I/M regulation and the CAA, a schedule of implementation which contained the elements described in Phil Lorang's December 11, 1992 memorandum, and a submittal date to USEPA of November 15, 1993.

On November 15, 1993, the Minnesota Pollution Control Agency (MPCA) submitted the first of two parts of its State Implementation Plan (SIP) revision request for the Twin Cities seven country metropolitan area I/M program. The second part of the revision request, consisting of the public hearing notice, was received by USEPA on December 15, 1993. The submittal requests approval of the Minnesota I/M program which has been operating in the Twin Cities metropolitan area since July 1, 1991. The seven county metropolitan area includes Anoka, Carver, Dakota, Hennepin, Ramsey, Scott and Washington Counties, which have been designated moderate nonattainment for carbon monoxide (CO).

III. Review of State Submittal

The basic I/M program SIP submittal has been reviewed against the requirements of the November 5, 1992, final rule and approvability criteria of the USEPA *Checklist.* An analysis of whether the Minnesota basic I/M program satisfies the requirements of the final rule and *Checklist* is provided below.

Applicability

Section 51.350 of the final rule requires I/M SIP submittals to describe the applicable areas in detail and to include the legal authority or rules necessary to establish program boundaries. The Twin Cities seven county metropolitan area has been classified as moderate nonattainment for CO and has a design value less than 12.7 ppm. Therefore, the area is required to implement a Basic I/M program as part of the State's CO SIP.

On April 8, 1988 Minnesota Statute §§ 116.60–116.65 was enacted by the Minnesota legislature, establishing a basic I/M program in the Twin Cities seven county metropolitan area and directing MPCA to develop and adopt administrative rules to govern the I/M program. Minnesota Rules parts 7023.1010—7023.1105 were adopted by the MPCA Citizen's Board on July 25, 1989. Minnesota's centralized I/M program has been in operation since July 1991. The geographic coverage of the program complies with the requirements of the Federal I/M rule and is approvable.

Basic I/M Performance Standard

Section 51.352 outlines the method States are to follow to arrive at a minimum performance standard. The performance standard sets an emission reduction target that the program must meet in order for the SIP to be approvable. The SIP must also demonstrate that the program will meet the performance standard in actual operation, with provisions for appropriate adjustments if the standard is not met.

The performance standard for which the MPCA must be able to demonstrate compliance was established using the Mobile 5a model inputs and local characteristics outlined at § 51.352(a)(1)–(12). CO nonattainment areas are required to demonstrate compliance with the performance standard by 1996. The State has submitted a modeling demonstration using the EPA computer model Mobile 5a demonstrating compliance with the basic performance standard.

Network Type and Evaluation

Section 51.353 of the final rule requires SIPs to include a description of the network to be employed, the required legal authority, and a description of the evaluation schedule and protocol, sampling methodology, the data collection and analysis system,

the resources and personnel for evaluation, and related details of the evaluation program. Areas that are required to implement basic I/M programs can at their own discretion choose between a centralized, decentralized, or hybrid testing network as long as the program demonstrates compliance with the performance standard of Section 51.352.

Through a contractual agreement, Minnesota operates a centralized program, consisting of eleven inspection stations with 46 testing lanes. The MPCA compiles data on failure rate, compliance rate, the number of certificates issued, and other similar matters and publishes an annual report on the I/M program.

Adequate Tools & Resources

Section 51.354 requires States to demonstrate that the appropriate administrative, budgetary, personnel, and equipment resources have been allocated for the I/M program and discuss how the performance standard will be met. Appendix 10 of the submittal contains the fiscal year 1994 budget for the I/M program. The submittal also provides a description of the program staffing levels and equipment resources.

Test Frequency & Convenience

Section 51.355 requires the SIP to describe in detail the test schedule of the program. If testing is not performed on an annual basis, the description is to include the test year selection scheme. In addition, the SIP should include the legal authority necessary to implement and enforce the test frequency requirement and explain how the test frequency will be integrated with the enforcement process.

Minnesota's program is based upon annual testing. Vehicle owners subject to the program are required to submit their vehicles to testing prior to annual vehicle registration renewal. The State's vehicle registration program is administered by the Minnesota Department of Public Safety. The Department of Public Safety's vehicle registration computer system tracks those vehicle owners who are required to provide proof of compliance with the I/M program, in order to renew vehicle registration.

Vehicle Coverage

SIPs are to include a detailed description of the number and types of vehicles to be covered by the program and a plan for how those vehicles are to be identified. The SIP should also include a description of any special exemptions granted by the program, an estimate of the percentage and number of subject vehicles which will be exempted. Exempted vehicles should be accounted for in the emission reduction analysis. The SIP should also include the legal authority or rule necessary to implement and enforce the vehicle coverage requirement.

Vehicles subject to the Minnesota basic I/M performance standard include: vehicles registered or required to be registered within the Twin Cities metropolitan area boundaries; fleet vehicles primarily operated within the I/M program area boundaries; and Federal vehicles located within the I/M program area boundaries. The Minnesota program subjects all 1976 and newer model year vehicles registered or customarily domiciled in the Twin Cities seven county area to the I/M program. Vehicles with exchanged engines that were manufactured before 1976 are not subject to I/M testing. Although Section 51.356 states that the performance standard for basic I/M assumes coverage of all 1968 and later light duty vehicles, States can adopt other levels of model year coverage provided if the necessary emission reductions are achieved.

The *Checklist* requests that States provide a description of the number and types of vehicles subject to the I/M program and a plan for how subject vehicles will be identified. Appendix 12 of the Submittal provides a detailed inventory of vehicles tested by model year between July 1, 1992, and June 30, 1992. Vehicles required to undergo testing are identified by the Minnesota Department of Public Safety as part of the annual vehicle registration and license plates renewal process.

The Minnesota I/M program exempts the following vehicles from the I/M program:

1. Motor vehicles manufactured before the 1976 model year or with an engine manufactured before the 1976 model year.

2. Motor vehicles registered as classic, pioneer, collector, or street rod.

3. Motor vehicles that are exempted in accordance with rules of the MPCA because the vehicle, although registered to an owner residing in the metropolitan area, is customarily domiciled outside the metropolitan area.

4. Any class of vehicles that is exempted by rule of the MPCA because the vehicles present prohibitive inspection problems, or are inappropriate for inspection. These include vehicles powered solely by diesel fuel, natural gas, propane, pure alcohol, or hydrogen; fire apparatus, ambulances, and rescue vehicles. Vehicles that have been identified as "dual fuel" are required to be tested using their gasoline cycle only.

The Minnesota SIP submittal provides an estimate of the number of vehicles exempted due to vehicle age, fuel type, and engines type. These exempted vehicles are accounted for in the compliance rate which was used in the Mobile 5a modeling process to demonstrate compliance with the performance standard.

Test Procedures and Standards

Section 51.357 requires SIPs to include a description of each test procedure used, the legal authority or rule describing and establishing the test procedures, and the test standards.

The Minnesota I/M program includes a tampering inspection and an exhaust emission test (Minnesota Rules parts 7023.1025 and 7023.1030). The USEPA *Checklist* lists the criteria that State I/M programs must satisfy in order to be approvable. The Minnesota program satisfies the criteria of the *Checklist*.

Minnesota Rules pt. 7023.1010, subp. 35 exempts vehicles from testing that are powered solely by diesel fuel, electricity, natural gas, propane, pure alcohol, or hydrogen (alternate fuel vehicles). The State believes and USEPA agrees that there are so few alternate fuel vehicles that there is no significant impact upon ambient air quality. Vehicles that are "dual fuel" are tested using the gasoline cycle and must meet the same test requirements as all other vehicles subject to the program requirements.

The Minnesota program tests vehicles with exchanged engines that were manufactured before 1976 according to the emission standards applicable to the year of the exchanged engine and tests vehicles where the year of the exchanged engine is unknown according to the standard applicable to 1976 engines. Section 51.357(d)(2) requires vehicles with exchanged engines to be subject to the emission standards based on the chassis type and model year, not the engine year as the Minnesota rule allows. Engine year standards can only be used if the engine is newer than the chassis and subject to stricter emission control requirements.

In a letter from Charles Williams, Commissioner MPCA, dated July 5, 1994 to Valdas Adamkus, Regional Administrator, the MPCA committed to requesting statutory and rule amendments that are consistent with USEPA final regulations. USEPA proposes to conditionally approve the SIP based on this commitment. MPCA must submit these amendments as a SIP revision within one year of final conditional approval.

Test Equipment

Section 51.358 of the final rule requires SIPs to include written technical specifications for all test equipment used in the program. The specifications should describe the emission analysis process, the necessary test equipment, the required features, and written acceptance testing criteria and procedures.

Appendix 11 of the Minnesota submittal and Minnesota Rules 7023.1090 contains the specifications for the test equipment used in the I/M program. The gas analyzers used in the program each meet or exceed the California Bureau of Automotive Repair bench specifications and meet or exceed the specifications contained in Appendices A, B, and D of the I/M final rule.

Quality Control

Section 51.359 of the I/M final regulations requires SIPs to include a description of quality control and recordkeeping procedures. The submittal should include the procedures manual, rule, ordinance, or law establishing the procedures of quality control and recordkeeping.

Minnesota Rules pts. 7023.1010–7023.1105 and Appendix 11 of the submittal describe the quality control standards and criteria for the I/M program. Specifications for the test equipment used in the I/M program are also located in Appendix 11 of the submittal.

Waivers and Compliance via Diagnostic Inspection

Section 51.360 outlines the standards that State SIP submittals must satisfy before owners of vehicles can be issued waivers or temporary extensions. A waiver or temporary extension allows motorists to renew vehicle registration. These requirements include: a maximum waiver rate used for estimating emission reduction benefits in the modeling analysis; a commitment by the State to take corrective action if the waiver rate exceeds that which was committed to in the SIP or a commitment to revise the SIP and emission reductions claimed; a description of waiver criteria and procedures, including cost limits, quality assurance methods and administration; and the necessary legal authority to issue waivers, set and adjust costs limits and carry out any other functions necessary to administer the waiver system.

Section 51.360(a)(5) states that in order for an owner to receive a waiver, repairs on vehicles newer than 1980 models must be performed by recognized repair technicians. Repairs by non-technicians can be applied toward the waiver limit only if the vehicle was manufactured prior to 1980. Under the Minnesota I/M program, repairs by non-technicians can be applied towards the waiver limit for any vehicle subject to the I/M program (i.e. 1976 model year and newer). The USEPA has advised MPCA that the Statute and Rules must be amended to only allow repairs by non-technicians for vehicles manufactured between 1976 and 1979 to be applied towards the waiver limit. In the July 5, 1994 letter from Charles Williams, Commissioner, MPCA commits to taking the necessary actions to amend the Statute and Rules so that they are consistent with the I/M final rule. USEPA proposes to conditionally approve the SIP based on this commitment. MPCA must submit these amendments as a SIP revision within one year of final conditional approval.

Section 51.360(a)(6) establishes the minimum repair expenditure that vehicle owners must incur in order to qualify for a waiver under basic I/M programs. In basic I/M programs, owners must expend a *minimum* of $75 for pre-1981 vehicles and $200 for 1981 and later vehicles. Minnesota statute 116.62 Subdivision 5(c) establishes expenditure *limits* of $75 for pre-1981 vehicles and $200 for 1981 and later vehicles, but imposes no requirement for a minimum repair expense to qualify for a waiver. The USEPA has advised the State that the statutory minimum expenditure limits must be amended so that they are consistent with the final Federal regulations and vehicle owners are required to present proof of repair expenditures before a waiver can be granted. In a letter to Regional Administrator Adamkus, the MPCA commits to take the necessary action to amend the State's statutes and rules for waivers so that they are consistent with the I/M final rule. USEPA proposes to conditionally approve the SIP based on this commitment. MPCA must submit these amendments as a SIP revision within one year of final conditional approval.

Section 51.360(a)(9) allows time extensions up to the length of the inspection cycle to be granted to vehicle owners when repairs are needed on a vehicle in the case of economic hardship, but the extension can only be granted one time for a vehicle and the extension must be tracked and reported by the program.

Minnesota grants temporary extensions, which are valid for only 30 days, under three circumstances: (1) when a vehicle will not be available for inspection during the 90-day period before registration expiration; (2) a vehicle has failed the initial inspection and additional time is needed for repair and reinspection; and (3) the vehicle registration has been expired for at least 12 months or more.

Although the Federal rule only allows for extensions in cases of economic hardship, the State has successfully tracked the number of vehicles issued temporary extensions and those vehicles which have violated the terms of the extension. Minnesota estimates that between July 1, 1992 and June 30, 1993, approximately 50,000 vehicle owners were issued temporary extensions. MPCA estimates that to date, approximately 10,000 vehicles or less are non-compliant. These 10,000 non-compliant vehicles represent approximately 1 percent of the total number of vehicles subject to the I/M program requirements. The non-compliant vehicles are accounted for in the Mobile 5a modeling results submitted by the State which demonstrates compliance with the basic I/M performance standard. USEPA therefore believes that the Minnesota I/M temporary extension provisions are approvable.

Motorist Compliance Enforcement

Under Section 51.361, States that are required to implement basic I/M Programs are required to ensure compliance with program requirements through the denial of motor vehicle registration or an alternative enforcement mechanism if the State can demonstrate that the alternative is as effective as registration denial. SIP submittals must include: a description of the enforcement process; a determination of the current compliance rate that includes an estimate of compliance loss due to loopholes; legal authority for enforcement; and a commitment to an enforcement level to be used for modeling purposes and to be maintained, at a minimum, in practice.

The Minnesota Basic I/M program uses registration denial to ensure compliance with the vehicle inspection requirements. Section 51.361(c)(2) requires States to include in their submittals a determination of the current compliance rate that includes an estimate of compliance losses due to loopholes, counterfeiting, and unregistered vehicles. The SIP submittal estimates a compliance rate of 97%, which is computed by dividing the total number of vehicles that were *actually* tested by the number of vehicles that *should* have been tested. The State does not provide an estimate of the effect of

closing the loopholes that allow vehicles to escape inspection. MPCA believes it's current compliance rate is sufficient since the State is not required to achieve 100% compliance. In the SIP submittal, the State commits to a compliance rate of 97% and a stringency rate of 23%.

Section 51.361(a)(5) requires States to structure a penalty system to deter non-compliance with the registration requirement through the use of mandatory, minimum fines (meaning civil and monetary penalties) and through a requirement that vehicle owners demonstrate compliance before a case can be closed.

Minnesota's basic I/M program allows the owner of a vehicle that has failed inspection to make the repairs necessary for the vehicle to pass reinspection. Vehicle owners are allowed two reinspections. If a vehicle does not pass the reinspections, then the owner can apply for compliance waiver. If a vehicle does not pass reinspection and does not qualify for a waiver, the owner is issued a report indicating noncompliance. Minnesota's penalty for noncompliance is the denial of vehicle registration. If a vehicle's registration is denied, then the owner is subject to receiving a citation from local, county or State law enforcement officials which averages $35.00. For as long as a vehicle owner continues to operate a vehicle that has not been properly registered, the owner will receive multiple fines.

Motorists Compliance Enforcement Program Oversight

Under Section 51.362, I/M SIP submittals are to include a description of enforcement program oversight and information management activities. The enforcement program must be audited regularly and follow effective program management practices. Minnesota's Basic I/M program includes several oversight activities which include: verification of exempt vehicle status; fines against testing stations for missing or unaccounted for documents; and methods for evaluating program effectiveness.

Quality Assurance

Section 51.363 requires States to operate on-going quality assurance programs aimed at discovering, correcting, and preventing fraud, waste and abuse. The quality assurance officer should also assess whether correct operating procedures are being followed and that testing equipment provides accurate measurements. SIP submittals must include a description of the quality assurance program, written procedures manuals covering covert and overt audits, records audits, and equipment audits.

Section 51.363(a)(2) requires States to audit more frequently stations that employ inspectors suspected of violating regulations as a result of audits, data analysis, or consumer complaints. Section 51.363(a)(4) sets forth the criteria that covert audits must satisfy. Between July 1, 1992 and June 30, 1993, MPCA conducted a total of 24 covert audits.

The USEPA has advised MPCA that, although the State does conduct covert audits as part of its quality assurance activities, the I/M program has not established an ongoing consistent audit program that meets the criteria of Section 51.363(a)(4). In the July 5, 1994, letter to USEPA, from Charles Williams, Commissioner, the MPCA has committed to implementing a covert audit schedule and an audit program that meets the requirements of Section 51.363 and includes the following actions:

(1) Continued annual remote visual observations by the auditor of inspector performance at each of the eleven inspection stations and, recording of these observations.

(2) Implementation of a covert audit schedule where a minimum of two covert audits will be conducted annually at each of the eleven inspection stations. The MPCA anticipates conducting an average of two covert audits a month.

(3) Audits will be conducted using covert vehicles that are set to fail.

(4) Vehicles used in covert audits will cover a full range of vehicle technology groups and malfunctions.

(5) Auditors will record the covert audit and provide sufficient written documentation for building a legal case and conducting on going performance evaluations.

The contractor will continue to run "altered" vehicles through the network of inspection stations to audit test procedures. A schedule for these audits will be developed and implemented and, written reports of the audits will be submitted to MPCA as required. USEPA proposes to conditionally approve the SIP based on this commitment. MPCA must submit these amendments as a SIP revision within one year of final conditional approval.

Enforcement Against Contractors, Stations & Inspectors

Section 51.364 requires I/M programs to include enforcement mechanisms that allow for the imposition of penalties against licensed stations, contractors or inspectors that violate program requirements. SIP submittals must describe the legal authority for imposing penalties, civil fines, license suspension, and revocations.

Section 51.364(a)(1) requires States to develop a penalty schedule that establishes minimum penalties for violations of program rules and procedures. The penalty schedule should categorize and list violations and the minimum penalties to be imposed for violations. States that have contracted systems, may use compensation retainage in lieu of penalties.

Section 51.364(a)(3) states that findings of serious violations of rules or procedural requirements shall result in mandatory fines or retainage. In the case of gross neglect, a first offense shall result in a fine or retainage of no less than $100 or 5 times the inspection fee, whichever is greater, for the contractor or the licensed station and inspector, if involved.

The Minnesota I/M program uses compensation retainage for assessing penalties against the contractor when the MPCA determines that the contractor has not complied with the requirements of the MPCA contract agreement. The amount of compensation retained is determined at the discretion of MPCA. Where retainage does not adequately address the severity of noncompliance, the MPCA may also avail itself of other remedies.

Each month, the contractor submits to the MPCA an invoice for payment based on the number of vehicles tested. MPCA staff reviews the invoice for accuracy, retains 10% and pays the contractor the remaining 90%. The 10% retainage is accumulated monthly and released to the contractor at the end of each quarter provided the MPCA is satisfied with the contractors performance. When judging performance, the MPCA pays particular attention to the requirements of public convenience, proper calibration of instruments, excessive wait times, facility and lane down time, and submittal of complete reports in the time specified. MPCA retains an average of $100,000 per month. Therefore, the State believes that it is meeting the retainage requirement of $100 or 5 times the inspection fee as specified in Section 51.364.

Section 51.364(b) states that quality assurance officers shall have the authority to temporarily suspend station and inspector licenses or certificates (after approval of a superior) immediately upon finding a violation or equipment failure that directly affects emission reduction benefits, pending a hearing when requested.

As explained in the SIP submittal, MPCA quality assurance officers do not have direct authority to impose disciplinary action against inspectors employed by the contractor since inspectors are not directly employed by MPCA. Any disciplinary action to be taken is carried out through the contractor's internal disciplinary procedures. However, MPCA quality assurance officers may recommend disciplinary action or discharge of an employee of the contractor. In the event that improper performance is observed or reported, the quality assurance officer may recommend disciplinary action to MPCA's Program Manager. Disciplinary action against inspectors include verbal warnings, written reprimands or revocation of the Certification of Training, which can result in re-training and, if necessary, immediate discharge.

Situations requiring disciplinary action have been isolated incidents and, since initial notification to the MPCA of such incidents, no subsequent similar incidents have been recorded.

MPCA has committed to implementing a formal process to certify lane inspectors are qualified and authorized to test vehicles. Lane inspectors will be required to complete the existing Training Program outlined in Appendix 14 of the submittal and demonstrate competence in vehicle testing by receiving at least an 80% passing grade on the written and practical examinations. Upon successful completion of the Training Program, lane inspectors will be issued by the MPCA and the contractor, a certificate of training which certifies that the lane inspector is qualified and authorized to test vehicles. A Certificate of Training will be valid for two years, at which time the inspector is required to repeat the Training Program. No lane inspector will be authorized to test vehicles without a valid Certificate of Training. A lane inspector must retain a valid Certificate as a condition of employment as a lane inspector by the contractor. MPCA has committed to entering into a Contract Compliance Order with the contractor to reflect these certification requirements for lane inspectors. USEPA proposes to conditionally approve the SIP based on this commitment. MPCA must submit these amendments as a SIP revision within one year of final conditional approval.

Data Collection

Section 51.365 outlines the test data and quality control data that must be collected for the management, evaluation, and enforcement of an I/M program. I/M programs must gather test data on individual vehicles, as well as quality control data on test equipment. The Minnesota I/M program contains data gathering provisions that meet all of the criteria of the *Checklist*.

Data Analysis and Reporting

SIP submittals are to include information on how States will incorporate data analysis and reporting into their I/M programs. Reports should provide information regarding the types of program activities performed and their final outcomes, including summary statistics and effectiveness evaluations of the enforcement mechanism,, the quality assurance system, the quality control program, and the testing element. The Minnesota I/M SIP submittal describes data analysis and reporting activities that completely satisfy the criteria of the *Checklist*.

Inspector Training & Licensing or Certification

All inspectors partaking in I/M programs must receive formal training and be licensed or certified to perform inspections. SIP submittals must include a description of the training program, the written and practical examinations and the licensing or certification process.

Lane inspectors are employed and trained by the contractor. Appendix 14 describes the contractor's training program. MPCA has committed to issuing a Contract Compliance Order to the contractor requiring inspectors to complete the contractor training and demonstrate competence by receiving an 80% or better grade on an examination. The certificates will expire after two years at which time inspectors must repeat the training program. USEPA proposes to conditionally approve the SIP based on this commitment. MPCA must submit these amendments as a SIP revision within one year of final conditional approval.

Public Information and Consumer Protection

SIP submittals must include a plan for informing the public on an ongoing basis, throughout the life of the I/M program, of the air quality program, the requirements of Federal and State law, the role of motor vehicles, in the air quality problem, the need for benefits of an inspection program. In addition, the submittal must describe procedures and mechanisms to protect the public from fraud and abuse by inspectors, mechanics, and others involved in the I/M program.

The Minnesota I/M program has included public information and consumer protection provisions since its inception in 1991. Appendix 25 contains MPCA's most current Public Information Plan and Appendix 26 includes all of the fact sheets, brochures, an annual report, quarterly newsletter, a media relations kit and other I/M program publications.

Improving Repair Effectiveness

Basic I/M SIP submittals must include a description of the State's technical assistance program and a description of the repair technician training resources available to the community. The technical assistance program must provide the repair industry with information and assistance related to vehicle inspection, diagnosis, and repair.

The Minnesota I/M program offers assistance to repair technicians through the Consumer Advocate program and the MPCA currently publishes a quarterly newsletter that serves as the main communication link between the repair industry and the MPCA. Appendix 21 contains the repair technician curriculum used by vocational/technical colleges, community colleges or post-secondary programs to train automotive repair technicians.

Section 51.372 lists each of the elements that must be included in SIP submittals. The Minnesota submittal addresses each of the elements listed in the Section.

Implementation Deadlines

States implementing decentralized basic programs must have such programs fully operable by January 1, 1994. The Minnesota I/M program has been fully implemented since 1991.

IV. USEPA Comments

The USEPA has identified additional deficiencies in the I/M submittal that the MPCA must adequately address before the USEPA can proceed with final approval. The deficiencies are presented in the following comments. If MPCA adequately addresses the deficiencies during the 30-day comment period, USEPA will proceed with final conditional approval of the I/M SIP submittal. In the event that the State does not adequately address the deficiencies outlined below, the USEPA will take final action to disapprove the basic I/M SIP submittal.

(1) Minnesota Rules 7023.1020 has been amended such that visual inspection of fuel inlet restrictors is no longer required. Therefore, the emission reductions obtained in the proposed program must be less than or equal to those obtained by the existing program. Since visual inspection for fuel inlet restrictors was previously required,

there must be comparable improvement to the program if this element is to be removed. There is no evidence that the program has been strengthened. The State should either reinstate the fuel inlet restrictor requirement or make other improvements to the testing program so that the reductions are as good or better than under the existing program.

(2) USEPA has identified two issues regarding the compliance rate claimed by the State in the submittal. First, the submittal provides conflicting estimates of the number of unregistered vehicles in the Twin Cities metropolitan area. The contractor estimates that 22,000 vehicles in the area are registered without undergoing testing, while MPCA estimates that only 12,000 vehicles are registered without undergoing testing. The conflicting estimates undermine the reliability of the 97% compliance rate arrived at by the State. Secondly, the State uses a 96% compliance rate in the Mobile 5a modeling inputs, yet claims a 97% compliance rate in the submittal. USEPA can accept the 96% compliance rate without any further information or action on the State's part. If the State chooses to continue to claim the 97% compliance rate, it must supply USEPA with an estimate of the number of unregistered vehicles and a description of mechanisms the state will employ to identify and encourage registration of unregistered vehicles.

(3) The USEPA is concerned that the $35.00 citation imposed on vehicle owners who fail to undergo testing and properly register their vehicles is not sufficiently high to deter non-compliance. The USEPA requests that MPCA provide further information on the maximum fine imposed on vehicle owners that fail to undergo testing.

(4) The USEPA believes that Minnesota's lack of a defined penalty schedule for cases of serious violations of the State's contractual agreement significantly lessens the stringency of the State's enforcement efforts. In addition, the State has not provided any description of its mechanisms for permanent fee retainage from the contractor. The MPCA must provide USEPA with a schedule of typical retainage for serious violations of the contractual agreement.

(5) The submittal indicates that quality assurance officers do not have direct authority to impose disciplinary action against inspectors employed by the contractor. MPCA quality assurance officers may only recommend disciplinary action or discharge of an employee. MPCA must commit to requiring the contractor to act upon the State's recommendation for disciplinary action.

V. Proposed Action

The USEPA is proposing conditional approval of the Minnesota basic I/M SIP revision request for CO. Section 110(k)(4) of the Clean Air Act allows USEPA to conditionally approve a plan based on a commitment from the State to adopt and submit specific enforceable measures within one year from the date of approval. USEPA's conditional approval of Minnesota's basic I/M program is based upon MPCA's commitment to adopt specific enforceable measures as outlined in the July 5, 1994, letter from Charles Williams, Commissioner MPCA, to Valdas Adamkus, Regional Administrator, USEPA. If Minnesota fails to implement the necessary changes within the one year period following the date of approval, the approval will automatically convert to a disapproval of the SIP. Automatic disapproval of the SIP will trigger the 18-month sanctions period of Section 179 of the CAA. In addition, USEPA can elect to exercise its discretionary authority to impose sanctions prior to the end of the 18-month period. Finally, disapproval will trigger a 24 month Federal Implementation Plan (FIP) clock under Section 110(c) of the CAA. MPCA must also adequately address the deficiencies outlined in the section entitled *"USEPA Comments"* during the 30-day comment period. If MPCA adequately addresses the comments, USEPA will proceed with final conditional approval of the I/M SIP submittal. In the event that the State does not adequately address the deficiencies, the USEPA proposes in the alternative to take final action to disapprove the basic I/M SIP submittal.

Public comments are solicited on the requested SIP revision and on USEPA's proposal to conditionally approve. Public comments received by September 6, 1994 will be considered in the development of USEPA's final rulemaking action.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. USEPA shall consider each request for revision to the SIP 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 by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). A revision to the SIP processing review tables was approved by the Acting Administrator for the Office of Air and Radiation on October 4, 1993 (Michael Shapiro's memorandum to Regional Administrators.) A future notice will inform the general public of these tables. Under the revised tables, this action remains classified as Table 2.

On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of 2 years. The USEPA has submitted a request for permanent waiver for Table 2 and 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request. This request remains in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Executive Order 12866

Under Executive Order 12866 [58 FR 51735 (October 4, 1993)] the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

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

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

(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. The OMB has exempted this regulatory action from E.O. 12866 review.

Under the Regulatory Flexibility Act, 5 U.S.C. Section 600 *et seq.*, USEPA 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, USEPA 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.

Potential conversion of the conditional approval to disapproval

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 affects its state-enforceability. Moreover, USEPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, USEPA certifies that this action or the conversion of this action into a disapproval action would not have a significant impact on a substantial number of small entities because it would not remove existing requirements nor impose any new Federal requirements.

List of Subjects in 40 CFR Part 52

Environmental protection, Air Pollution control, Carbon monoxide, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671(q).

Dated: July 15, 1994.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 94–19183 Filed 8–4–94; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 721

[OPPTS–50601A; FRL–4761–7]

Pentaerythritol, Mixed Esters with Carboxylic Acids; Revocation of a Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke a significant new use rule (SNUR) promulgated under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for pentaerythritol, mixed esters with carboxylic acids based on receipt of toxicity data. The data indicate that for purposes of TSCA section 5 the substance will not present an unreasonable risk to health.

DATES: Written comments must be received by EPA by September 6, 1994.

ADDRESSES: All comments must be sent in triplicate to: U.S. Environmental Protection Agency, ATTN: OPPT Document Receipt Office (7407), 401 M St. SW., Rm. E–G99, Washington, DC 20460. Comments that are confidential must be clearly marked confidential business information (CBI). If CBI is claimed, three additional sanitized copies must also be submitted. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Comments should include the docket control number. The docket control number for the chemical substance in this SNUR is OPPTS–50601A. Unit III. of this preamble contains additional information on submitting comments containing CBI.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 23, 1992 (57 FR 44050), EPA issued a SNUR establishing significant new uses for pentaerythritol, mixed esters with carboxylic acids (P–91–1250). Because of additional data EPA has received for this substance, EPA is proposing to revoke this SNUR.

I. Proposed Revocation

EPA is proposing to revoke the significant new use and recordkeeping requirements for the following chemical substance under 40 CFR part 721 subpart E. In this unit, EPA provides a brief description for the substance, including its PMN number, chemical name (generic name if the specific name is claimed as CBI), CAS citation (if assigned), basis for the revocation of the section 5(e) consent order for the substance, and the CFR citation removed in the regulatory text section of this proposed rule. Further background information for the substance is contained in the rulemaking record referenced in Unit IV. of this preamble.

PMN Number P–91–1250

Chemical name: (generic) Pentaerythritol, mixed esters with carboxylic acids.

CAS number: Not available.

Effective date of revocation of section 5(e) consent order: December 7, 1993.

Basis for revocation of section 5(e) consent order: The order was revoked based on test data submitted under the terms of the consent order. Based on the Agency's analysis of the submitted data, EPA has sufficient information to determine for purposes of TSCA section 5, that the manufacture, processing, distribution in commerce, use, or disposal of the PMN substance will not present an unreasonable risk to human health. Accordingly, EPA has determined that further regulation under section 5(e) is not warranted at this time.

Toxicity testing results: A mouse micronucleus assay of the substance was negative. In a 28–day dietary study the No Observed Adverse Effect Level (NOAEL) was 1,000 ppm (parts per million) (approximately 110 mg/kg/day). Toxicity at higher doses of 5,000 and 12,500 ppm consisted of mild anemia and liver effects.

CFR citation: 40 CFR 721.5660.

II. Background and Rationale for Proposed Revocation of the Rule

During review of the PMN submitted for the chemical substance that is the subject of this proposed revocation, EPA concluded that regulation was warranted under section 5(e) of TSCA pending the development of information sufficient to make a reasoned evaluation of the health effects of the substance, and that the substance is expected to be produced in substantial quantities and there may be significant or substantial environmental exposure. EPA identified the tests necessary to make a reasoned evaluation of the risks posed by the substance to human health. Based on these findings, a section 5(e) consent order was negotiated with the PMN submitter and a SNUR was promulgated. EPA reviewed testing conducted by the PMN submitter pursuant to the 5(e) consent order for the substance and determined that the information available was sufficient to make a reasoned evaluation of the health effects of the substance. EPA concluded that, for the purposes of TSCA section 5, the substance will not present an unreasonable risk and consequently revoked the section 5(e) consent order. The proposed revocation of SNUR provisions for the substance designated herein is consistent with the revocation of the section 5(e) order. In light of the above, EPA is proposing a revocation of SNUR provisions for this chemical substance. EPA will no longer require notice of any company's intent to manufacture, import, or process this substance. In addition, export notification under section 12(b) of TSCA will no longer be required.

III. Comments Containing Confidential Business Information

Any person who submits comments claimed as CBI must mark the comments as "confidential," "trade secret," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any party submitting comments claimed to be confidential must prepare and submit a public version of the comments that EPA can place in the public file.

IV. Rulemaking Record

The record for the rule which EPA is proposing to revoke was established at OPPTS–50601A (P–91–1250). This record includes information considered by the Agency in developing the rule and includes the test data that formed the basis for this proposal.

V. Regulatory Assessment Requirements

EPA is proposing to revoke the requirements of the rule. Any costs or burdens associated with the rule will also be eliminated when the rule is revoked. Therefore, EPA finds that no costs or burdens must be assessed under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 605(b)), or the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: July 26, 1994.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

§ 721.5660 [Removed]

2. By removing § 721.5660.

[FR Doc. 94–19194 Filed 8–4–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7103]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (100-year) flood elevations and proposed base (100-year) flood elevation modifications for the communities listed below. The base (100-year) flood elevations and modified base (100-year) flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Chief, Hazard Identification Branch, Mitigation Directorate, 500 C Street, SW., Washington, DC 20472, (202) 646–2756.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the NFIP. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of Section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of Section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR Part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq.; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
California	City of Barstow, San Bernardino County.	Mojave River	At the downstream Corporate Limit approximately 10,500 feet downstream of Interstate 15.	*2,032	*2,031
			Approximately 4,300 feet downstream of Interstate 15.	*2,048	*2,049
			Approximately 2,800 feet upstream of Interstate 15.	*2,070	*2,070
			Approximately 5,000 feet downstream of First Street.	*2,083	*2,083
			Just upstream of First Street	*2,097	*2,098
			Approximately 900 feet upstream of First Street.	*2,099	*2,101
			Approximately 3,170 feet upstream of First Street.	*2,103	*2,105
			At the upstream Corporate Limit approximately 3,600 feet upstream of Atchison, Topeka and Santa Fe Railway.	*2,118	*2,120
		Lenwood Creek	At the intersection of Lenwood Road and Sun Valley Road approximately 3,480 feet above Atchison, Topeka and Santa Fe Railway.	None	*2,257
			At Sun Valley Road	None	*2,261
			Approximately 1,400 feet upstream of Sun Valley Road.	#2	*2,272
			Just upstream of Lenwood Road	#2	*2,339
		Armory Channel	Approximately 100 feet upstream of Armory Road.	#2	*2,282
			Approximately 200 feet upstream of Armory Road.	#2	*2,286
			Approximately 100 feet downstream of Tenth Street.	#2	*2,291
			At the limit of detailed study approximately 190 feet upstream of Fifth Street.	None	*2,358

Maps are available for review at City Hall, 220 East Mountain View Road, Barstow, California.

Send comments to The Honorable Mal Wessel, Mayor, City of Barstow, 220 East Mountain View Road, Barstow, California 92311.

Hawaii	Kaui County, Unincorporated Areas.	Kalama Stream	Approximately 2,500 feet upstream of Puuopae Road.	*327	*327
			Approximately 4,770 feet upstream of Puuopae Road.	None	*350
			Approximately 7,300 feet upstream of Puuopae Road.	None	*400
		Hanamaulu Stream	Approximately 1,100 feet upstream of confluence with Hanamaulu Bay.	*10	*11
			Approximately 80 feet upstream of Access Road.	None	*35
			Approximately 120 feet downstream of Kuhio Highway.	None	*89
			Approximately 1,200 feet upstream of Kuhio Highway.	None	*116
		Hanamaulu Stream Tributary.	At confluence with Hanamaulu Stream	None	*106
			Approximately 500 feet upstream of Maalo Road.	None	*106
		Waikomo Stream	At confluence with Omao Stream	*214	*223
			Just upstream of Maluhia Road	None	*217
			Just upstream of Cane Road	None	*220
			Approximately 1,000 feet upstream of Wailaau Road.	None	*223
		Waikomo Stream Tributary	At confluence with Waikomo Stream	None	*221
			Approximately 50 feet downstream of Wailaau Road.	None	*221

Maps are available for review at the Department of Public Works, Engineering Division, 3021 Umi Street, Lihue, Kauai, Hawaii.

Send comments to The Honorable JoAnn Yukimura, Mayor, Kauai County, 4963 Rice Street, Lihue, Kauai, Hawaii 967b6.

Hawaii	Maui County, Unincorporated Areas.	Kailua Gulch	Approximately 300 feet downstream of Hana Highway.	None	*17

State	City/town/county	Source of flooding	Location	# Depth in feet above ground. *Elevation in feet. (NGVD)	
				Existing	Modified
			Approximately 1,100 feet upstream of Hana Highway.	None	*30
			Approximately 200 feet downstream of Kahului Railroad.	None	*83

Maps are available for review at the Department of Public Works and Waste Management, Land Use and Codes Administration, 250 South High Street, Wailuku, Maui, Hawaii.

Send comments to The Honorable Linda Crockett Lingle, Mayor, Maui County, 200 South High Street, Wailuku, Hawaii 96793.

Oklahoma	Payne County, Unincorporated Areas..	Stillwater Creek	Approximately 4,300 feet upstream of Fairground Road.	*853	*853
			Approximately 4,700 feet upstream of Brush Creek Road.	*856	*857
			Approximately 270 feet upstream of Perkins Road.	*860	*861
			Approximately 3,500 feet downstream of Range Road.	*885	*886
			Approximately 1,400 feet downstream of confluence with North Stillwater Creek.	*893	*893

Maps are available for review at the Payne County Conservation District, 800 East Sixth Street, Stillwater, Oklahoma.

Send comments to Ms. Bernice Mitchell, Chairperson, County Commissioners, Payne County, 606 South Husband, Room 101, Stillwater, Oklahoma 74074.

Oregon	City of Eugene, Lane County.	Amazon Creek	Just downstream of Beltline Highway	*390	*390
			Approximately 1,200 feet downstream of Bertelson Road.	*391	*392
			Just downstream of Bertelson Road	*391	*393
			Just downstream of West 11th Avenue	*394	*394

Maps are available for review at the City of Eugene, Engineering Division, 244 East Broadway, Eugene, Oregon.

Send comments to The Honorable Ruth Bascom, Mayor, City of Eugene, 777 Pearl Street, Room 105, Eugene, Oregon 97401.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: July 26, 1994.

Richard T. Moore,

Associate Director for Mitigation.

[FR Doc. 94–19140 Filed 8–4–94; 8:45 am]

BILLING CODE 6718–03–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 97 and 148

[CGD 87–069]

Carriage of Bulk Solid Materials Requiring Special Handling

AGENCY: Coast Guard, DOT.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: On April 12, 1994, the Coast Guard published a notice of proposed rulemaking (NPRM) pertaining to its regulations for the carriage of certain bulk solid materials. The comment period provided by that notice is reopened for a period of 30 days.

DATES: Comments must be received on or before September 6, 1994.

ADDRESSES: Comments may be mailed to the Executive Secretary, Marine Safety Council (G–LRA/3406) (CGD 87–069), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC, 20593–0001, or comments may be delivered to room 3406 at the same address between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

The Executive Secretary maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at room 3406, U.S. Coast Guard Headquarters, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Frank K. Thompson, Project Manager, Hazardous Materials Branch, Office of Marine Safety, Security and Environmental Protection, (202) 267–1217.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interest persons to participate in the rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 87–069) and the specific section of the proposal to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change the proposal in view of the comments.

Reopening of Comment Period

On April 12, 1994, the Coast Guard published an NPRM proposing to amend its regulations for the carriage of certain bulk solid materials by adding materials carried under Coast Guard

Special Permits, and other materials contained in the International Maritime Organization Code of Safe Practice for Solid Bulk Cargoes, including coal, to the list of materials permitted under the regulations (59 FR 17418). The original deadline for submission of comments was July 11, 1994. The Coast Guard received a number of requests that additional time be provided for comment. The Coast Guard is very interested in receiving information and opinions from persons who have an interest in the safe handling of bulk solid materials and may not have had an opportunity to submit comments. Therefore, in order to encourage meaningful participation by interested parties, the Coast Guard is reopening the comment period for an additional 30 days.

Dated: July 29, 1994.

J.F. McGowan,

Captain, U.S. Coast Guard Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–19174 Filed 8–4–94; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF DEFENSE

48 CFR Parts 207, 237, and 252

Defense Federal Acquisition Regulation Supplement; Continuation of Essential Contractor Services During Crises

AGENCY: Department of Defense (DoD).

ACTION: Withdrawal of proposed rule.

SUMMARY: The rule published September 30, 1993 (58 FR 51033), which proposed revisions to the Defense Federal Acquisition Regulation Supplement (DFARS) to add policy, procedures, and a clause to require contractor agreement to continue performance of essential services during crisis situations is hereby withdrawn. This action is based on the determination that no additional clause is necessary to convey the contractor's duty to perform contracts.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Holcome, telephone (703) 604–5929.

SUPPLEMENTARY INFORMATION: The Defense Acquisition Regulations (DAR) Council, under DAR Case 91–071, proposed a revision to the DFARS in September 1993 to add a contract clause requiring the contractor to continue to perform essential contract services, and to assert its right to any adjustment necessitated by performance of the essential services, during periods of crisis. These revisions were proposed to implement DoDI 3020.37, Continuation of Essential DoD Contractor Service During Crises. After a review of the public comments, the DAR Council agreed to withdraw the proposed rule from further consideration. Existing FAR and DFARS clauses adequately address the Government's rights to terminate a contract and the contractor's duty to perform.

Claudia L. Naugle,

Deputy Director, Defense Acquisition Regulations Council.

[FR Doc. 94–19125 Filed 8–4–94; 8:45 am]

BILLING CODE 5000–04–M

Notices

Federal Register
Vol. 59, No. 150
Friday August 5, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

RIN 1018–AB43

Alaska Federal Subsistence Regional Advisory Council Meeting

AGENCY: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

TIMES, DATES AND LOCATIONS: The Federal Subsistence Board announces the forthcoming public meeting of the Yukon-Kuskokwim Delta Subsistence Regional Advisory Council (Council). The Council meeting will be held by teleconference and will begin at 10:00 a.m. on August 2, 1994.

SUMMARY: This notice informs the public of the Yukon-Kuskokwim Delta Subsistence Regional Advisory Council meeting. The public is invited to participate by calling the toll-free teleconference number or going to the Yukon Delta National Wildlife Refuge office in Bethel. The teleconferencing toll-free number is 1–800–910–9610. If calling from Anchorage, Alaska call 561–9610. Individuals calling from out of state should call the teleconferencing operator collect at 1–907–561–9610. Public testimony will be accepted at the beginning of the meeting. After the public testimony, individuals will be able to listen to the Council's deliberation on the request for reconsideration of the Federal Subsistence Board's action in April on moose seasons in Unit 18.

MATTERS TO BE CONSIDERED: The Yukon-Kuskokwim Delta Subsistence Regional Advisory Council will be discussing the Request for Reconsideration from the Lower Yukon Moose Management Committee asking the Federal Subsistence Board to rescind its April action changing the moose season for the remainder of Unit 18 to August 25—Sepember 25 and to reinstate the September 1–September 30 season.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o Richard Pospahala, Office of Subsistence Management, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786–3447.

SUPPLEMENTARY INFORMATION: The Subsistence Regional Advisory Councils were established in accordance with Section 805 of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and Subsistence Management Regulations for Public Lands in Alaska. Subparts A, B, and C (57 FR 22940–22964, dated May 29, 1992). The Councils advise the Federal Government on all matters related to the subsistence taking of fish and wildlife on public lands in Alaska and operate in accordance with provisions of the Federal Advisory Committee Act. The public is invited to participate in the Yukon-Kuskokwim Delta Subsistence Regional Advisory Council meeting.

Dated: July 27, 1994.

William L. Hensley,

Chair, Federal Subsistence Board.

[FR Doc. 94–19084 Filed 8–4–94; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

International Trade Administration

Determination Not To Revoke Antidumping Duty Orders, Findings, and Suspension Agreement

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of determination not to revoke antidumping duty orders, findings, and a suspension agreement.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the antidumping duty orders, findings, and the suspension agreement listed below

EFFECTIVE DATE: August 5, 1994.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) may revoke an antidumping duty order or finding, or terminate a suspended investigation, pursuant to 19 CFR 353.25(d)(4)(iii), if no interested party has requested an administrative review for four consecutive annual anniversary months and no domestic interested party objects to the revocation or requests an administrative review.

We had not received a request to conduct administrative reviews of the following antidumping duty orders, findings, or suspension agreement for the last four consecutive annual anniversary months. Therefore, pursuant to § 353.25(d)(4)(i) of the Department's regulations, on September 9, 1993, November 2, 1993, December 27, 1993, December 30, 1993, January 3, 1994, January 27, 1994, February 4, 1994, and March 29, 1994, we published in the **Federal Register** notices of intent to revoke these antidumping duty orders and findings or terminate the suspended investigation and served written notice of the intent to each interested party on the Department's service list in each case. Within the specified time frame, we received objections from domestic interested parties to our intent to revoke these antidumping duty orders and findings or terminate these suspended investigations. Therefore, because domestic interested parties objected to the revocations and terminations, we no longer intend to revoke these antidumping duty orders and findings or terminate the suspended investigation.

Antidumping duty proceeding	Date of finding/order/ suspension agreement
JAPAN: Steel Wire Strand (A–588–068) Contact: Kris Campbell/Michael Rill (202) 482–4733 Objections: January 24, 1994 American Spring Wire Corp., Wire Rope Corp. of America, Inc., and Florida Wire & Cable Company.	43 FR 57599, 12/08/78
GERMANY: Animal Glue (A–428–062) Contact: Dennis Askey/Wendy Frankel (202) 482–5253 Objections: January 26, 1994 Hudson Industries Corporation.	42 FR 64116, 12/22/77
CANADA: Potash (A–122–701) Contact: Eric Hassman/Melissa Skinner (202) 482–3793 Objections: January 28, 1994 New Mexico Potash Corporation, Eddy Potash, Inc. and Mississippi Potash Corporation	53 FR 1393, 01/19/88
TAIWAN: Stainless Steel Cooking Ware (A–583–603) Contact: Valerie Turoscy/John Kugelman (202) 482–5253 Objections: January 7, 1994 Farberware Inc.	52 FR 2138, 01/20/87
S. AFRICA: Low-Fuming Brazing Copper Wire and Rod (A–791–502) Contact: Valerie Turoscy/John Kugelman (202) 482–5253 Objections: January 11, 1994 Copper and Brass Fabricators Council, Inc.	51 FR 3640, 01/29/86
JAPAN: Large Electric Motors (A–588–091) Contact: Elisabeth Urfer/Maureen Flannery (202) 482–4733 Objections: February 24, 1994, February 21, 1994 National Electrical Manufacturers Association. Reliance Electric Company.	45 FR 84994, 12/24/80
JAPAN: Small Electric Motors (A–588–090) Contact: Bruce Harsh/Linda Ludwig (202) 482–3793 Objections: November 24, 1993 Reliance Electric Company.	45 FR 73723, 11/06/80
BRAZIL: Butt-Weld Pipe Fittings (A–351–602) Contact: Michael Diminich/Richard Rimlinger (202) 482–4733 Objections: January 5, 1994 Tube Forgings of America, Inc., Hackney, Inc., Ladish Co., Inc., Mills Iron Works, Inc., and Steel Forgings, Inc.	51 FR 68391, 12/17/86
NEW ZEALAND: Brazing Copper Rod (A–614–502) Contact: Norbert Gannon/Kelly Parkhill (202) 482–2786 Objections: April 15, 1994 Copper & Brass Fabricators Council, Inc.	50 FR 69329, 12/04/85
ECUADOR: Certain Fresh Cut Flowers (A–331–602) Contact: Joseph Fargo/ Richard Rimlinger (202) 482–4722 Objections: April 28, 1994 The Floral Trade Council.	52 FR 8494, 03/18/87
PEOPLE'S REPUBLIC OF CHINA: Chloropicrin—(A–570–002) Contact: David Levy/Michael Rill (202) 482–4722 Objections: April 22, 1994 Niklor Chemical Co., Trinity Manufacturing, Inc., HoltraChem Manufacturing, and ASHTA Chemicals.	49 FR 10691, 03/22/84
PEOPLE'S REPUBLIC OF CHINA: Paint Brushes—(A–570–501) Contact: Maureen Shields/John Kugelman (202) 482–5253 Objections: April 7, 1994, April 11, 1994, April 12, 1994, April 14, 1994, April 15 1994, April 18, 1994 Maryland Brush Co., American Brush Manufacturers Association, R.L. Noon Associates, Inc., Stanley American Brush Co., and EZ Painter Corporation.	51 FR 5580, 02/14/86
JAPAN: Melamine (A–588–056) Contact: Todd Peterson/Tom Futtner (202) 482–5253 Objections: March 30, 1994 Melamine Chemicals, Inc.	42 FR 6366, 02/02/77
CANADA: Steel Jacks (A–122–006) Contact: Maureen Shields/John Kugelman (202) 482–5253 Objections: September 21, 1993 Bloomfield Manufacturing Company, Inc.	21 FR 11974, 09/13/66

Antidumping duty proceeding	Date of finding/order/ suspension agreement
JAPAN:	
Butt-Weld Pipe Fittings (A–588–602)	
Contact: Sheila Forbes/John Kugelman (202) 482–5253	52 FR 4167, 02/10/87
Objections: February 18, 1994	
Tube Forgings of America, Inc., Hackney, Inc., Ladish Co., Inc., Mills Iron Works, Inc. and Steel Forgings, Inc.	
We previously published notices of our intent to revoke the three cases listed below. Although we received objections to revocation, through inadvertence we never published determinations not to revoke.	
AUSTRALIA:	
Canned Bartlett Pears (A–602–039)	38 FR 7566, 03/23/73
Contact: David Levy/Michael Rill (202) 482–4733	
Objections: April 12, 1994	
Pacific Coast Canned Pear Service, Inc.	
FINLAND:	
Rayon Staple Fiber (A–405–071)	44 FR 17156, 03/21/79
Contact: Karen Parks/Tom Futtner (202) 482–5253	
Objections: April 11, 1994	
Courtaulds Fibers Inc. and Lenzing Fibers Corporation.	
FRANCE:	
Brass Sheet and Strip (A–427–602)	52 FR 6955, 03/05/87

Contact: Chip Hayes/John Kugelman (202) 482–5253
Objections: April 7, 1994
Copper and Brass Fabricators Council, Inc

Dated July 27, 1994.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 94–19171 Filed 8–4–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–570–828]

Postponement of Final Antidumping Duty Determination: Silicomanganese From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce

ACTION: Notice.

EFFECTIVE DATE: August 5, 1994.

FOR FURTHER INFORMATION CONTACT: Michelle Frederick or Paul Kullman, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0186 or (202) 482–1279.

POSTPONEMENT OF FINAL DETERMINATION: On June 10, 1994, (59 FR 31199, June 17, 1994), the Department of Commerce (the Department) issued an affirmative preliminary determination in the antidumping duty investigation of silicomanganese from the People's Republic of China (PRC).

In accordance with section 735(a)(2)(A) of the Tariff Act of 1930, as amended, (the Act), two exporters of silicomanganese, the China National Nonferrous Metals Import & Export Corporation (CNIEC) and the China Metallurgical Import & Export Corporation (China Metallurgical), requested in letters dated July 21, 1994, that the Department postpone its final determination in this investigation until 135 days after the date of publication of the preliminary determination. Under section 735(a)(2) of the Act and § 353.20(b) of the Department's regulations (19 CFR 353.20(b)) if, subsequent to an affirmative preliminary determination, the Department receives a request for postponement of the final determination from producers or resellers who account for a significant proportion of exports of the merchandise, the Department will, absent compelling reasons for denial, grant the request. Accordingly, we are postponing our final determination in this investigation until October 31, 1994.

This notice is published pursuant to section 735(d) of the Act and 19 CFR 353.20(b)(2).

Dated: July 28, 1994.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–19170 Filed 8–4–94; 8:45 am]

BILLING CODE 3510–DS–P

Minority Business Development Agency

MEGA Center Applications: Chicago, IL; Correction

AGENCY: Minority Business Development Agency, Commerce.

SUMMARY: In notice document 94–18311 beginning on page 38436 in the issue of Thursday, July 28, 1994, make the following correction:

On Page 38437 in the first column, in the first sentence under **SUPPLEMENTARY INFORMATION:** the first budget period is listed from January 1, 1995 through March 31, 1996. This should be changed to read from December 1, 1994 through February 29, 1996.

Dated: August 1, 1994.

Donald L. Powers,

Federal Register Liaison Officer.

[FR Doc. 94–19104 Filed 8–4–94; 8:45 am]

BILLING CODE 3510–21–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds to the Procurement List a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: September 6, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On November 11, 1993, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (58 FR 62647) of proposed addition to the Procurement List. After

consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the service.

3. The action will result in authorizing small entities to furnish the service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the service proposed for addition to the Procurement List. Accordingly, the following service is hereby added to the Procurement List: Painting Service, Family Quarters, Fort Sam Houston, Texas.

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–19158 Filed 8–4–94; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Addition

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to the Procurement List.

SUMMARY: This action adds to the Procurement List a commodity to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: September 6, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On February 25, 1994, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (59 FR 9189) of proposed addition to the Procurement List. Comments were received from the current contractor for the grommet in response to a request for sales data. In providing the data, the contractor indicated that loss of the contract would increase its prices for other items made of the same material, and reduce the company's competitiveness, because it would have to pay higher prices for the smaller volume of the material it would order if the grommet is added to the Procurement List. The contractor also indicated that it had spent a great amount of money to develop molds for the grommet, as a new producer would have to do. Because it has several molds, the contractor believes that it can produce the grommet for many years without subsequent investment, and that its experience with the molds permits it to keep the molds in running order easily.

The contractor did not provide data to indicate the extent of the impact which paying higher prices for material would have on the company. Consequently, the Committee cannot assess how much it would add to the impact of losing Government sales of the grommet. The sales loss alone represents such a small percentage of the contractor's total sales that the Committee does not consider it to constitute severe adverse impact.

The contractor's point about a new producer having to create new molds at substantial cost would appear to be a way of claiming that this cost would be reflected in the price the Government will pay for molds produced under the Committee's program. However, the Committee is required to set a fair market price for items the Government buys under its program. Consequently, the nonprofit agency which will produce the grommet under the Committee's program will not be able to charge an unfairly high price for the grommets in order to recoup its costs for the new molds.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity, fair market price, and impact of the addition on the current or most recent contractors, the Committee has determined that the commodity listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodity.

3. The action will result in authorizing small entities to furnish the commodity to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity proposed for addition to the Procurement List. Accordingly, the following commodity is hereby added to the Procurement List:

Grommet
8140–01–051–9951

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–19159 Filed 8–4–94; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: September 6, 1994.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2–3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as

otherwise indicated) will be required to procure the commodities and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and service have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Door Knob Conversion Kit
5340–00–NIB–0003 thru –0058
(Brushed Aluminum, Polished Chrome, Brass, Polished Brass, Antique Brass, Satin Bronze, Oil Rubbed Bronze, Black)
NPA: Wiscraft, Inc., Milwaukee, Wisconsin

Paper, Xerographic
7530–01–200–2203
7530–01–085–5225
7530–01–200–2204
7530–01–146–3361
7530–01–148–1766
7530–01–156–4689
7530–01–147–6812
7530–01–150–0334
7530–01–147–6811
7530–01–200–2207
7530–01–200–2206
NPA: Louisiana Association for the Blind, Shreveport, Louisiana

Napkin, Table, Paper
8540–00–965–4691
NPA: Duluth Lighthouse for the Blind, Duluth, Minnesota

Service

Janitorial/Custodial, Federal Building, Wilkes-Barre, Pennsylvania
NPA: United Rehabilitation Services, Inc., Wilkes-Barre, Pennsylvania

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–19160 Filed 8–4–94; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List a commodity and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: September 6, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2–3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodity and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and service to the Government.

2. The action will result in authorizing small entities to furnish the commodity and service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46 - 48c) in connection with the commodity and service proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodity and service have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodity

Filter Element
4130–01–103–8339
NPA: Sheltered Work Services of Rome, Inc., Rome, Georgia

Service

Grounds Maintenance, Admiral Bakerfield's U.S. Army Reserve Center, San Diego, California
NPA: Mental Health Systems, Inc. San Diego, California

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–19161 Filed 8–4–94; 8:45 am]

BILLING CODE 6820–33–P

Proposed Additions to the Procurement List; Corrections

In the document appearing on page 37465, F.R. Doc. 94–17893, in the issue of July 22, 1994, in the third column, the NSN listed as 4120–01–306–7826 should read 4210–01–306–7826. Also in the third column, the service listed at Jonesboro, Georgia should read Jonesboro, Arkansas.

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–19162 Filed 8–4–94; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Availability of the Amendments to the National Direct Student Loan and Federal Perkins Loan Programs Directory of Designated Low-Income Schools for Teacher Cancellation Benefits for the 1993–94 School Year

AGENCY: Department of Education.

ACTION: Notice of availability of the amendments to the 1993–94 National Direct Student Loan and Federal Perkins Loan Programs Directory of Designated Low-Income Schools.

SUMMARY: Institutions and borrowers participating in the Federal Perkins Loan and National Direct Student Loan Programs and other interested persons are advised that they may obtain information regarding the amendments to the National Direct Student Loan and

Federal Perkins Loan Programs Directory of Designated Low-Income Schools for Teacher Cancellation Benefits for the 1993–94 School Year (Directory). The amendments identify changes in the list of schools that qualify borrowers for teacher cancellation benefits under each of the loan programs.

DATES: The amendments to the Directory are currently available.

ADDRESSES: Information concerning specific schools listed in the amendments to the Directory may be obtained from Systems Administration Branch, Campus-Based Programs System Division, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 4621, ROB–3), Washington, D.C. 20202–5453, Telephone (202) 708–6730.

Information concerning deferment and/or cancellation of a National Direct Student Loan or Federal Perkins Loan may be obtained from Susan M. Morgan, Section Chief, Campus-Based Loan Programs Section, Loans Branch, Policy Development Division, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue S.W. (Room 4310, ROB–3), Washington, D.C. 20202–5453, Telephone (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: The amendments to the Directory are available at (1) each institution of higher education participating in the Federal Perkins Loan Program, (2) each of the fifty-seven (57) State and Territory Departments of Education, (3) each of the major Federal Perkins Loan billing services, and (4) the U.S. Department of Education.

SUPPLEMENTARY INFORMATION: The Secretary of Education published a notice in the **Federal Register** on January 11, 1994, (59 FR 1616) that the Directory was available. The Secretary has revised the Directory due to the opening and closing of schools, school name changes, and the need for other corrections. These revisions are listed in the amendments to the Directory.

The procedures for selecting the schools that qualify borrowers for cancellation benefits are described in the Federal Perkins Loan Program regulations at 34 CFR 674.53 and 674.54. The Secretary has determined that for the 1993–94 academic year full-time teaching in the schools set forth in the Directory and the amendments to the Directory qualifies a borrower for cancellation benefits.

The Secretary is providing the amendments to the Directory to each institution participating in the Federal Perkins Loan Program. Borrowers and other interested parties may check with their lending institutions, the appropriate State or Territory Department of Education, regional offices of the Department of Education, or the Office of Postsecondary Education of the Department of Education concerning the identity of qualifying schools for the 1993–94 academic year.

The Office of Postsecondary Education retains, on a permanent basis, copies of all published amendments and Directories.

(Catalog of Federal Domestic Assistance Number 84.037; National Defense/Direct and Federal Perkins Student Loan Cancellations.)

Dated: July 28, 1994.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 94–19091 Filed 8–4–94; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Intent to Prepare A Site-Wide Environmental Impact Statement for the Rocky Flats Environmental Technology Site Golden, CO

AGENCY: United States Department of Energy (DOE).

ACTION: Notice of Intent (NOI).

SUMMARY: DOE announces its intent to prepare a Site-wide Environmental Impact Statement (SWEIS) for the Rocky Flats Environmental Technology Site (formerly known as the Rocky Flats Plant) located near Golden in Jefferson County, CO. The SWEIS is being prepared pursuant to the National Environmental Policy Act (NEPA), as amended (42 USC 4321 *et seq.*), and in accordance with the Council on Environmental Quality Regulations for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500-1508) and the DOE NEPA Implementing Procedures (10 CFR Part 1021).

DATES: The public scoping period begins with the publication of this NOI and will continue until September 6, 1994. Written comments postmarked by that date will be considered in the preparation of the SWEIS. Comments postmarked after that date will be considered to the extent practicable.

ADDRESSES: Written comments or suggestions on the scope of the SWEIS or the issues to be addressed should be submitted to: Ms. Beth Brainard-Jordan, Office of Communications and Economic Development (T117A), U.S. Department of Energy, Rocky Flats Field Office, P.O. Box 928, Golden, CO 80402–0928 (Envelopes should be marked "SWEIS.")

FOR FURTHER INFORMATION CONTACT: For further information on the Rocky Flats SWEIS, please contact: Ms. Patricia Powell, NEPA Compliance Officer, Environmental Guidance Division (T–117), U.S. Department of Energy, Rocky Flats Field Office, P.O. Box 928, Golden, CO 80402–0928, Telephone number: 1–303–966–3260 .

For general information on the DOE NEPA review process, please contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight (EH–25), U.S. Department of Energy, 1000 Independence Avenue, S.W., Washington, DC 20585, Telephone number: 1–202–586–4600 or leave a message at 1–800–472–2756.

Addresses of reading rooms where additional SWEIS information is available are listed under Public Scoping Process, below.

SUPPLEMENTARY INFORMATION: Rocky Flats, a Federal Government-owned, contractor-operated facility near Golden, Colorado, began operations in 1952. The site's primary mission was the production of component parts for nuclear weapons. Key production activities involved the fabrication of parts from plutonium, uranium, and nonradioactive metals, such as beryllium, stainless steel, and aluminum. Components made at Rocky Flats were shipped elsewhere for assembly. Components from obsolete nuclear weapons were disassembled and processed to recover plutonium and americium (a by-product of plutonium radioactive decay). Enriched uranium components were separated and shipped elsewhere for recycling. In support of weapon component fabrication, Rocky Flats operated facilities for the storage, treatment, and transport of waste; chemical laboratories; research and development facilities; and special support operations for other DOE facilities.

In the process of fulfilling its national security mission, Rocky Flats generated waste materials that have contaminated soils, groundwater, and surface water with chemical and radioactive substances. In 1989, Rocky Flats was placed on the U.S. Environmental Protection Agency's National Priorities List under the Comprehensive Environmental Response, Compensation, and Liability Act of

1980, as amended. Cleanup, decontamination, and restoration of Rocky Flats is part of DOE's overall commitment to properly and safely manage sites under DOE's stewardship and to reduce or eliminate risks to the environment and public health and safety. These activities are being conducted at Rocky Flats under an Interagency Agreement regarding the remedial cleanup of Rocky Flats between DOE, the U.S. Environmental Protection Agency, and the Colorado Department of Health. This agreement is currently under renegotiation as the Rocky Flats Cleanup Agreement.

Rocky Flats will have completed a transition from a weapons complex site to one that has predominantly an environmental restoration and waste management mission by the end of fiscal year 1994 (September 30, 1994). The only weapons complex function still performed by the facility is the manufacture of a number of nonnuclear parts for nuclear weapons. As a result of the recent decision to consolidate the weapons complex nonnuclear manufacturing activities, the remaining weapons complex activities at the site will be terminated at the end of fiscal year 1994, and will be moved to the Department's Kansas City Plant. Thus, the new mission of the site will be to clean up and convert Rocky Flats to beneficial uses in a manner that is safe, environmentally and socially responsible, physically secure and cost-effective. In light of these changes, the name of the facility has recently been changed from the Rocky Flats Plant to the Rocky Flats Environmental Technology Site.

As defined in the DOE NEPA Implementing Procedures, a SWEIS is a broad-scope, programmatic NEPA document that identifies and assesses the individual and cumulative environmental effects of ongoing and reasonably foreseeable future actions at a DOE site. A SWEIS may be used to assess potential effects related to changes in overall operational mode or mission. Subsequent, project-specific NEPA documents may be tiered from a SWEIS, and general information included in the SWEIS can be incorporated by reference into project-specific NEPA documents.

The Rocky Flats SWEIS is being prepared to update and replace the April 1980, Final Environmental Impact Statement for the Rocky Flats Plant Site (DOE/EIS–0064), and to provide a basis for selection of a site-wide strategic approach to implementing Rocky Flats' change in mission from production of nuclear weapons components to nuclear materials storage, waste management, cleanup, and economic conversion. The SWEIS will also support project level decisions within the next 5–10 years regarding land use, management of nuclear materials, deactivation of Rocky Flats facilities, decontamination and decommissioning of existing facilities for conversion to beneficial uses, need for additional waste storage facilities, and possible onsite and offsite transportation of radioactive, hazardous and mixed wastes. This NOI provides a proposed action and two alternatives for public review and comment.

This notice supersedes the NOI for the Rocky Flats SWEIS published at 56 FR 10548, March 13, 1991, and the NOI for the Plutonium Recovery Modification Project published at 55 FR 21919, May 22, 1990. As a result of the cancellation of nuclear weapons production at Rocky Flats, both the 1991 SWEIS NOI and the Plutonium Recovery Modification Project NOI no longer reflect Rocky Flats' current mission. Accordingly, both the 1991 SWEIS NOI and the Plutonium Recovery Modification Project NOI are withdrawn.

Public Scoping Process: To ensure the SWEIS addresses the full range of issues and alternatives related to this proposal, DOE invites all interested parties, including the general public, to submit oral or written comments on the issues to be addressed and the alternatives to be analyzed in the SWEIS. Interested parties may submit written comments to Beth Brainard-Jordan at the address listed above, at facsimile number 1–303–966–6633, or at the public scoping meeting.

DOE also invites all interested parties to present oral and/or written comments at the public scoping meeting scheduled for August 23, 1994. In addition, parties are invited to offer comments or suggestions concerning the SWEIS by calling the Rocky Flats SWEIS telephone hotline at 1–800–801–2026. All written and oral comments will be recorded and given equal weight in preparation of the Draft SWEIS.

The scoping process includes informal scoping workshops, which have begun and will continue until the close of the comment period. These workshops are designed to provide interested parties with an effective, informal mechanism for two-way communication with DOE. Dates, times, and locations of the workshops will be advertised locally in the Golden, CO, area.

A public scoping meeting is being held to assist in defining the appropriate scope of the SWEIS and the significant environmental issues to be addressed. This meeting is scheduled for August 23, 1994, from 2:00 to 4:30 P.M. and from 6:00 to 8:00 P.M., at the Arvada Center for the Arts and Humanities, 6901 Wadsworth Boulevard, Arvada, CO. This public scoping meeting will be conducted by a facilitator, and will not be a formal evidentiary hearing. The facilitator, DOE representatives, and members of the public present may ask for clarification of comments and statements. Requests to speak at the meeting and requests for additional information may be made by calling the toll-free telephone number 1–800–801–2026 or by facsimile at 1–303–832–9095. People may also register at the meeting to speak.

To ensure that all interested parties have an opportunity to speak, five minutes will be allotted for each speaker. Depending on the number of persons requesting to speak, the facilitator may allow people to speak more than once or allot additional time for elected officials, organizations, or speakers representing multiple parties. Persons speaking on behalf of organizations should identify the name of the organization in their request to speak. Persons who have not submitted a request to speak in advance of the public scoping meeting, but who have registered at the meeting, will be called upon to speak in turn after the pre-registered speakers. Written comments will also be accepted at the meeting, and speakers are encouraged to provide written versions of their oral comments for the record.

DOE is committed to providing opportunities for the involvement of interested individuals and groups in this and other DOE planning activities. DOE will publish additional information on the date and location of the public scoping meeting in local newspapers well in advance of the scheduled meeting date. If it becomes necessary to change the date, time or location of the public scoping meeting, the changes will be announced in appropriate media.

DOE will record and prepare transcripts of the public scoping meeting comments. Interested parties will be able to review the transcripts, written comments, reference material, related NEPA documents, and background information on Rocky Flats during normal business hours at the following reading rooms:

The DOE Freedom of Information Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, 1–202–586–6020

The Colorado Department of Health, 4300 Cherry Creek Drive South, Building B–2, Denver, CO 80222–1530, 1–303–692–2056

DOE Rocky Flats Public Reading Room, Front Range Community College Library, 3645 West 112th Avenue, Westminster, CO 80030, 1-303-469-4435

Rocky Flats Citizens Advisory Board, 9035 Wadsworth Parkway, Suite 2250, Westminster, CO 80021, 1-303-420-7855

Standley Lake Library, 8485 Kipling Street, Arvada, CO 80005, 1-303-456-0806

U. S. Environmental Protection Agency, Superfund Records Center, 999 18th Street, 5th Floor, Denver, CO 80202-2405, 1-303-293-1807

DOE will prepare a SWEIS Implementation Plan after completion of the public scoping process. The SWEIS Implementation Plan will be placed in the public reading rooms for review, and copies will be made available to the public upon request. The Implementation Plan will be a brief document that will provide guidance for the preparation of the SWEIS in accordance with 10 CFR 1021.312 and will include a discussion of the intended scope and content of the SWEIS; a summary of the comments received and their disposition; and target dates for completion of the Draft SWEIS, Final SWEIS, and issuance of a Record of Decision.

Preliminary Alternatives: This section describes three preliminary alternatives that represent the spectrum of options available for future actions at Rocky Flats. Each alternative represents a broad direction regarding materials management, waste management, and site cleanup that DOE could take during the ten-year period after the issuance of a Record of Decision.

DOE recognizes that there may be a need to redefine these alternatives and welcomes comments on the best way to accomplish this. The actions DOE chooses to implement, through the Record of Decision, may be composites of actions analyzed in the SWEIS alternatives. Proposed future actions that are not well enough defined to be analyzed in the SWEIS will be subject to separate NEPA review tiered from the SWEIS.

Alternative 1—No Action: Analysis of the no action alternative provides a reference point for comparison with the environmental effects of the other alternatives analyzed. The No Action alternative would include ongoing activities and planned activities for which decisions have already been made to proceed. DOE will continue to conduct these activities as the SWEIS is being prepared.

The ongoing activities included in the no action alternative are site cleanup and minor facility upgrades. Examples include:

- Transfer of non-nuclear weapons manufacturing to Kansas City
- Continuation of remediation under the Interagency Agreement
- Treatment and storage of onsite wastes up to currently approved limits
- Shipping wastes offsite to permitted disposal facilities that have agreed to accept the waste
- Maintenance activities
- Activities needed to support ongoing site programs and to safeguard nuclear material

DOE is also considering certain proposed actions for which NEPA review may be completed during the preparation of the SWEIS. DOE may decide to proceed with actions for which NEPA review has been completed and which are allowable as interim actions during the preparation of the SWEIS (see limitations stated in 40 CFR 1506.1, for example). These actions would then become a part of the No Action alternative. Such planned activities may include:

- Consolidation of fissile materials storage locations
- Rehabilitation of site drainage ditches
- Actinide solution processing
- Construction of a storage facility for investigation-derived material

The no action alternative would not include cleanup activities and waste management activities that require new permits or facility upgrades that involve major expansions or modifications to existing buildings. Transfer of buildings or property to private ownership (economic conversion) would not be included in the no action alternative. Excluding these actions from this alternative provides the reference point that shows the effects of site operations with no major improvements or modifications.

Analysis of the no action alternative is required by Council on Environmental Quality and DOE regulations.

Alternative 2—Proposed Action: This alternative encompasses the activities addressed in Alternative 1 plus other actions necessary to meet environmental, regulatory, and security requirements and other mission objectives that would be taken within the ten years following the Record of Decision. The proposed action includes activities described in the Transition Plan Report to Congress, the Rocky Flats Strategic Plan, actions under discussion in connection with the Rocky Flats Cleanup Agreement that is currently being negotiated, and anticipated activities under the Federal Facility Compliance Act. Examples include, but are not limited to:

- Materials management—consolidate all non-waste materials
- Waste Management—store onsite and dispose of offsite; pretreat, if necessary
- Upgrade buildings to meet the new mission and current regulatory requirements
- Economic conversion to transfer buildings or property to private use or ownership
- Deactivation of onsite facilities

Alternative 3: This alternative assumes that offsite disposal facilities may not be available as envisioned in current plans, and involves programs that would create suitable facilities for prolonged storage of waste and other materials. The onsite activities included in Alternative 2, with the exception of economic conversion, would be encompassed by this alternative plus the construction of onsite facilities suitable for storing nuclear materials and transuranic waste until offsite disposition is available. Low-level waste and mixed wastes would be disposed of onsite.

This alternative is consistent with the current mission statement, but involves design and construction of additional prolonged onsite storage and disposal capacity.

Preliminary Issues To Be Addressed: The SWEIS will address the impacts of the alternatives to the extent necessary to make a reasoned choice among the alternatives, using available data where possible and by obtaining new data where necessary. In accordance with Council on Environmental Quality regulations (40 CFR 1500.4 and 1502.21), other documents, as appropriate, may be incorporated into the impact analyses by reference, in whole or in part. The following preliminary issues are presented to facilitate public comment on the SWEIS. This presentation is not intended to be all-inclusive nor to be a predetermination of impacts to be considered.

1. Land Use. The SWEIS will consider land use planning issues in consultation with the Citizen's Advisory Board, including economic conversion and potential land use restrictions based on residual contamination levels.

2. Economic Conversion. The impacts of converting buildings onsite and portions of the buffer zone to private sector usage, including the impacts of decontaminating land and buildings for economic conversion.

3. Environmental Restoration. The impacts of environmental restoration activities to remediate past releases to

ground water, surface water, sediment, and soils.

4. Waste Management. The impacts of management (treatment, storage, and disposal) of solid and liquid waste, including residues, non-hazardous, hazardous, and mixed transuranic and low-level wastes.

5. Pollution Prevention. The SWEIS will consider appropriate and innovative pollution prevention, waste minimization, and energy and water use reduction technologies, including eliminating or significantly reducing (a) acquisition of unnecessary hazardous substances; and (b) energy, water, and related environmental impacts by promoting use of energy efficiency and renewable energy technologies.

6. Nuclear Materials. The impacts of storage and management of nuclear materials until their disposition can be determined.

7. Soil, Water, and Air. Potential impacts to soil, water, and air.

8. Sensitive Environmental Resources. Potential impacts to plants, animals, and habitat, including impacts to floodplains, wetlands, and threatened and endangered species and their habitat.

9. Cultural Resources. Potential impacts to cultural resources, such as historic, archaeological, scientific, or other culturally important sites.

10. Socioeconomic. Potential impacts to local and regional socioeconomic conditions and factors, including urban encroachment, employment, housing, tax base, and community infrastructure and services.

11. Environmental Justice. Potential disproportionate impacts of DOE activities on minority or low-income populations.

12. Transportation. Potential impacts on the environment and public health from the on- and off-site transportation of radioactive and/or hazardous materials, equipment, products, and wastes.

13. Public and Occupational Safety and Health. The radiological and non-radiological impacts on workers and the public from routine site operations and potential accidents.

14. Regulatory Compliance. The impacts of the alternatives on compliance of Rocky Flats with applicable Federal and State requirements.

Related Documentation: NEPA documents that have been or are being prepared that concern activities at Rocky Flats include the following:

1. Programmatic Environmental Impact Statement for Environmental Restoration and Waste Management (EM–PEIS). The EM–PEIS will analyze complex-wide environmental restoration and waste management issues and alternatives. DOE published the NOI to prepare the EM–PEIS on October 22, 1990 (55 FR 42633) and issued an Implementation Plan on December 23, 1993. The Rocky Flats SWEIS will discuss its relationship to the EM–PEIS and how issues addressed in the EM–PEIS could affect the alternatives analyzed in the SWEIS.

2. Proposed Interim Storage of Enriched Uranium Above the Maximum Historic Storage Levels at the Y–12 Plant (Enriched Uranium Environmental Assessment). The Enriched Uranium Environmental Assessment will analyze the treatment and storage of enriched uranium, including highly enriched uranyl nitrates now stored at Rocky Flats and at DOE's Y–12 Plant in Oak Ridge, TN. DOE will incorporate into the Rocky Flats SWEIS, as appropriate, any decisions made about interim storage and treatment of highly enriched uranium as a result of the Enriched Uranium Environmental Assessment.

3. Resumption of Thermal Stabilization of Plutonium in Building 707, Rocky Flats Plant: Environmental Assessment (DOE/EA–0887). This environmental assessment analyzed the impacts of heating small quantities of plutonium powder in gloveboxes, under controlled conditions, in Building 707. DOE issued a Finding of No Significant Impact on February 10, 1994. The Rocky Flats SWEIS will incorporate the decisions made about thermal stabilization of plutonium into the Rocky Flats SWEIS and discuss how issues addressed in the Building 707 Environmental Assessment could affect the alternatives analyzed in the Rocky Flats SWEIS.

4. Nonnuclear Consolidation Environmental Assessment (DOE/EA–0792). The Nonnuclear Consolidation Environmental Assessment analyzed the DOE's proposal to withdraw defense activities from the Mound, Pinellas, and Rocky Flats Plants, and consolidate most of the nonnuclear activities at the Kansas City Plant. Consolidation was evaluated in terms of operating costs, protection of the environment and public and worker health and safety, and preservation of technical competency to maintain the nuclear deterrent. DOE issued a Finding of No Significant Impact on July 8, 1993. The Rocky Flats SWEIS will discuss how issues addressed in the Nonnuclear Consolidation Environmental Assessment could affect the alternatives analyzed in the Rocky Flats SWEIS.

5. Programmatic Environmental Impact Statement for the Storage and Disposition of Fissile Nuclear Materials. This Environmental Impact Statement will assess alternatives and assist in establishing a national policy for the long term storage and disposition of fissile nuclear materials. Any decisions resulting from the Rocky Flats SWEIS regarding the storage and disposition of fissile nuclear materials will be interim decisions that will not affect the long-term, DOE-wide decisions to be made following completion of the Nuclear Materials Programmatic Environmental Impact Statement.

6. Site-wide Environmental Impact Statement (SWEIS) for the Nevada Test Site and Other Off-site Test Locations within the State of Nevada. This SWEIS would evaluate alternative management strategies for the Nevada Test Site, which would support current and future defense related missions, research and development, waste management, environmental restoration, infrastructure maintenance, and facility upgrades and alternative uses over the next 5–10 years. This SWEIS would also address environmental restoration and other related activities at other offsite test locations within the State of Nevada, which include the Project Shoal Area, Central Nevada Test Area, Tonopah Test Range, and portions of the Nellis Air Force Range. In the Nevada SWEIS, DOE would consider the transportation, management and disposal at the Nevada Test Site of wastes from other locations, including the Rocky Flats Environmental Technology Site.

Issued in Washington, DC, on July 29, 1994.

Tara J. O'Toole,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 94–19149 Filed 8–4–94; 8:45 am]

BILLING CODE 6450–01–P

Kansas City Support Office; Noncompetitive Financial Assistance Award; Kansas State University, Engineering Extension Service

AGENCY: Department of Energy.

ACTION: Notice of Noncompetitive Financial Assistance Award.

SUMMARY: The U.S. Department of Energy (DOE), Kansas City Support Office announces that, pursuant to the DOE Financial Assistance Rules 10 CFR 600.7(b)(2), DOE intends to make a noncompetitive financial assistance award to Kansas State University, Engineering Extension Service (KSU/EES), for technical assistance in the DOE/HUD Base System Analysis Maintenance Program.

PROJECT PERIOD: The project period for the grant award is extended 12 months to September 30, 1995. Total funding for the FY94 portion of the project is expected to be approximately $15,000.

FOR FURTHER INFORMATION CONTACT: Kirk M. Bond, Program Engineer, (816) 426–7054 or JoAnn Timm, Contracting Officer, (816) 426–3116 at U.S. Department of Energy, Kansas City Regional Support Office, 911 Walnut St., Suite 1411, Kansas City, MO 64106–2024 FAX: (816) 426–6860.

SUPPLEMENTARY INFORMATION: KSU/EES provided technical, computer, and software support for the DOE/HUD Initiative in FY91, FY92 and FY93. That effort will be continued and evolve in the FY94 project effort. KSU/EES will: (1) secure needed modifications to the utility record system software (ENACT–2) developed by the Washington State Energy Office; (2) assist in institutionalizing the revised software into the HUD/PHA management process; (3) develop a summary report on the efficacy of the ENACT–2 program for HUD and PHAs energy management, and make recommendations on additional software enhancements, how to facilitate its national replication in the HUD/PHA management system/interface. Due to their prior involvement, and associated experience, their staff is uniquely qualified to continue the efforts associated with their assigned tasks. KSU/EES has expended much time and effort in helping analyze the extensive engineering and facility management relationships and complexities that are associated with the program. It would not be cost effective to sever that base of knowledge in either time or funds because competition for support would have a significant adverse effect on continuity and completion of the project in the time frame approved by DOE Washington.

Issued in Golden, Colorado on July 20, 1994.

John W. Meeker,

Chief, Procurement Team, CO.

[FR Doc. 94–19151 Filed 8–4–94; 8:45 am]

BILLING CODE 6450–01–M

Financial Assistance Award: The State of Illinois

AGENCY: Department of Energy, Pittsburgh Energy Technology Center.

ACTION: Notice of intent.

SUMMARY: The Department of Energy (DOE), Pittsburgh Energy Technology Center, announces that pursuant to 10 CFR 600.7(b)(2)(i) criteria (A), (B), and (D) it intends to make a Non-Competitive Financial Assistance Award (Cooperative Agreement) to the State of Illinois for the "Support of High Sulfur Coal Research."

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Center, P.O. Box 10940, MS 921–118, Pittsburgh, PA 15236, Attn.: Nancy Toppetta, Telephone: (412) 892–5715.

SUPPLEMENTARY INFORMATION: The objective of the program is to continue broad-based research on high sulfur coal and thereby expand the technology base that will allow for the increased use of high sulfur coals in an economically and environmentally acceptable manner. The following are areas in which research will be conducted: Coal preparation (Cleaning, Characterization, and Reconstruction); Gas cleanup (Combustion and Gasification Gas Cleanup); Coal-Related waste management (Combustor, Gasifier, Preparation Plant, and FGD Waste); Coal conversion (Gasification, Liquefaction, Mild Gasification and Processing); Develop advanced combustion technologies and perform combustion testing; and other activities which include technology transfer activities, operation of the coal sample bank, market surveys/analyses and addressing global climate issues.

In accordance with criteria under 10 CFR 600.7(b)(2)(i) criteria (A), (B), and (D), the State of Illinois has been selected as the cooperative agreement recipient. Criterion (A) is satisfied since the research effort to be supported is a continuation of work presently being jointly funded by DOE and State of Illinois. Criterion (B) is satisfied since similar research projects would be conducted by the State using their own resources; however, additional DOE support will enhance the public benefit by permitting a larger number of more complex projects to be supported. Presently, neither the State nor DOE know of another entity which is conducting or is planning to conduct a similar high-sulfur coal research activity. Criterion (D) is also satisfied. The State has the unique domestic capability necessary to perform the planned research activities in view of the extensive program it has already conducted. The State also maintains a large database along with expertise gained through its Department of Energy & Natural Resources, Illinois Coal Development Board, Illinois Clean Coal Institute, Coal Industry Committee, and other dedicated State agencies.

The project period for the cooperative agreement is for three years with an initial funding period of twelve months. The estimated value for the initial funding period is $2,000,000.00. The State of Illinois is required to provide at least fifty percent cost sharing from non-federal sources.

Issued in Washington, DC on July 15, 1994.

Richard D. Rogus,

Contracting Officer.

[FR Doc. 94–19150 Filed 8–4–94; 8:45 am]

BILLING CODE 6450–01–M

Chicago Field Office, NREL Area Office; Federal Assistance Award to Photonic Sensor Systems, Inc.

AGENCY: Department of Energy.

ACTION: Notice of Noncompetitive Financial Assistance Award.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7, is announcing its intention to enter into a cooperative agreement with Photonic Sensor Systems, Inc. (PSS). This new cooperative agreement will in effect continue a research project that had been funded by the Department with Georgia Tech Research Corp. (GTRC), (an affiliate of the Georgia Institute of Technology) for development of a sensor system to monitor ammonia.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Field Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: J. K. Lewis, Contract Specialist or call (303) 275–4739. The Contracting Officer is John W. Meeker.

SUPPLEMENTARY INFORMATION: With assistance from DOE through Cooperative Agreement # DE–FC02–89ID12905, GTRC developed an optical sensor for real time detection of ammonia. The original application was to monitor ammonia transfer from agricultural croplands, and thereby reduce the amount of nitrogen fertilizer used; however, PSS has determined that the sensor can also facilitate the use of ammonia in a variety of industrial applications such as large scale refrigeration where the use of ammonia as the refrigerant has development of the sensor through commercial prototype and evaluation of this prototype in full-scale agricultural and industrial settings..

DOE has performed a review in accordance with 10 CFR 600.7 and has determined that the activity to be funded is necessary to the satisfactory

completion of, and is a continuation of, an activity presently being funded by DOE, and for which competition for support would have a significant adverse effect on continuity and satisfactory completion of the activity. Also, the applicant has exclusive domestic capability to perform the activity successfully based on ownership of the fundamental patent rights and technical expertise gained in the earlier phases of the project.

DOE funding for the proposed activity is estimated to be $605,000 and PSS's share is estimated to be $332,000 for a total of $937,000 over a three year project period.

Issued in Golden, CO on July 25, 1994.

John Meeker,

Contract Officer, GO.

[FR Doc. 94–19152 Filed 8–4–94; 8:45 am]

BILLING CODE 6450–01–M

Golden Field Office; Federal Assistance Award to Thermotrex East, Inc.

AGENCY: Department of Energy.

ACTION: Notice of Noncompetitive Financial Assistance Award.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7, is announcing its intention to award a grant to Thermotrex East, Inc. for continuing research and development activities to advance the commercialization of chemical vapor composite (CVC) materials.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: Matt Barron, Contract Specialist at (303) 275–4787. The Contracting Officer is John W. Meeker. The Project Manager is G. William Ives at (303) 275–4755.

SUPPLEMENTARY INFORMATION: Thermotrex East, Inc. has been conducting research for a number of years to develop CVC materials with the strength and toughness for high-temperature industrial applications at costs which are superior to current technology. Successful completion of this research and demonstration project will advance the goal to further develop and demonstrate composite ceramic materials for industrial application.

DOE has performed a review in accordance with 10 CFR 600.7 and has determined that the applicant had an exclusive domestic capability to perform the proposed activity successfully. Thermotrex East, Inc. has conducted prior research into this project, has proprietary data necessary to further develop the process, and has the requisite technical expertise necessary to conduct this project. Subject to eligibility determinations, the Department of Energy intends to make a financial assistance award to Thermotrex East, Inc. to undertake this activity.

The total project is estimated to cost $1,357,100 of which $407,100 will be provided by the participant and $950,000 will be provided by DOE. The anticipated period of performance is twelve (12) months.

Issued in Golden, Colorado on July 20, 1994.

John W. Meeker,

Contracting Officer.

[FR Doc. 94–19153 Filed 8–4–94; 8:45 am]

BILLING CODE 6450–01–M

Golden Field Office; Grant Award to the University of Pittsburgh

AGENCY: Department of Energy.

ACTION: Notice of Noncompetitive Financial Assistance Award.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.7, is announcing its intention to award a grant to the University of Pittsburgh for continuing research activities to advance the state-of-the-art in designing macromolecular electron delivery systems for artificial biocatalysis.

ADDRESSES: Questions regarding this announcement may be addressed to the U.S. Department of Energy, Golden Office, 1617 Cole Blvd., Golden, Colorado 80401, Attention: John K. Lewis, Contract Specialist at (303) 275–4787. The Contracting Officer is John W. Meeker at (303) 275–4787. The Project Officer is G. William Ives at (303) 275–4755.

SUPPLEMENTARY INFORMATION: The University of Pittsburgh has been conducting research for a number of years to develop electron delivery systems for artificial biocatalysis. Successful completion of this research will advance the goal to further develop the mapping of electron transfer pathways and to investigate multiple electron transfer reaction mechanisms necessary to reduce CO_2. This work is an extension of work currently being funded by DOE and competition for this effort would have a significant adverse impact on the continuity of this research program. The applicant has an exclusive domestic capability to perform this activity successfully because of the unique expertise of the principal investigator and the unique laboratory facility designed to support these efforts.

DOE has performed a review in accordance with 10 CFR 600.7 and has determined that the activity to be funded is necessary to satisfactorily complete the current project. DOE funding for this grant is estimated at $300,000 and the anticipated period of performance is thirty-six (36) months.

Issued in Golden, Colorado on July 25, 1994.

John W. Meeker,

Contracting Officer.

[FR Doc. 94–19154 Filed 8–4–94; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. CP94–682–000]

Southern Natural Gas Company; Application

August 1, 1994.

Take notice that on July 22, 1994, pursuant to Section 7 of the Natural Gas Act (NGA), as amended, and the Federal Energy Regulatory Commission's (Commission) Regulations (18 CFR 157.7), Southern Natural Gas Company (Applicant), P.O. Box 2563, Birmingham, Alabama 35202, filed an application for a certificate of public convenience and necessity authorizing the construction, installation and operation of pipeline, measurement and related appurtenant facilities, as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant states it has received long-term commitments for firm transportation service under its FT Rate Schedule from the Citizens Gas Utility District, Cookeville Gas Department, Etowah Utilities, Hawkins County Gas Utility, Jefferson-Cocke County Utility District, Knoxville Utilities Board, Loudon Utilities, Middle Tennessee Natural Gas Utility District, Oak Ridge Utility District, Powell-Clinch Utility District and United Cities Gas Company, hereinafter referred to as "Customers", for a total subscription of 11,350 Mcf per day of firm transportation service to the Customers. Applicant requests authorization to construct, install and operate approximately 21 miles of 12-inch pipeline and the necessary measurement facilities to connect its system at or near mile post 101.44 on its Chattanooga Branch Line in Catoosa

County, Georgia, with the facilities of Tenneco East, L.P., in Bradley County, Tennessee.

The estimated cost of the proposed facilities is $6,951,000. Although a final plan of financing has not been determined, Applicant states that the costs of construction will be financed initially by short-term financing and/or available cash from operations, and, ultimately, by permanent financing. In addition, Applicant requests the Commission waive all applicable provisions of its tariff and § 284.7 of the Commission's Regulations so that the Customers will not have to pay any GSR surcharges or transition costs on Applicant's system. Applicant requests Commission approval of the application by June 1, 1995, so that facilities will be available for service to the Customers on or before November 1, 1995.

Any person desiring to be heard or to make any protest with reference to said application should on or before August 21, 1994, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, or if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–19092 Filed 8–4–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–4713–9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared July 18, 1994 Through July 22, 1994 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(C) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in the **Federal Register** dated April 08, 1994 (59 FR 16807).

DRAFT EISs

ERP No. D–DOE–K06006–NV Rating EC2, Pinon Pine Coal-Fired Power Project, Construction, Operation and Maintenance, Funding, Tracy Power Station, Storey County, NV.

Summary: EPA expressed environmental concerns regarding the project's potential impacts to air quality and the need for additional information regarding best available control technology, for particulates. EPA also expressed concerns regarding potential impacts to water quality and biological resources, and recommended that the final EIS provide additional information in this respect.

ERP No. D–FHW–L40184–WA Rating EC2, WA–167 Corridor Adoption, WA–167 Freeway Extension from WA–167/ Meridian Street North in the City of Puyallup to the proposed WA–509 Freeway/East-West Alignment in the City of Tacoma, Funding and COE Section 404 Permit, Pierce County, WA.

Summary: EPA expressed environmental concerns based on the need to identify the corridor alternative with the least environmentally damaging wetlands impacts. EPA requested additional clarification whether the analysis of proposed mitigation was detailed enough to identify any major issues or costs associated with each corridor alternative.

ERP No. D–FHW–L40191–AK Rating EC2, Whittier Access Project, Construction between Port of Whittier and Seward Highway, Funding, Right-of-Way Agreement and COE Section 10 and 404 Permits, Chugauch National Forest, Municipality of Anchorage, City of Whittier, AK.

Summary: EPA expressed environmental concerns regarding hazardous waste sites, air and water quality and cumulative effects. EPA requested additional information be included in the final EIS concerning these issues.

ERP No. DS–NPS–F61015–IN Rating EC2, Gary Marina Development, Updated Information for the New Access Alternatives, Approval and Right-of-Way Permit, Indiana Dunes National Lakeshore, City of Gary, Lake County, IN.

Summary: EPA expressed environmental concerns based on potential impacts to surface water, groundwater and wetlands, and meeting RCRA corrective action provisions. EPA requested additional information on these aspects be provided in the FEIS.

Final EISs

ERP No. F–AFS–L61196–OR, Snake River Recreation Wild and Scenic River Management Plan, Implementation, Hells Canyon National Recreation Area, Wallowa-Whitman National Forest and Nez Perce and Payette National Forests, Bake and Wallowa Counties, OR, and Nez Perce, Idaho and Adams Counties, ID.

Summary: EPA provided no formal written comments. EPA had no objection to the preferred alternatives as described in the final EIS.

ERP No. F–BLM–L60100–ID, Twin Falls County Solid Waste Landfill Facility Construction and Operation, Land Acquisition, Twin Falls County, ID.

Summary: Review of the Final EIS has been completed and the project found to be satisfactory. No formal comment letter was sent to the preparing agency.

ERP No. F–COE–L28006–OR, Barney Reservoir Expansion Project, Increasing Municipal Water Supply on the Middle Fork of the North Fork Trash River, COE Section 404 Permit Issuance, Washington County, OR.

Summary: EPA had no objections to this project.

ERP No. F–FAA–G51027–AR, Northwest Arkansas Regional Airport, Construction of Replacement Airport for Drake Field in Fayetteville, Funding, Land Acquisition and Airport Layout Plan, City of Fayetteville, AR.

Summary: EPA review of the information presented, finds that all

areas of EPA responsibilities and concerns have been adequately addressed in the final EIS.

ERP No. F–FAA–L51041–AK, Anchorage International Airport Instrument Landing Systems (ILS), Construction and Operation, Install ILS on Runway 14, Approval, Funding and COE Section 404 Permit, Anchorage, AK.

Summary: EPA had no objection to the preferred alternative as described in the FEIS.

ERP No. F–FHW–G40135–AR, Newport/US 63/US 67 Construction, Newport to Walnut Ridge/Hoxie, Funding and COE Section 404 Permit, Jackson, Lawrence, Craighead and Poinsett Counties, AR.

Summary: EPA had no objection to implementation of the preferred alternative.

ERP No. F–UAF–K11052–CA, Travis Air Force Base, Defense Base Closure and Realignment, KC–10 Aircraft Realignment and Additional KC–10 Basing Proposal, Fairfield, CA.

Summary: The final EIS generally responded to the concerns EPA had raised on the draft EIS.

ERP No. FS–FHW–F40170–MN, TH–610 Construction, I–94 in Maple Grove to TH–252 in Brooklyn Park, Additional Funding and COE Section 404 Permit, Hennepin County, MN.

Summary: EPA had no objection to the preferred alternative.

Dated: August 2, 1994.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 94–19002 Filed 8–4–94; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–4713–8]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075.

Weekly receipt of Environmental Impact Statements Filed July 25, 1994 Through July 29, 1994 Pursuant to 40 CFR 1506.9.

EIS No. 940304, DRAFT EIS, DOE, WA, Safe Interim Storage of Hanford Tank Wastes, Double Shell Tanks (DSTs) and Cross Site Transfer System (CSTS) Construction, Hanford Site, Adams, Richland, Washington, Benton and Franklin Counties, WA, Due: September 19, 1994, Contact: Dr. Don Alexander (509) 372–2453.

EIS No. 940299, FINAL SUPPLEMENT, FHW, VA, VA–234 Bypass Corridor Transportation Improvement, VA–619 at Independent Hill to US 15 at Woolsey, Updated and New Information, Funding, City of Manassas, Prince William County, VA, Due: September 06, 1994, Contact: James M. Tumlin (804) 771–2371.

EIS No. 940300, DRAFT EIS, FHW, NH, Broad Street Parkway Project, Construction, Board Street near Exit 6 of the FE Everett Turnpike on the North to the West Hollis Street/Kinsley Street area near Pine Street on the South, Funding and Possible COE Section 404 Permit, Hillsborough County, NH, Due: September 19, 1994, Contact: William F. O'Donnell (603) 225–1608.

EIS No. 940301, DRAFT EIS, FHW, CA, US 101 Realignment Construction, near Cushing Creek from Mile Post 20.3 to 22.3 South of Crescent City, Funding and COE Permits, Del Norte County, CA, Due: September 19, 1994, Contact: John R. Schultz (916) 551–1314.

EIS No. 940302, FINAL EIS, SFW, IN, Patoka River National Wetlands Project, Land Acquisition for Fish and Wildlife Protection and Management, Funding and COE Section 404 Permit, Gibson and Pike Counties, IN, Due: September 06, 1994, Contact: William McCoy (812) 749–3199.

EIS No. 940303, LEGISLATIVE DRAFT EIS, AFS, NC, North Fork Mills, South Fork Mills and Mills Rivers Wild and Scenic River Study, Designation Nondesignation, into the National Wild and Scenic River System, Pisgah National Forest, Henderson and Transylvania Counties, NC, Due: September 30, 1994, Contact: Randle G. Phillips (704) 257–4200.

EIS No. 940305, FINAL SUPPLEMENT, USN, WA, US West Coast Homeporting Program for Fast Combat Support Ships (AOE–6 Class), Updated Information concerning Dredging and Dredge Disposal at Pier D Naval Shipyard Puget Sound for the Berthing of (AOE–6 Class) Ships and Temporary Berthing of Deep-Draft Vessels, Sincliar Inlet, Bremerton, WA, Due: September 06, 1994, Contact: Peter W. Havens (206) 396–5976.

EIS No. 940306, FINAL EIS, DOE, WA, ID, WY, CO, CA, OR, MT, UT, NM, NV, AZ, PacifiCorp Capacity Power Sale Contract for 1100 Megawatts (MW) Long-Term Contract for Peaking Capacity, Implementation, WA, OR, ID, MT, WY, UT, CO, CA, NV, AZ, NM and British Columbia, Due: September 06, 1994, Contact: Michael Ary (503) 230–4259.

EIS No. 940307, DRAFT SUPPLEMENT EIS, AFS, UT, Gardner Canyon Gypsum Open Pit Mine, Development and Operation, Updated Information, Special-Use-Permit and Possible COE Section 404 Permit, Mount Nebo Wilderness Area, Uinta National Forest, Juab County, UT, Due: October 01, 1994, Contact: Mark Sensibaugh (801) 798–3571.

EIS No. 940308, FINAL EIS, DOE, FL, Adoption Tampa Electric—Polk 1150 Megwatt Power Station Construction and Operation, NPDES and COE Section 404 Permits, Polk County, FL, Contact: Bruce Buvinger (304) 291–4379.

The US Department of Energy's has adopted the US Environmental Protection Agency's final EIS filed on 6–03–94. The DOE was a Cooperating Agency for the above final EIS. Recirculation of the document is not necessary Under § 1506.3(c) of the Council on Environmental Quality Regulations.

EIS No. 940309, FINAL EIS, DOE, OR, Coyote Springs Cogeneration Project, General Transmission Agreement Revision for Construction and Operations of the Coyote Springs Interconnection, Implementation and COE Permits, Morrow County, OR, Due: September 06, 1994, Contact: Ken Barnhart (503) 230–3667.

EIS No. 940310, FINAL EIS, NPS, WA, Hanford Reach of the Columbia River Comprehensive River Conservation Study, Designation or Nondesignation, National Wildlife Refuge with Wild and Scenic River Overlay, Benton, Grant and Franklin Counties, WA, Due: September 06, 1994, Contact: Ms. Kristen Sycamore (206) 220–4115.

EIS No. 940311, DRAFT EIS, FRC, CA, Clavey River Hydroelectric Project (FERC # 10081), Construction, Operation and Maintenance License, USFS Special-Use-Permit, BLM Right-of-Way Permit and COE Section 404 Permit Issuance, Tuolumne County, CA, Due: September 19, 1994, Contact: Mr. Thomas Camp (202) 219–2832.

Dated: August 1, 1994.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 94–19003 Filed 8–4–94; 8:45 am]

BILLING CODE 6560–50–U

[OPPT–59340; FRL–4904–3]

Certain Chemicals; Approval of a Test Marketing Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of an application for test marketing exemption (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated this application as TME–94–15. The test marketing conditions are described below.

EFFECTIVE DATE: July 25, 1994. Written comments will be received until August 22, 1994.

FOR FURTHER INFORMATION CONTACT: Edna Pleasants, New Chemicals Branch, Chemical Control Division (7405), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–613, 401 M St., SW., Washington, DC 20460, (202) 260–4142.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing, distribution in commerce, use and disposal of the substances for test marketing purposes will not present an unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present an unreasonable risk of injury.

Inadvertently, notice of receipt of the application was not published. Therefore, an opportunity to submit comments is being offered at this time. The complete nonconfidential document is available in the TSCA Nonconfidential Information Center (NCIC), Rm. NE–B607 at the above address between 12 noon and 4 p.m., Monday through Friday, excluding legal holidays. EPA may modify or revoke the test marketing exemption if comments are received which cast significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury.

EPA hereby approves TME–94–15. EPA had determined that test marketing of the new chemical substance described below, under the conditions set out in the TME application, and for the time period and restrictions specified below, will not present an unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the application. All other conditions and restrictions described in the application and in this notice must be met.

The following additional restriction applies to TME-94-15:

The Company is prohibited from any predictable or purposeful release of the PMN substance, or any waste stream from manufacture, processing, or use containing the PMN substance, to the waters of the United States.

T–94–15

Date of Receipt: June 10, 1994. The extended comment period will close (insert date 15 days after date of publication in the **Federal Register**).

Applicant: A and R materials, Inc.

Chemical: Isotopically altered zinc oxide (IAZO).

Use: Chemical additive to nuclear power plant coolant.

Production Volume: 1,000 Kilograms.

Number of Customers: One.

Test Marketing Period: Twelve months, commencing on the first day of manufacture under this exemption.

Risk Assessment: EPA identified no significant health concerns for the test market substance. Therefore, the test market activities will not present any unreasonable risk of injury to human health. EPA has concluded, if the TME substance were to be released to surface water, the TME substance may present an unreasonable risk of injury to the environment. Therefore, the company is prohibited from any predictable or purposeful release of the TME substance, or any waste stream from manufacture, processing, or use containing the TME substance, to the waters of the United States.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information come to its attention which casts significant doubt on its finding that the test marketing activities will not present an unreasonable risk of injury to health or the environment.

List of Subjects

Environmental protection, Test marketing exemptions.

Dated: July 25, 1994.

Charles M. Auer,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 94–19195 Filed 8–4–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

OMB Control No.: 3060–0168

Title: Reports of Proposed Changes in Depreciation Rates—Section 43.43

Expiration Date: 10/31/96

Estimated Annual Burden: 120,000 total hours; 10,000 hours per response.

Description: Section 220(b) of the Communications Act of 1934, as amended, 47 U.S.C. Section 220(b), requires the Commission to prescribe depreciation charges for the subject carriers. Section 219 of the Act requires annual and other reports from the carriers. Section 43.43 of the Commission's Rules establishes the reporting requirements for depreciation prescription purposes. Communication common carriers with annual operating revenues of $100 million or more that the Commission has found to be dominant must file information specified in Section 43.43 before making my change in the depreciation rates applicable to their operating plant. The Commission uses the information to establish proper depreciation rates to be charged by the carriers, pursuant to Section 220(b) of the Act. The information serves as the basis for depreciation analyses made by the Description Rates Branch in establishing the aforementioned rates. Without this information, the validity of the carriers' depreciation policies could not be ascertained. In the *Report and Order* in CC Docket No. 92–296 (released 10/20/93) (Depreciation Simplification Order), the Commission streamlined its depreciation prescription process for local exchange carriers (LECs) regulated under its price cap regulatory scheme by adopting a modified basic factor range approach. In the *Second Report and Order* issued in CC Docket No. 92–296, the Commission adopted the initial set of accounts and ranges for the price cap LECs and terminated phase one of the implementation process. Ranges will be set for the remaining accounts later this year.

OMB Control No.: 3060–0463

Title: Telecommunications Services for Individuals with Hearing and Speech Disabilities, and the Americans with Disabilities Act of 1990, CC Docket No. 90–571.

Expiration Date: 06/30/97

Estimated Annual Burden: 8,110 total hours; 112.64 hours per response

Description: Title IV of the Americans with Disabilities Act of 1990 (ADA), Public law 101–336, 104 Stat. 327, 366–69, added Section 225 of the Communications Act of 1934, amended Section 711 and made confronting amendments to Sections 2(b) and 221(b). 47 C.F.R. Part 64, Subpart F implements certain provisions of the ADA. It contains the operational, technical and functional standards required of all telecommunications relay services (TRS) providers and also the procedures for state certification and for filing complaints involving TRS. Information submitted in response to the state certification program will be used to determine whether the program is certifiable under federal requirements. Information submitted by complainants will be used to determine the merits of the complaints, and to attempt resolution.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–19082 Filed 8–4–94; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for a new FM station:

Applicant, City/ State	File No.	MM docket No.
A. Music Ministries, Inc.; Loogootee, IN.	BPED–920128MG	94–87
B. Community Education and Religion Broadcasting, Inc., Loogootee, IN.	BPED–920930MB	

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 Fed. Reg. 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicants

1. (See Appendix)—B
2. 307(b)—Noncommercial Educational FM—A & B
3. Comparative—Noncommercial Educational FM—A & B

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, N.W., Washington, D.C. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, N.W., Suite 140, Washington, D.C. 20037 (telephone (202)–857–3800).

Linda B. Blair,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix

1. To determine whether (B) CERB is either a nonprofit educational institution or an otherwise qualified nonprofit educational organization proposing to advance an educational program in compliance with 47 CFR 73.503.

[FR Doc. 94–19101 Filed 8–4–94; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for new noncommercial, educational FM construction permits:

Applicant, City/ State	File No.	MM docket No.
A. Community Educational Association; Holly Hill, FL.	BPED–930316MF	94–88
B. Cornerstone Community Radio, Inc.; Flagler Beach, FL.	BPED–930618MG	

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose hearings are set forth below. The text of each of the issues has been standardized and is set forth in its entirety under the corresponding heading at 51 Fed. Reg. 19347, May 29, 1986. The letters shown before each applicant's name above are used below to signify the issue in question applicable to that particular applicant.

Issue Heading and Applicant(s)

1. (See Appendix)—A
2. Air Hazard—A
3. 307(b)-Noncommercial Educational FM—A, B
4. Contingent Comparative-Noncommercial Educational FM—A, B
5. Ultimate—A, B

3. If there are any non-standardized issues in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, telephone (202) 857–3800.

Linda B. Blair,

Assistant Chief, Audio Services Division, Mass Media Bureau.

Appendix

1. To determine whether A (Community Educational Association) is a qualified educational organization proposing an acceptable educational format in compliance with 47 CFR 73.503(a) of the Commission's Rules.

[FR Doc. 94–19102 Filed 8–4–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1033–DR]

Georgia; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia, (FEMA–1033–DR), dated July 7, 1994, and related determinations.

EFFECTIVE DATE: July 27, 1994.

FOR FURTHER INFORMATION CONTACT:

Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of

Georgia dated July 7, 1994, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 7, 1994:

The counties of Carroll, Marion, and Schley for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94–19139 Filed 8–4–94; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1031–DR]

South Dakota; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of South Dakota, (FEMA–1031–DR), dated June 21, 1994, and related determinations.

EFFECTIVE DATE: July 26, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of South Dakota dated June 21, 1994, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 21, 1994:

Hughes County for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94–19138 Filed 8–4–94; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

L. A. Matrix, Inc., 20,815 South Belshaw, Carson, CA 90749, Officers: Charles DeMarais, Vice President, Douglas Cruikshank, Co-President

Bay Area Matrix, Inc., 14,072 Catalina Street, San Leandro, CA 94577, Officers: Douglas Cruikshank, Co-President, Ronald S. Cruse, Co-President, Steven Hitchock, Director, Paul D. Smith, Director, Abe Ranish, Director

Goodship International, Inc., 1058 Tower Lane, Bensenville, IL 60106, Officer: Robert J. Villiard, President

C-Air Brokers & Forwarders, Inc., 2539 N.W. 72nd Ave., Miami, FL 33122, Officer: Laurence E. Hart, Jr., President

GCI Forwarding Co., Inc., 220H W. Gatehouse Drive, Metairie, LA 70001, Officers: Gary P. Conzonire, President

Master Air Cargo, Inc., 2507 NW 72nd Ave., Miami, FL 33122, Officers: Domingo Hector Faraci,President/ Director, Ana Maria Faraci, Stockholder

By the Federal Maritime Commission.

Dated: August 1, 1994.

Joseph C. Polking,

Secretary.

[FR Doc. 94–19086 Filed 8–4–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

CFB Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than August 29, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. CFB Bancorp, Inc., Jacksonville, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Community First Bank, Jacksonville, Florida.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Associated Banc-Corp., Green Bay, Wisconsin; to retain 13.43 percent of the voting shares of Spencer Bancorporation, Inc., Spencer, Wisconsin, and thereby indirectly acquire Spencer State Bank, Spencer, Wisconsin.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. B&E Investments, Inc., State Bank of Arcadia, Employee Stock Ownership Plan & Trust, Arcadia, Wisconsin; to become a bank holding company by acquiring 30.09 percent of the voting shares of B&E Investments, Inc., Bloomer, Wisconsin, and thereby indirectly acquire State Bank of Arcadia, Arcadia, Wisconsin.

Board of Governors of the Federal Reserve System, August 1, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-19099 Filed 8-4-94; 8:45 am]

BILLING CODE 6210-01-F

Stephen B. and Pamela Holton; Change in Bank Control Notice

Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notice is available for immediate inspection at the Federal Reserve Bank indicated. Once the notice has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in

writing to the Reserve Bank indicated for the notice or to the offices of the Board of Governors. Comments must be received not later than August 25, 1994.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Stephen B. and Pamela Holton, Poteau, Oklahoma; to acquire an additional 6.03 percent, for a total of 26.45 percent, of the voting shares of Central Bancshares of Poteau, Inc., Poteau, Oklahoma, and thereby indirectly acquire Central National Bank of Poteau, Oklahoma.

Board of Governors of the Federal Reserve System, August 1, 1994.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 94-19100 Filed 8-4-94; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN 071194 AND 072294

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Potomac Hotel Limited Partnership, California Federal Bank, FSB, Tampa-Westshore Marriott Hotel	94-1629	07/11/94
Carlyle Partners Leveraged Capital Fund I, L.P., Cincinnati Bell Inc., Cincinnati Bell Information Systems Federal Inc	94-1639	07/12/94
International Multifoods Corporation, James G. Leprino, Leprino Foods Company	94-1641	07/12/94
Bally Entertainment Corporation, Circus Circus Enterprises, Inc., Circus Circus Enterprises, Inc	94-1644	07/12/94
Palmer Communications Incorporated, Sterling Cellular Holdings Limited Partnership, Southeast and Georgia Limited Partnerships	94-1654	07/12/94
LDDS Communications, Inc., Impact Telecommunications Corporation, Impact Telecommunications Corporation	94-1656	07/12/94
Citicorp, James N. Vangilder, Havco Wood Products, Inc	94-1664	07/12/94
Blue Cross and Blue Shield of Minnesota, Aspen Medical Group, Aspen Medical Group	94-1669	07/12/94
DavCo Restaurants, Inc., Southern Hospitality Corporation, Southern Hospitality Corporation	94-1672	07/12/94
Community Health Systems, Inc., Hallmark Healthcare Corporation, Hallmark Healthcare Corporation	94-1634	07/13/94
Micronics Computers, Inc., Orchid Technology, Orchid Technology	94-1638	07/13/94
Vulcan Materials Company, Exxon Corporation, Callaway Chemical Company	94-1642	07/13/94
TCW Special Placements Fund III, TCW Special Placements Fund III, CBI Holding Company, Inc	94-1645	07/13/94
TCW Special Placements Fund III, Robert M. Castello, CBI Holding Company	94-1646	07/13/94
HBO & Company, Serving Software, Inc., Serving Software, Inc	94-1650	07/13/94
Sumitomo Chemical Company, Limited, Phillips Petroleum Company, Phillips Petroleum Company	94-1580	07/14/94
Phillips Petroleum Company, Sumitomo Chemical Company, Limited, Sumitomo Chemical Company, Limited	94-1583	07/14/94
Hellman & Friedman Capital Partners II, L.P., Craig O. McCaw, Chico MSA Cellular, Inc	94-1665	07/14/94
Parker & Parsley Petroleum Company, Pacific Gas and Electric Company, PG&E Resources Company	94-1667	07/14/94
CRH plc, Blanche Savin Goldenberg, The Balf Company	94-1668	07/14/94
H. Thomas Beck, Fleck Manufacturing, Inc., Fleck Manufacturing, Inc	94-1677	07/14/94
Newbridge Networks Corporation, Advanced Computer Corporation, Advanced Computer Corporation	94-1586	07/15/94
Protective Life Corporation, Delphi Financial Group, Inc., Reliance Standard Life Insurance Company	94-1686	07/15/94
EZ Communications, Inc., Tak Communications, Inc., as debtor-in-possession, Tak Communications, Inc., as debtor-in-possession	94-1690	07/15/94
Louisiana-Pacific Corporation, Jerry Long, Creative Point, Inc	94-1692	07/15/94
Arnold H. Simon, Calvin Klein Jeanswear Company, Calvin Klein Jeanswear Company	94-1693	07/15/94
Charterhouse Equity Partners II, L.P., Calvin Klein Jeanswear Company, Calvin Klein Jeanswear Company	94-1694	07/15/94
Charterhouse Equity Partners II, L.P., Calvin Klein, Inc., Calvin Klein, Inc	94-1695	07/15/94
Justin Industries, Inc., Clarence W. Dowdy and Rosalie Dowdy, American Tile Supply, Inc	94-1698	07/15/94
First Financial Management Corporation, Lawrence J. Kent, GENEX Services, Inc	94-1702	07/15/94
The Interpublic Group of Companies, Inc., All American Communications, Inc., All American Communications, Inc	94-1705	07/15/94
The Quaker Oats Company, Arnie's Bagelicious Bagels, Inc., Arnie's Bagelicious Bagels, Inc	94-1706	07/15/94
Franciscan Sisters of Allegany Health Systems, Inc., Good Samaritan Health Systems, Inc., Good Samaritan Hospital, Inc	94-1607	07/18/94
Grow Group, Inc., Water Street Corporate Recovery Fund I, L.P., Sinclair Paint Company	94-1617	07/18/94
Mr. Reinhard Mohn, The New York Times Company, The New York Times Company Women's Magazines Group	94-1624	07/18/94
Thomas H. Lee Equity Partners, L.P., Health o meter Products, Inc., Health o meter Products, Inc	94-1697	07/19/94
Newfield Exploration Company, Arabian Oil Company, Ltd., AEDC (USA) Inc	94-1703	07/19/94
Blue Cross of California, Blue Cross and Blue Shield of Western New York, Inc., Professional Claim Services, Inc	94-1606	07/20/94
CRH plc, Fin-By-Me Corp., Fin-By-Me Corp	94-1652	07/21/94
AT&T Corp., Mr. James M. Moran, World Omni Financial Corp	94-1666	07/21/94

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN 071194 AND 072294—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Fruit of the Loom, Inc., Mr. Ki Young Lee, Daniel Young International Corporation	94–1636	07/22/94
Arrow Electronics, Inc., Gates/FA Distributing, Inc., Gates/FA Distributing, Inc	94–1657	07/22/94
Lane Investment Limited Partnership, John L. Booth, Sr., Booth American Company	94–1707	07/22/94
John L. Booth, Sr., Lane Investment Limited Partnership, Broadcast Alchemy, L.P	94–1708	07/22/94

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94–19128 Filed 8–4–94; 8:45 am]

BILLING CODE 6750–01–M

[File No. 941 0059]

Adobe Systems Incorporated, et al., Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, two software firms to divest Aldus Corporation's FreeHand professional-illustration software and name to Altsys Corporation within six months after the merger takes place. In addition, for ten years, it would require the respondents to obtain Commission approval before acquiring any stock or other interest in any firm engaged in the development or sale of professional-illustration software for the Macintosh or Power Macintosh.

DATES: Comments must be received on or before October 4, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Mary Lou Steptoe, FTC/H–374, Washington, D.C. 20580. (202) 326–2556.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to divest, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the Matter of Adobe Systems Incorporated a corporation, and Aldus Corporation a corporation.

Agreement Containing Consent Order

The Federal Trade Commission ("Commission") having initiated an investigation of the proposed acquisition by Adobe Systems Incorporated ("Adobe") of the stock of Aldus Corporation ("Aldus"), and it now appearing that Adobe and Aldus, hereinafter sometimes referred to as "proposed respondents" are willing to enter into an Agreement Containing Consent Order ("Agreement") to divest certain assets, and to provide for certain other relief,

It Is Hereby Agreed by and between Adobe, By its duly authorized officers and its attorneys, Aldus, by its duly authorized officers and its attorneys, and counsel for the Commission that:

1. Proposed respondent Adobe is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its office and principal place of business located at 1585 Charleston Road, Mountain View, California, 94039.

2. Proposed respondent Aldus is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Washington, with its office and principal place of business located at 411 First Avenue South, Seattle, Washington, 98104.

3. Proposed respondents admit all the jurisdictional facts set forth in the draft of Complaint here attached.

4. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this Agreement; and

(d) Any claim under the Equal Access to Justice Act.

5. This Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission it, together with the draft of Complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its Complaint (in such form as the circumstances may require) and decision is disposition of the proceeding.

6. This Agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of Complaint here attached, or that the facts as alleged in the draft Complaint, other than jurisdictional facts, are true.

7. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents: (1) Issue its Complaint corresponding in form and substance with the draft of Complaint here attached and its decision containing the following Order to divest and cease and desist in disposition of the proceeding; and (2) make information public with respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the United States Postal Service of the Complaint and decision containing the agreed to Order to proposed respondents' addresses as stated in this Agreement shall constitute service.

Proposed respondents waive any right they may have to any other manner of service. The Complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the Agreement may be used to vary or contradict the terms of the Order.

8. Proposed respondents have read the proposed Complaint and Order contemplated hereby. They understand that once the Order has been issued, they will be required to file one or more compliance reports showing they have fully complied with the Order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

It is ordered, that, as used in this Order, the following definitions shall apply:

A. "Adobe" means Adobe Systems Incorporated, its predecessors, divisions, subsidiaries, groups and affiliates that it controls, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

B. "Aldus" means Aldus Corporation, its predecessors, divisions, subsidiaries, groups and affiliates that it controls, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

C. "Respondents" means Adobe and Aldus.

D. "Altsys" means Altsys Corporation, a Texas corporation located at 269 West Renner Parkway, Richardson, Texas, 75080–9604.

E. "Professional Illustration Software" means a complete path-based illustration program native to Apple Macintosh or Power Macintosh computers, targeted to meet the needs of professional customers whose function is to create graphics for internal and external clients to be used in publications printed on a printing press, and excludes Computer Aided Design (CAD) and 3D programs.

F. "FreeHand" means the Professional Illustration Software program marketed and solid by Aldus under the name "Aldus FreeHand" pursuant to a Software License Agreement with Altsys dated as of July 20, 1987, as amended (the "License"); Aldus source code incorporated in FreeHand (for use in FreeHand); the name "FreeHand" (but not the name "Aldus"); the FreeHand customer names and addresses together with FreeHand specific information in the Aldus database (but not the underlying database application software); and all marketing, advertising, training and technical support information and materials for FreeHand.

G. "Illustrator" means the Professional Illustration Software program marketed and sold by Adobe under the name "Illustrator."

H. "Altsys Agreement" means the July 11, 1994, agreement between Aldus and Altsys, attached as Confidential Appendix A hereto.

I. "Acquisition" means the stock acquisition of Aldus by Adobe.

J. "Commission" means the Federal Trade Commission.

II

It is further ordered, that, pending divestiture of FreeHand, Respondents shall take such action as is necessary to maintain the viability and marketability of FreeHand and shall not cause or permit the destruction, removal from the market, wasting, deterioration or impairment of FreeHand. Pending divestiture of FreeHand, employees of Respondents involved in the development, marketing, or sale of Illustrator or FreeHand shall not be involved in the development, marketing or sale of the other product; and employees of Respondents involved in the development, marketing or sale of Illustrator or FreeHand shall not receive or have access to or the use of any "material confidential information" not in the public domain, with respect to the other product except as such information would be available to those employees in the normal course of business if the Acquisition had not taken place. ("Material confidential information," as used herein, means competitively sensitive or proprietary information not independently known from sources other than those employees involved in the development, marketing, or sale of FreeHand or Illustrator.)

III

It is further ordered, that within six (6) months after the Acquisition is consummated Respondents shall absolutely and in good faith divest FreeHand to Altsys in accordance with the Altsys agreement. Adobe and Aldus shall comply with all the terms of the Altsys Agreement, except that the License shall be terminated no later than six (6) months after the Acquisition. The purpose of the divestiture is to ensure the continuation of FreeHand as an ongoing viable Professional Illustration Software program, to maintain FreeHand as an independent competitor in the Professional Illustration Software business, and to remedy the lessening of competition resulting from the Acquisition as alleged in the Commission's Complaint.

IV

It is further ordered, that, within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until Respondents have fully complied with the provisions of Paragraphs II and III of this Order, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, or have complied with those provisions. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of the efforts being made to comply with Paragraphs II and III of this Order.

V

It is further ordered, that for a period of ten (10) years from the date on which this Order becomes final, Respondents shall not, without the prior approval of the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise:

A. Acquire any stock, share capital, equity or other interest in any concern, corporate or noncorporate, then engaged in the development or sale of Professional Illustration Software, provided, however, that an acquisition of such stock, share capital, equity or other interest will be exempt from the requirements of this paragraph if it is solely for the purpose of investment and Respondents will hold no more than one percent of the shares of any class of security traded on a national securities exchange or authorized to be quoted in an interdealer quotation system of a national securities association registered with the United States Securities and Exchange Commission; or

B. Acquire any Professional Illustration Software or acquire or enter into any exclusive license to Professional Illustration Software; Provided, however, that such an acquisition will be exempt from the requirements of this paragraph if the purchase price is less than $2,000,000 (two million dollars).

VI

It is further ordered, that, for a period of ten (10) years from the date this order becomes final, unless Respondents are required to seek prior approval from the

Commission pursuant to Paragraph V, Respondents shall not, without providing advance written notification to the Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise, acquire any Professional Illustration Software or any exclusive license to Professional Illustration Software;

Said notification shall be given on the Notification and Report Form set forth in the Appendix to Part 803 of Title 16 of the Code of Federal Regulations as amended (hereinafter referred to as "the Notification"). Respondents shall provide to the Commission at least ten days prior to acquiring any such interest (hereinafter referred to as the "first waiting period"), both the Notification and supplemental information either in Respondents' possession or reasonably available to Respondents. Such supplemental information shall include a copy of the proposed acquisition agreement; the names of the principal representatives of each Respondent and of the firm Respondents desire to acquire who negotiated the acquisition agreement; and any management or strategic plans discussing the proposed acquisition. If, within the first waiting period, representatives of the Commission make a written request for additional information, Respondents shall not consummate the acquisition until twenty days after submitting such additional information. Early termination of the waiting periods in this paragraph may be requested and, where appropriate, granted in the same manner as is applicable under the requirements and provisions of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 18a.

VII

One year from the date this Order becomes final, annually for the next nine (9) years, and at other times as the Commission may require, Respondents shall file with the Commission verified written reports setting forth in detail the manner and form in which they have complied and are complying with Paragraphs V and VI of this Order.

VIII

It is further ordered, that, for the purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and on reasonable notice to Respondents, Respondents shall permit any duly authorized representatives of the Commission:

A. Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondents relating to any matters contained in this Order; and

B. Upon five (5) days notice to Respondents, and without restraint or interference from Respondents, to interview officers or employees of Respondents, who may have counsel present, regarding such matters.

IX

It is further ordered, that each Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in such Respondent, such as dissolution, assignment, sale resulting in the emergence of a successor, or the creation or dissolution of subsidiaries or any other change that may affect compliance obligations arising out of this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Order from Adobe Systems, Inc., ("Adobe") and Aldus Corporation ("Aldus") (collectively, the "Respondents") in resolution of antitrust concerns arising from Adobe's proposed acquisition of Aldus (the "Acquisition").

The proposed Consent Order (Order) has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the Agreement and the comments received and will decide whether it should withdraw from the Agreement or make final the Agreement's proposed Order.

Respondents Adobe and Aldus, which market, respectively, Adobe Illustrator and Aldus FreeHand, are direct and substantial competitors with respect to professional illustration software.

The Commission has reason to believe that Adobe's acquisition of Aldus would substantially lessen competition in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. § 18 and Section 5 of the FTC Act, as amended, 15 U.S.C. § 45. The proposed Order if issued by the Commission, would settle the allegations of the Complaint.

The proposed complaint in this matter alleges that Adobe Illustrator and Aldus FreeHand are the only illustration software programs which offer features and performance characteristics enabling graphics professionals efficiently and reliably to create and print high-quality illustrations. It alleges that the proposed acquisition would result in a monopoly in the market for professional illustration software for use on Apple Macintosh and Power Macintosh computers. It further alleges that even if the relevant market is broadened to include the development and sale of all illustration software for use on Apple Macintosh and Power Macintosh computers, or is broadened even further to include the development and sale of illustration software for use on IBM-compatible computers with the Windows operating environment, the relevant market is highly concentrated and Adobe and Aldus have a combined share of more than 35% of sales. The products in the broader markets are differentiated and a significant share of sales in the broader markets is accounted for by customers who regard Illustrator and FreeHand as their first and second choices.

The complaint further alleges that entry into the market for professional illustration software would not be timely, likely, or sufficient in its magnitude, character, and scope to deter or counteract anticompetitive effects of the Acquisition because developing a professional illustration program is difficult and time consuming, and marketing a technically comparable or even an improved illustration program would be difficult and time consuming because of network externalities associated with Illustrator's and FreeHand's extensive installed user bases. Repositioning of other programs to compete with Illustrator and FreeHand would also be difficult, time consuming and unlikely.

The complaint alleges that the Acquisition, by combining Illustrator and FreeHand, may substantially lessen competition or tend to create a monopoly in the development and sale of professional illustration software.

Under the terms of the proposed Order, the Respondents must divest FreeHand to Altsys Corporation, along with Aldus source code incorporated in FreeHand; the name "FreeHand;" the FreeHand customer names and addresses together with FreeHand specific information in the Aldus database; and marketing, advertising, training and technical support information and materials for FreeHand.

The Order requires the Respondents to effect the divestiture of FreeHand within six (6) months after the Acquisition is consummated. The Order requires that prior to divesting FreeHand the Respondents shall take all necessary actions to maintain the viability and marketability of FreeHand.

The proposed Order would also prohibit the Respondents, for a period of

ten (10) years from the date the proposed Order becomes final, from acquiring, without the prior approval of the Commission, any stock, share capital, equity or other interest in any concern engaged in the development or sale of professional illustration software native to the Macintosh or Power Macintosh; or any such professional illustration software or any exclusive license to such professional illustration software, the purchase price of which is $2 million or more.

It is anticipated that the proposed Order would resolve the competitive problems alleged in the Complaint. The purpose of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute an official interpretation of the agreement and proposed Order or to modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 94–19133 Filed 8–4–94; 8:45 am]

BILLING CODE 6750–01–M

[File No. 932 3253]

American Institute of Smoking Cessation, et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, an Illinois-based company and its two officers from making any representation about the relative or absolute performance or efficacy of any smoking cessation or weight loss program, unless they possess and rely upon competent and reliable scientific evidence to substantiate the representation, and would prohibit the respondents from misrepresenting the contents, results or validity of any study, test, survey or report.

DATES: Comments must be received on or before October 4, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Matthew Daynard, FTC/H–200, Washington, D.C. 20580. (202) 326–3291.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the matter of American Institute of Smoking Cessation, Inc., a corporation, Kenneth C. Grossman, individually and as an officer of said corporation, and Jane A. Grossman, individually and as an officer of said corporation.

The Federal Trade Commission having initiated an investigation of certain acts and practices of American Institute of Smoking Cessation, Inc. ("AISC"), a corporation, Kenneth C. Grossman, individually and as an officer of said corporation, and Jane A. Grossman, individually and as an officer of said corporation ("respondents"), and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed, By and between American Institute of Smoking Cessation, Inc., Kenneth C. Grossman, individually and as an officer of said corporation, and Jane A. Grossman, individually and as an officer of said corporation, and counsel for the Federal Trade Commission that:

1. Proposed respondent AISC is an Illinois corporation, with its principal office or place of business at 318 South Garfield, Hinsdale, Illinois, 60521.

2. Proposed respondent Kenneth C. Grossman is the President and Treasurer of said corporation. Respondent Jane A. Grossman is the Vice-President and Secretary of said corporation. Together, they formulate, direct, and control the acts and practices of said corporation. Their address is the same as that of said corporation.

3. Proposed respondents admit all the jurisdictional facts set forth in the attached draft complaint.

4. Proposed respondents waive:

(a) Any further procedural steps;

(b) the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act, 5 U.S.C. § 504.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the attached draft complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of the complaint here attached.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondents: (a) issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following Order to cease and desist in disposition of the proceeding; and (b) make information public in respect thereto. When so entered, the Order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The compliant may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order may be used to vary or contradict the terms of the Order.

8. Proposed respondents have read the attached draft complaint and the

following Order. Proposed respondents understand that once the Order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

Definition

For the purposes of this Order, "competent and reliable scientific evidence" shall mean those tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results. Survey evidence may be appropriate depending on the representation made.

I

It is ordered, That respondents American Institute of Smoking Cessation, Inc., a corporation, its successors and assigns, and its officers, Kenneth C. Grossman, individually and as an officer of said corporation, and Jane A. Grossman, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, or sale of any smoking cessation or weight loss program, including any such program that uses hypnosis, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any representation, directly or by implication, that participants who attend respondents' single-session group hypnosis seminar are cured of smoking addiction without experiencing irritability, anxiety, weight gain, or other side effects, unless, at the time of making any such representation, respondents possess and rely upon competent and reliable scientific evidence substantiating the representation.

B. Making any representation, directly or by implication, about the relative or absolute performance or efficacy of any smoking cessation program or weight loss program, unless, at the time of making any such representation, respondents possess and rely upon competent and reliable scientific evidence substantiating the representation.

C. Representing through any endorsement or testimonial that any participant(s) of respondents' smoking cessation program or weight loss program have achieved success in smoking abstinence or weight loss unless:

(1) at the time of making such representation, the success claimed is representative of the typical or ordinary experience of all participants of such program, and respondents possess and rely upon competent and reliable scientific evidence that substantiates such representation, or

(2) respondents disclose, clearly and prominently, and in close proximity to the endorsement or testimonial, either:

(a) what the generally expected results would be for participants in such program, or

(b) the limited applicability of the endorser's experience to what consumers may generally expect to achieve, that is, that consumers should not expect to experience similar results.

D. Misrepresenting, directly or by implication, the existence, contents, validity, results, conclusions, or interpretations of any test, study, survey or report.

E. Misrepresenting, directly or by implication, the performance or efficacy of any smoking cessation program or weight loss program.

II

It is further ordered, That for three (3) years after the last date of dissemination of any representation covered by this Order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

III

It is further ordered, That respondents shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation(s), the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising out of this Order.

IV

It is further ordered, That the individual respondents named herein shall promptly notify the Commission of the discontinuance of their present business or of their affiliation with the corporate respondent. In addition, for a period of three (3) years from the date of service of this Order, each respondent shall promptly notify the Commission of each affiliation with a new business or employment that involves a smoking cessation program or a weight loss program. Each such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of the respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this Order.

V

It is further ordered, That respondents shall distribute a copy of this Order to each of their officers, agents, representatives, independent contractors, and employees who are involved in the preparation and placement of advertisements or promotional materials; and, for a period of three (3) years from the date of entry of this Order, distribute same to all future such officers, agents, representatives, independent contractors, and employees.

VI

It is further ordered, That respondents shall, within sixty (60) days after the date of service of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from American Institute of Smoking Cessation, Inc. (hereinafter "AISC"), its President, Kenneth C. Grossman, and its Vice-President, Jane A. Grossman, marketers of The Grossman Method seminar, a single, three-hour, group hypnosis session program for smoking cessation and weight loss. The Grossman Method seminar is offered to the public nationwide by Kenneth C. Grossman at hotel locales.

The proposed consent order has been placed on the public record for sixty (60) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's complaint charges that the proposed respondents deceptively advertised: (1) The likelihood of seminar participants' success in achieving abstinence from smoking cigarettes and weight loss; and (2) the effectiveness of proposed respondents' smoking cessation methods in leading consumers to achieve smoking abstinence compared to other stop-smoking methods.

Success

The complaint against AISC, Kenneth C. Grossman and Jane A. Grossman alleges that the proposed respondents failed to possess a reasonable basis for claims they made regarding the success of their seminar participants in quitting smoking and quickly achieving weight loss, and made a false claim about smoking abstinence success. Through advertisements placed in various media in advance of their seminars, proposed respondents represented that surveys prove that 97 to 100 percent of their seminar participants permanently abstain from smoking after attending those seminars. The complaint alleges that this claim is false.

Proposed respondents further represented through their advertisements, including the use of consumer endorsements, that seminar participants: (1) Typically are cured of smoking addiction and permanently abstain from smoking cigarettes; (2) are cured of smoking addiction without experiencing irritability, anxiety or weight gain; and (3) typically achieve weight loss quickly. Finally, proposed respondents represented that over 300,000 seminar participants have permanently quit smoking as a result of attending the Grossman Method seminar over the last fifteen years, and that up to or over 98% of consumers attending The Grossman Method seminar have quit smoking.

The Commission believes that these success claims for seminar attendees' smoking cessation and weight loss are deceptive because proposed respondents did not posses adequate substantiation for those claims at the time they made the claims.

The proposed consent order seeks to address the alleged success misrepresentations cited in the accompanying complaint in five ways. First, the order (Part I.B.) requires proposed respondents to possess a reasonable basis consisting of competent and reliable scientific evidence substantiating any claim about the performance or efficacy of any smoking cessation or weight loss program.

Second, the proposed order (Part I.A.) prohibits proposed respondents from representing that seminar participants are cured of smoking addiction without experiencing side effects, such as irritability, anxiety or weight gain, unless the claim is substantiated by competent and reliable scientific evidence.

Third, the proposed order (Part I.C.) prohibits proposed respondents from representing through any endorsements that seminar participants have achieved success in smoking abstinence or weight loss unless the claimed success is representative of the typical or ordinary experience of all such participants, and competent and reliable scientific evidence substantiates that claim, or respondents clearly and prominently disclose either: (1) What the generally expected results would be for program participants, or (2) the limited applicability of the endorser's experience to what consumers may generally expect to achieve, that is, that consumers should not expect to achieve similar results.

Fourth, the proposed order (Part I.D.) generally prohibits proposed respondents from misrepresenting the existence, contents, validity, results, conclusions, or interpretations of any test, study, survey or report.

Finally, the proposed order (Part I.E.) generally prohibits proposed respondents from misrepresenting the performance or efficacy of any smoking cessation or weight loss program.

Efficacy

The Commission's complaint further alleges that proposed respondents failed to possess a reasonable basis for a claim they made regarding the relative ability of their hypnosis program to lead consumers to quit smoking. AISC, Kenneth C. Grossman and Jane A. Grossman represented through their advertising that their single-session, group hypnosis seminar is more efficacious for smoking cessation than other stop-smoking methods. The Commission believes that this comparative efficacy claim for proposed respondents' hypnosis program is deceptive because proposed respondents at the time they made the claim did not possess adequate substantiation for the claim.

To address this efficacy misrepresentation, the proposed order (Part I.B.) requires proposed respondents to possess and rely upon competent and reliable scientific evidence substantiating any representation about the relative (or absolute) performance or efficacy of any smoking cessation (or weight loss) program, before they make such a claim. The proposed order (Part I.E.) further generally prohibits proposed respondents from misrepresenting the performance or efficacy of any smoking cessation program (or weight loss program).

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 94–19134 Filed 8–4–94; 8:45 am]

BILLING CODE 6750–01–M

[File No. 891 0104]

Boulder Ridge Cable TV, et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, two California-based cable companies and their officers from enforcing rights they may have under the current non-competitive agreement, entered into as part of Boulder Ridge's acquisition of Three Palms, Ltd., and would bar the respondents from entering into similar agreements in the future.

DATES: Comments must be received on or before October 4, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Ronald B. Rowe, FTC/S–2105, Washington, D.C. 20580. (202) 326–2610.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to

cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public Comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

In the matter of Boulder Ridge Cable TV, a corporation, Dean Hazen, individually and as an officer of respondent Boulder Ridge Cable TV, Inc., Weststar Communications, Inc., a corporation, and Rodney A. Hansen, individually.

The Federal Trade Commission ("the Commission"), having initiated an investigation of certain acts and practices of Boulder Ridge Cable TV, and Dean Hazen, individually and as an officer of said corporation, and Rodney A. Hansen, individually and as a partner in Three Palms, Ltd., and it now appearing that Boulder Ridge Cable TV, a corporation, Dean Hazen, Rodney A. Hansen, and Weststar Communications, Inc., a corporation, are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed, by and between Boulder Ridge Cable TV, by its duly authorized officer, and Dean Hazen, individually and as an officer of said corporation, and by and between Weststar Communications, Inc., by its duly authorized officer, and Rodney A. Hansen, individually, and counsel for the Commission that:

1. Proposed respondent Boulder Ridge Cable TV (hereafter "Boulder Ridge"), is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business at 590 Kelly Ave., Half Moon Bay, California 94019.

2. Proposed respondent Dean Hazen is the president and majority shareholder of Boulder Ridge, and was the sole shareholder of Boulder Ridge at the time of the acts and practices being investigated. His business address is 590 Kelly Ave., Half Moon Bay, California 94019.

3. Proposed respondent Weststar Communications, Inc. (hereafter "Weststar"), is a corporation organized, existing and doing business under and by virtue of the laws of the State of California, with its principal office and place of business at 2200 Sunrise Blvd., Suite 250, Rancho Cordova, California 95670.

4. Proposed respondent Rodney A. Hansen is a shareholder of Weststar and was a partner in Three Palms, Ltd., a dissolved California partnership. His business address is 8217 Hegseth Court, Fair Oaks, California 95628.

5. Proposed respondents Boulder Ridge and Dean Hazen are collectively and individually referred to herein as proposed respondents "Boulder Ridge Entities."

6. Proposed respondent Weststar and Rodney A. Hansen are collectively and individually referred to herein as respondents "Three Palms Entities."

7. Boulder Ridge Entities and Three Palms Entities admit all the jurisdictional facts set forth in the draft of complaint, here attached.

8. Boulder Ridge Entities and Three Palms Entities each waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. Any claim under the Equal Access to Justice Act.

9. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify Boulder Ridge Entities and Three Palms Entities, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

10. This agreement is for settlement purposes only and does not constitute an admission by Boulder Ridge Entities or Three Palms Entities that the law has been violated as alleged in the draft of complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

11. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to Boulder Ridge Entities and Three Palms Entities, (1) Issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following Order to cease and desist, and (2) make information public with respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to-Order to Boulder Ridge Entities' counsel and to Three Palms Entities' counsel shall constitute service. Boulder Ridge Entities and Three Palms Entities each waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation or interpretation not contained in the Order or the agreement may be used to vary or contradict the terms of the Order.

12. Boulder Ridge Entities and Three Palms Entities have read the proposed complaint and Order contemplated hereby. Boulder Ridge Entities and Three Palms Entities understand that once the Order has been issued, each will be required to file one or more compliance reports showing that they have fully complied with the Order. Boulder Ridge Entities and Three Palms Entities further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

As used in this Order, the following definitions shall apply:

(A) "Boulder Ridge" means (1) Boulder Ridge Cable TV, and its predecessors, successors and assigns, subsidiaries, and divisions, and their respective directors, officers, employees, agents, and representatives; and (2) partnerships, joint ventures, groups and affiliates that Boulder Ridge Cable TV, controls, directly or indirectly, and their respective directors, officers, employees, agents, and representatives.

(B) "Dean Hazen" means Dean Hazen, individually, and all partnerships, joint ventures, and corporations that Dean Hazen controls, directly or indirectly, and their respective directors, officers, employees, agents, and representatives.

(C) "Three Palms, Ltd." means (1) Three Palms, Ltd, and its predecessors, successors and assigns, subsidiaries, and division, and their respective directors, officers, employees, agents

and representatives; and (2) partnerships, joint ventures, groups and affiliates that Three Palms, Ltd., controlled, directly or indirectly, and their respective directors, officers, employees, agents, and representatives.

(D) "Weststar Communications, Inc." means (1) Weststar Communications, Inc., and its predecessors, successors ad assigns, subsidiaries, divisions, and their respective directors, officers, employees, agents, and representatives; and (2) partnerships, joint ventures, groups and affiliates that Weststar Communications, Inc., controls, directly or indirectly, and their respective directors, officers, employees, agents and representatives.

(E) "Rodney A. Hansen" means Rodney A. Hansen, individually, and all partnerships, joint ventures, and corporations that Rodney A. Hansen controls, directly or indirectly, and their respective directors officers, employees, agents, and representatives.

(F) "Respondents" means Boulder Ridge Cable TV, Inc., Dean Hazen, Weststar Communications, Inc., and Rodney A. Hansen.

(G) "Cable Television Service" means the delivery to the home of various entertainment and informational programming via a cable television system.

(H) "Cable Television System" means a facility, consisting of a set of closed transmission paths and associated signal generation, reception, and control equipment that is designed to provide cable television service, which includes video programming and which is provided to multiple subscribers within a community. The term does not include: (a) A facility that service only to retransmit the television signals of one or more television broadcast stations; or (b) a facility that serves only subscribers in one or more multiple dwelling units under common ownership, control, or management, unless such facility or facilities uses a public right-of-way.

(I) "NON–COMPETITION AGREEMENT" means the "NON–COMPETITION AND NON-DISCLOSURE AGREEMENT" signed by respondents and Three Palms, Ltd., on November 22, 1988.

(J) "Agreeing not to compete" means agreeing directly or indirectly not to own, manage, operate, control (or engage or participate in the ownership, management, operation, or control of) a cable television system, subscription television system, multipoint distribution system, direct broadcast system, private operational fixed microwave service, or any similar multi-channel video distribution system or service (or obtaining or holding any authorizations or franchises for any of the foregoing) in competition with another person.

II

It is ordered, That respondents, in connection with the purchase, sale, or operation of any cable television system or cable television service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, to forthwith cease and desist from enforcing any rights they may have under Paragraphs 3 and 4 of the Non-Competition Agreement

III

It is further ordered, That respondents, in connection with the acquisition or sale of any cable television system or cable television service in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, as amended, do forthwith cease and desist from agreeing not to compete with the seller or buyer of such cable television system or cable television service in any geographic area. Provided, however, that this paragraph shall not apply to any agreement made in connection with the lawful acquisition or sale of a cable television system or cable television service in which the seller agrees not to compete with the buyer or buyers, or the buyer agrees not to compete with the seller or sellers, in a geographic area that is reasonably related to:

(A) The cable television system or cable television service that is being acquired or sold;

(B) A proximately located system or service of the buyer with which the cable television system or cable television service that is being acquired will be jointly operated; or

(C) A proximately located system or service of the seller with which the cable television system or cable television service that is being sold previously was jointly operated.

IV

It is further ordered, That, within sixty (60) days after the date this Order becomes final, and annually thereafter for a period of three (3) years on the anniversary date this Order becomes finale, and at such other times as the Commission or its staff may request, each respondent shall file with the Secretary of the Federal Trade Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying and has complied with this Order.

V

It is further ordered, That, for the purposes of determining of securing compliance with this Order, and subject to any legally recognized privilege, upon written request and on five days notice to any respondent, made to its principal office, such respondent shall permit any duly authorized representatives of the Federal Trade Commission:

(A) Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of respondent relating to any matters contained in this Order; and

(B) Without restraint or interference from respondent, an opportunity to interview officers or employees of respondent, who may have counsel present, regarding any matters contained in this Order.

VI

It is further ordered, that, each respondent shall notify the Federal Trade Commission at least thirty (30) days prior to any proposed change in such respondent such as dissolution, assignment, or sale resulting in the emergence of a successor corporation or partnership, the creation, dissolution, or sale of subsidiaries, and any other change that may affect compliance obligations arising out of this Order.

Analysis to Aid Public Comment on the Provisionally Accepted Consent Order

The Federal Trade Commission ("Commission") has accepted for public comment, from Boulder Ridge Cable TV ("Boulder Ridge"), Dean Hazen, Weststar Communications, Inc., and Rodney A. Hansen (collectively "the parties"), an agreement containing consent order. This agreement has been placed on the public record for sixty (60) days for reception of comments from interested persons.

Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement or make final the agreement's order.

The Commission's investigation of this matter concerns a non-competition and non-disclosure agreement signed by the parties in connection with the acquisition of Three Palms, Ltd. ("Three Palms"), by Boulder Ridge. Boulder Ridge and Three Palms operated competing cable companies in

Ridgecrest, California. The parties own and operate multiple cable systems in California and Hawaii.

The agreement containing consent order, if finally issued by the Commission, would settle charges that the mutual agreement not to compete between Boulder Ridge and Three Palms appears to restrain competition unreasonably and bears no reasonable relation to the Ridgecrest market interests of the buying firm. The Commission has reason to believe that the agreement would affect competition for cable television services adversely and would violate Section 5 of the Federal Trade Commission Act, unless an effective remedy eliminates such anticompetitive effects.

The order accepted for public comment would require the parties to cease and desist from enforcing any rights they may have under Paragraphs 3 and 4 of the agreement not to compete. The order also would ban the parties from entering into similar agreements in the future by prohibiting them from agreeing not to compete in any geographic area unrelated to the cable system or systems being sold. This would bar any unreasonable broad covenant not to compete but would provide an exception for an agreement made in connection with the sale of a cable television system or cable television service in which the parties agree not to compete with one another in a geographic area that is reasonably related to the cable television system or cable television service that is being acquired or sold.

The purpose of this analysis is to invite public comment concerning the consent order. This analysis is not intended to constitute an official interpretation of the agreement and order or to modify their terms in any way.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 94–19134 Filed 8–4–94; 8:45 am]

BILLING CODE 6750–01–M

[Docket No. C–2858]

California and Hawaiian Sugar Company

AGENCY: Federal Trade Commission.

ACTION: Notice of period for public comment on petition to modify or vacate consent order.

SUMMARY: California and Hawaiian Sugar Company ("C&H"), a respondent in Docket No. C–2858, is subject to an order prohibiting it from representing that its granulated sugar is different or superior unless: (a) Such difference or superiority relates to a consumer use of such sugar which is specified in the advertisement; (b) such difference or superiority is substantiated; and (c) such substantiation includes competent and reliable evidence that the difference or superiority is discernible to or of benefit to the class of consumers to whom the representation is directed. C&H filed a petition on July 20, 1994, requesting that the Commission reopen and modify the order to allow C&H to advertise any truthful, nondeceptive difference between its sugar and competing sugar (other than a difference relating to health, safety, nutritional quality, or purity) without relating it to a specific consumer use and proving its discernibility or benefit. In the alternative, C&H requests that the Commission either modify the order to allow C&H to advertise any truthful, nondeceptive difference between its sugar and competing sugar that is substantiated by competent and reliable evidence or that it vacate the order. This document announces the public comment period on this petition.[1]

DATES: The deadline for filing comments in this matter is August 26, 1994.

ADDRESSES: Comments should be sent to the Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580. Requests for copies of the petition should be sent to the Public Reference Branch, Room 130.

FOR FURTHER INFORMATION CONTACT: Robert M. Frisby, Enforcement Division, Bureau of Consumer Protection, Federal Trade Commission, Washington, D.C. 20580, (202) 326–2098.

SUPPLEMENTARY INFORMATION: The order in Docket No. C–2858 was published at 42 FR 6800 on February 4, 1977, reported at 89 F.T.C. 15. C&H argues that significant changes in constitutional law and Commission policy since 1976 justify reopening the docket and modifying the order. C&H maintains that the U.S. Supreme Court has extended First Amendment protection to purely commercial speech and views as particularly suspect prohibitions on expression such as those in the order. C&H also contends that the burden of proof in restricting commercial speech lies with the party seeking to restrict it and that the Commission has provided no evidence that the order directly advances its interests in a reasonable manner. In addition, C&H argues that since 1976 the Commission altered its position concerning truthful comparative advertising and now actively encourages such advertising. C&H notes that since 1976 the Commission has adopted a "reasonable consumer" standard. C&H also contends that the public interest justifies reopening and setting aside the order because consumers have a constitutional right to receive uncensored distribution of truthful information. Furthermore, C&H maintains that market efficiency requires that consumers be given access to truthful information and that the order improperly discriminates among competitors. The petition was placed on the public record on July 27, 1994.

Donald S. Clark,

Secretary.

[FR Doc. 94–19136 Filed 8–4–94; 8:45 am]

BILLING CODE 6750–01–M

[1] C&H filed an earlier petition to modify or vacate this consent order on December 16, 1993, and withdrew it on May 26, 1994.

[Dkt. 9207]

The Coca-Cola Company; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: This final order requires Coca-Cola, for ten years, to obtain Commission approval before acquiring any part of the stock or interest in any company that manufactures or sells branded concentrate, syrup, or carbonated soft drinks in the United States.

DATES: Complaint issued July 15, 1986. Final order issued June 13, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Joseph Brownman FTC/S–2105, Washington, D.C. 20580. (202) 326–2605.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 94–19129 Filed 8–4–94; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. 9242]

College Football Association, et al.; Prohibited Trade Practices and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Final order.

[1] Copies of the Complaint, Initial Decision, Opinion of the Commission, and Final Order are available from the Commission's Public Reference Branch, H–130, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

SUMMARY: This final order dismisses the complaint which alleged that the College Football Association (CFA) and Capital Cities/ABC, Inc. illegally restrained competition through agreements which gave ABC exclusive rights to televise certain college football games. The final order to dismiss was due to the Commission's lack of jurisdiction over CFA, citing its not-for-profit nature. Dismissal was also determined to be in the public interest.

DATES: Complaint issued September 5, 1990. Final order issued June 16, 1994.[1]

FOR FURTHER INFORMATION CONTACT:

Michael Antalics, FTC/S–2627, Washington, D.C. 20580. (202) 326–2821.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 94–19130 Filed 8–4–94; 8:45 am]

BILLING CODE 6750–01–M

[File No. 932–3254]

Gorayeb Seminars, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a New Jersey-based company and its officer from making any representation about the relative or absolute performance or efficacy of any smoking cessation or weight loss program, unless they possess and rely upon competent and reliable scientific evidence to substantiate the representation.

DATES: Comments must be received on or before October 4, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT:

Matthew Daynard, FTC/H–200, Washington, D.C. 20580. (202) 326–3291.

[1] Copies of the Complaint, Initial Decision, Opinion of the Commission, Final Order, and Statement of Commissioner Azcuenaga are available from the Commission's Public Reference Branch, H–130, 6th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii).

Agreement Containing Consent Order To Cease and Desist

In the matter of Gorayeb Seminars, Inc., a corporation, Gorayeb Learning Systems, Inc., a corporation, and Ronald B. Gorayeb, individually and as an officer of said corporations.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Gorayeb Seminars, Inc., a corporation, Gorayeb Learning Systems, Inc., a corporation, and Ronald B. Gorayeb, individually and as an officer of said corporations ("proposed respondents" or "respondents"), and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed, By and between Gorayeb Seminars, Inc., Gorayeb Learning Systems, Inc., their duly authorized officers, and Ronald B. Gorayeb, individually and as an officer of said corporations, and their attorney and counsel for the Federal Trade Commission that:

1. Proposed respondent Gorayeb Seminars, Inc., is a New Jersey corporation, with its principal office or place of business at 101 Roundhill Drive, Rockaway, New Jersey, 07866.

2. Proposed respondent Gorayeb Learning Systems, Inc., is a New Jersey corporation, with its principal office or place of business at 101 Roundhill Drive, Rockaway, New Jersey 07866.

3. Proposed respondent Ronald B. Gorayeb is the President, Secretary, and sole director and shareholder of said corporations. He formulates, directs, and controls the acts and practices of said corporations and his address is the same as that of said corporations.

4. Proposed respondents admit all the jurisdictional facts set forth in the attached draft complaint.

5. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act, 5 U.S.C. 504.

6. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the attached draft complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

7. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of the complaint here attached.

8. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to the proposed respondents: (a) Issue its complaint corresponding in form and substance with the attached draft complaint and its decision containing the following Order to cease and desist in disposition of the proceeding; and (b) make information public in respect thereto. When so entered, the Order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not

contained in the Order may be used to vary or contradict the terms of the Order.

9. Proposed respondents have read the attached draft complaint and the following Order. Proposed respondents understand that once the Order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

Definition

For the purposes of this Order, "competent and reliable scientific evidence" shall mean those tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

I

It is ordered, that respondents Gorayeb Seminars, Inc., a corporation, Gorayeb Learning Systems, Inc., a corporation, their successors and assigns, and their officers, and Ronald B. Gorayeb, individually and as an officer of said corporations, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, promotion, offering for sale, or sale of any smoking cessation or weight lose program, including any such program that uses hypnosis, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, that participants who attend respondents' single-session group hypnosis seminar are cured of smoking addiction without experiencing withdrawal, anxiety, weight gain, or other side effects, unless, at the time of making any such representation, respondents possess and rely upon competent and reliable scientific evidence substantiating the representation.

B. Making any representation, directly or by implication, about the relative or absolute performance or efficacy of any smoking cessation program or weight loss program, unless, at the time of making any such representation, respondents possess and rely upon competent and reliable scientific evidence substantiating the representation.

C. Misrepresenting, directly or by implication, the performance or efficacy of any smoking cessation program or weight loss program.

II

It is further ordered, that for three (3) years after the last date of dissemination of any representation covered by this Order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. All materials that were relied upon in disseminating such representation; and

B. All tests, reports, studies, surveys, demonstrations or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

III

It is further ordered, that respondents shall notify the Commission at least thirty (30) days prior to the effective date of any proposed change in the corporate respondents such as dissolution, assignment, or sale resulting in the emergence of a successor corporation(s), the creation or dissolution of subsidiaries, or any other change in the corporations that may affect compliance obligations arising out of this Order.

IV

It is further ordered, that the individual respondent named herein shall promptly notify the Commission of the discontinuance of his present business or of his affiliation with the corporate respondents. In addition, for a period of three (3) years from the date of service of this Order, the respondent shall promptly notify the Commission of each affiliation with a new business or employment that involves a smoking cessation program or a weight loss program. Each such notice shall include the respondent's new business address and a statement of the nature of the business or employment in which the respondent is newly engaged as well as a description of the respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this Order.

V

It is further ordered, that respondents shall distribute a copy of this Order to each of their officers, agents, representatives, independent contractors, and employees who are involved in the preparation and placement of advertisements or promotional materials; and, for a period of three (3) years from the date of entry of this Order, distribute same to all future such officers, agents, representatives, independent contractors, and employees.

VI

It is further ordered, that respondents shall, within sixty (60) days after the date of service of this Order, file with the Commission a report, in writing, setting forth in detail the manner and form in which they have complied with this Order.

Analyis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Gorayeb Seminars, Inc. (hereinafter "GSI"), Gorayeb Learning Systems, Inc. (hereinafter "GLS") and their President, Ronald B. Gorayeb, marketers of The Gorayeb Method seminar, a single, two-hour, group hypnosis session program for smoking cessation and weight loss. The Gorayeb Method seminar is offered to the public nationwide by Ronald B. Gorayeb at hotel locales.

The proposed consent order has been placed on the public record for sixty (60) days for the reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's complaint charges that the proposed respondents deceptively advertised: (1) The likelihood of seminar participants' success in achieving and maintaining abstinence from smoking cigarettes and weight loss; and (2) the effectiveness of proposed respondents' weight-loss programs in leading consumers to achieve and maintain weight loss compared to other weight-loss methods.

Success

The complaint against GSI, GLS and Ronald B. Gorayeb alleges that the proposed respondents failed to possess a reasonable basis for claims they made regarding the success of their seminar participants in quitting smoking and

achieving and maintaining weight loss. Through advertisements placed in various media in advance of their seminars, proposed respondents represented that seminar participants: (1) Are cured of smoking addiction and permanently abstain from smoking cigarettes; (2) are cured of smoking addiction without experiencing withdrawal, anxiety or weight gain; and (3) achieve and maintain weight loss. Proposed respondents further represented that thousands of consumers have permanently quit smoking and thousands have achieved and maintained weight loss as a result of attending The Gorayeb Method seminars.

The Commission believes that these success claims for seminar attendees' smoking cessation, weight loss and maintenance of achieved weight loss are deceptive because proposed respondents did not possess adequate substantiation for those claims at the time they made the claims.

The proposed consent order seeks to address the alleged success misrepresentations cited in the accompanying complaint in three ways. First, the order (Part I.B.) requires proposed respondents to possess a reasonable basis consisting of competent and reliable scientific evidence substantiating any claim about the performance or efficacy of any smoking cessation or weight loss program.

Second, the proposed order (Part I.A.) prohibits proposed respondents from representing that seminar participants are cured of smoking addiction without experiencing side effects, such as withdrawal, anxiety or weight gain, unless the claim is substantiated by competent and reliable scientific evidence.

Finally, the proposed order (Part I.C.) generally prohibits proposed respondents from misrepresenting the performance or efficacy of any smoking cessation or weight loss program.

Efficacy

The Commission's complaint further alleges that proposed respondents failed to possess a reasonable basis for a claim they made regarding the relative ability of their hypnosis program to lead consumers to achieve and maintain weight loss. GSI, GLS and Ronald B. Gorayeb represented through their advertising that their single-session, group hypnosis seminar is more efficacious for weight loss and weight-loss maintenance than other weight-loss methods. The Commission believes that this comparative efficacy claim for proposed respondents' hypnosis program is deceptive because proposed respondents at the time they made the claim did not possess adequate substantiation for the claim.

To address this efficacy misrepresentation, the proposed order (Part I.B.) requires proposed respondents to possess and rely upon competent and reliable scientific evidence substantiating any representation about the relative (or absolute) performance or efficacy of any weight loss program (or smoking cessation program), before they make such a claim. The proposed order (Part I.C.) further generally prohibits proposed respondents from misrepresenting the performance or efficacy of any weight loss program (or smoking cessation program).

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order, or to modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 94–19135 Filed 8–4–94; 8:45 am]

BILLING CODE 6750–01–M

[Dkt. C–3501]

Vien Clinics of America, Inc., et al., Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, an Illinois-based corporation and its officer from misrepresenting the rate of likely recurrence for any venous disease following treatment, or misrepresenting the rate of likely recurrence for any venous disease following treatment, or misrepresenting the newness, past availability, safety, risks or potential side-effects of any cosmetic or plastic surgery procedure. In addition, the consent order requires the respondents to have scientific evidence to substantiate any representations it makes about any cosmetic or plastic surgery procedure it markets or sells in the future.

DATES: Complaint and Order issued June 24, 1994.[1]

FOR FURTHER INFORMATION CONTACT: Richard Kelly and Sondra Mills, FTC/H–200, Washington, D.C. 20580. (202) 326–3304 or 326–2673.

SUPPLEMENTARY INFORMATION: On Thursday, February 10, 1994, there was published in the **Federal Register** 59 FR 6273, a proposed consent agreement with analysis In the Matter of Vein Clinics of America, Inc., et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to cease and desist, as set forth in the proposed consent agreement, in disposition of this proceeding.

Authority: Sec. 6, 38 Stat. 721, 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45, 52.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 94–19131 Filed 8–4–94; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Renewals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the renewal of FDA advisory committees by the Commissioner of Food and Drugs. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463 (5 U.S.C. app. 2)).

DATES: Authority for these committees will expire on the dates indicated below unless the Commissioner formally determines that renewal is in the public interest.

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[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580.

Name of the Committee	Date of Expiration
Anesthetic and Life Support Drugs Advisory Committee	May 1, 1996
Blood Products Advisory Committee	May 13, 1996
Pulmonary-Allergy Drugs Advisory Committee	May 30, 1996
Drug Abuse Advisory Committee	May 31, 1996
Science Advisory Board to the National Center for Toxicological Research	June 2, 1996
Peripheral and Central Nervous System Drugs Advisory Committee	June 4, 1996
Psychopharmacologic Drugs Advisory Committee	June 4, 1996
Science Board to the Food and Drug Administration	June 26, 1996

FOR FURTHER INFORMATION CONTACT: Donna M. Combs, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2765.

Dated: August 1, 1994

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94–19095 Filed 8–4–94; 8:45 am]

BILLING CODE 4160–01–F

Request for Nominations for Voting Members on Public Advisory Committees; Device Good Manufacturing Practice Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for voting members to serve on the Device Good Manufacturing Practice Advisory Committee in FDA's Center for Devices and Radiological Health. Nominations will be accepted for current vacancies and vacancies that will or may occur through May 31, 1995.

FDA has a special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented on advisory committees and, therefore, encourages nominations for appropriately qualified female, minority, or disabled candidates.

DATES: Nominations should be received by September 6, 1994.

ADDRESSES: All nominations and curricula vitae for health professionals, industry representatives, and government representatives shall be submitted in writing to Sharon M. Kalokerinos (address below). All nominations and curricula vitae for general public representatives (consumer representatives) shall be submitted in writing to Susan K. Meadows (address below).

FOR FURTHER INFORMATION CONTACT:

Regarding health professionals, industry representatives, and government representatives: Sharon M. Kalokerinos, Center for Devices and Radiological Health (HFZ–300), Food and Drug Administration, 2098 Gaither Rd., Gaithersburg, MD 20850, 301–594–4613.

Regarding general public representatives (consumer representatives): Susan K. Meadows, Office of Consumer Affairs (HFE–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5006.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations of voting members for the following vacancies: Two vacancies immediately, three vacancies occurring June 1, 1995. There are immediate openings for one industry and one government representative; as of June 1, 1995, vacancies will exist for a general public representative, a health professional, and a government representative.

Function

The function of the Device Good Manufacturing Practice Advisory Committee is to review regulations for promulgation regarding current good manufacturing practices (CGMP's) governing the methods used in, and the facilities and controls used for, the design, manufacture, packaging, storage, installation, and servicing of devices, and make recommendations regarding the feasibility and reasonableness of those proposed regulations. The committee also reviews and makes recommendations on proposed guidelines (e.g., "Guideline on General Principles of Process Validation") developed to assist the medical device industry in meeting the CGMP requirements, and provides advice with regard to any petition submitted by a manufacturer for an exemption or variance from CGMP regulations.

Section 520 of the act, as amended by the Medical Device Amendments of 1976 (21 U.S.C. 360(j)), provides that the Device Good Manufacturing Practice Advisory Committee shall be composed of nine members as follows: (1) Three of the members shall be appointed from persons who are officers or employees of any Federal, State, or local government; (2) two shall be representatives of interests of the device manufacturing industry; (3) two shall be representatives of the interests of physicians and other health professionals; and (4) two shall be representatives of the interests of the general public.

Criteria for Members

Government Representatives and Health Professionals

Persons nominated for membership should have knowledge of or expertise in any one or more of the following areas: Quality assurance concerning the design, manufacture, and use of medical devices.

General Public and Industry Representatives

To be eligible for selection as a representative of the general public and industry, candidates should possess appropriate qualifications to understand and contribute to the committee's work.

Nomination Procedures

Any interested person may nominate one or more qualified persons as a member of the advisory committee. Self-nominations are also accepted. Nominations shall include a complete curriculum vitae of each nominee, as well as current business address and telephone number. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest. Industry representatives are included specifically for the purpose of representing industry interests and any financial interest covered by 18 U.S.C. 208(a) in the class which the member represents is irrelevant and is exempted under 18 U.S.C. 208(b). The term of office is up to 4 years, depending on the appointment date.

Selection Procedures

Selection of members representing general public interests is conducted through procedures which include use

of a consortium of consumer organizations which has the responsibility for screening, interviewing, and recommending candidates for the agency's selection.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: August 1, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94–19096 Filed 8–4–94; 8:45 am]

BILLING CODE 4160–01–F

Request for Nominations for Members on Public Advisory Committees; Veterinary Medicine Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for members to serve on the Veterinary Medicine Advisory Committee in FDA's Center for Veterinary Medicine. Nominations will be accepted for vacancies that will or may occur during the next 16 months.

FDA has a special interest in ensuring that women, minority groups, and individuals with disabilities are adequately represented on advisory committees and, therefore, extends particular encouragement to nominations for appropriately qualified female, minority, or disabled candidates.

DATES: No cutoff date is established for receipt of nominations.

ADDRESSES: All nominations for membership should be submitted to Gary E. Stefan (address below).

FOR FURTHER INFORMATION CONTACT: Gary E. Stefan, Center for Veterinary Medicine (HFV–244), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1769.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for members to serve on the committee. The function of the committee is to review and evaluate available data concerning safety and effectiveness of marketed and investigational new animal drugs, feeds, and devices for use in the treatment and prevention of animal disease and increased animal production.

Criteria for Members

Persons nominated for membership on the Veterinary Medicine Advisory Committee shall have adequately diversified experience appropriate to the work of the committee in such fields as companion animal medicine, food animal medicine, avian medicine, microbiology, biometrics, toxicology, pathology, pharmacology, animal science, and chemistry. The specialized training and experience necessary to qualify the nominee as an expert suitable for appointment is subject to review, but may include experience in medical practice, teaching, and/or research relevant to the field of activity of the committee. The term of office is 4 years.

Nomination Procedures

Any interested person may nominate one or more qualified persons for membership on the committee. Nominations shall state that the nominee is willing to serve as a member of the committee and appears to have no conflict of interest that would preclude committee membership. FDA will ask the potential candidates to provide detailed information concerning such matters as employment, financial holdings, consultancies, and research grants or contracts to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to advisory committees.

Dated: August 1, 1994.

Linda A. Suydam,

Interim Deputy Commissioner for Operations.

[FR Doc. 94–19094 Filed 8–4–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94F–0250]

Registration and Consulting Co. AG; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Registration and Consulting Co. AG has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 8,9,10,11-tetrachloro-12H-phthaloperin-12-one (C.I. Solvent Red 135) as a colorant in polyethylene phthalate polymers intended for use as food-contact articles.

DATES: Written comments on the petitioner's environmental assessment by September 6, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9500.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5)(21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 4B4424) has been filed by the Registration and Consulting Co. AG, c/o Mr. Reynaldo A. Gustilo, 125A 18th St., suite 142, Newport Plaza, Jersey City, NJ 07310. The petition proposes to amend the food additive regulations in § 178.3297 *Colorants for Polymers* (21 CFR 178.3297) to provide for the safe use of 8,9,10,11-tetrachloro-12H-phthaloperin-12-one (C.I. Solvent Red 135) as a colorant in polyethylene phthalate polymers intended for use in food-contact articles and complying with 21 CFR 177.1630.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before September 6, 1994, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: July 27, 1994.

L. Robert Lake,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94–19097 Filed 8–4–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 94G–0237]

Stepan Co.; Filing of Petition for Affirmation of GRAS Status

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Stepan Co. has filed a petition (GRASP 4G0409) proposing that a medium chain triglyceride containing caprylic and capric acids be affirmed as generally recognized as safe (GRAS) for use in food as a direct human food ingredient. The petitioner proposes that captrin be the common or usual name for this triglyceride.

DATES: Written comments by October 4, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Lawrence J. Lin, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3090.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (secs. 201(s) and 409(b)(5) (21 U.S.C. 321(s) and 348(b)(5)) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that Stepan Co., 100 West Hunter Ave., Maywood, NJ 07607, has filed a petition (GRASP 4G0409) proposing that a medium chain triglyceride containing caprylic and capric acids be affirmed as GRAS for use in food as a direct human food ingredient. The petitioner proposes that captrin be the common or usual name for this triglyceride.

The petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the requirements outlined in §§ 170.30 (21 CFR 170.30) and 170.35 is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for GRAS affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Interested persons may, on or before October 4, 1994, review the petition and file comments with the Dockets Management Branch (address above). Two copies of any comments should be filed and should be identified with the docket number found in brackets in the heading of this document. Comments should include any available information that would be helpful in determining whether captrin is, or is not, GRAS for the proposed use. In addition, consistent with the regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency encourages public participation by review of and comment on the environmental assessment submitted with the petition that is the subject of this notice. A copy of the petition (including the environmental assessment) and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: July 27, 1994.

L. Robert Lake,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94–19098 Filed 8–4–94; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[OMC–020–N]

Health Maintenance Organizations: Qualification Determinations During the Period January 1, 1994 through March 31, 1994

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice sets forth the names, addresses, service areas or modified service areas, and dates of qualification or expansion of entities determined to be Federally qualified health maintenance organizations (FQHMOs) during the period January 1, 1994 through March 31, 1994. This notice is published in accordance with our regulations at 42 CFR 417.144 and 417.163, which require publication in the **Federal Register** of certain determinations relating to FQHMOs.

FOR FURTHER INFORMATION CONTACT: Christine Boesz, (202) 619–0840.

SUPPLEMENTARY INFORMATION:

A. Qualification Determinations

As part of our evaluation and determination of whether an entity qualifies as a Federally qualified health maintenance organization (FQHMO), our regulations set forth at 42 CFR 417.144(e), promulgated under title XIII of the Public Health Service Act (the Act) (42 U.S.C. 300e), require publication in the **Federal Register** of the names, addresses, and descriptions of the service areas of new FQHMOs. We interpret this requirement as applying to revisions of service areas of currently approved FQHMOs, as well. Our last notice containing this information was published on April 20, 1994 (59 FR 1021).

There are three categories of FQHMOs: operational qualified, transitional qualified, and preoperational qualified. These terms are defined in 42 CFR 417.141.

HCFA has determined that the following entity is an operational FQHMO under section 1310(d) of the Act (42 U.S.C. 300e–9(d)) and has expanded its previously qualified service area:

Expansion and Addition of Service Area Regional Components by Existing FQHMOs

Intergroup Prepaid Health Services (Intergroup)

(Individual Practice Association Model; Requirements are set forth at sections 1302(5) and 1310(b)(2)(a) of the Act), 1010 N. Finance Center Drive, Suite 200, Tucson, Arizona 85710. Intergroup's approved Federally qualified expansion includes the remainder of Pinal County and the entire Counties of Santa Cruz, Cochise, Gila, Graham, and Greenlee. Date of qualification for service area expansion: March 3, 1994.

B. Compliance Actions

HCFA gives notice of compliance actions affecting FQHMOs. No compliance actions occurred during January 1, 1994 through March 31, 1994.

C. Availability of Additional Information

A cumulative list of FQHMOs and additional information may be obtained by writing to the following address: Health Care Financing Administration, Office of Managed Care, Room 4406 Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201.

The list also may be obtained by visiting that office between the hours of 8:30 A.M. and 4:30 P.M. Monday through Friday, except for Federal holidays. Interested persons should contact Margie Sharif for an appointment by telephoning (202) 619–0845.

Authority: Title XIII of the Public Health Service Act (42 U.S.C. 300e).

Dated: July 5, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 94–19110 Filed 8–4–94; 8:45 am]

BILLING CODE 4120–01–P

[BPO–126–N]

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances and Coverage Decisions—First Quarter 1994

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice lists HCFA manual instructions, substantive and interpretive regulations and other **Federal Register** notices, and statements of policy that were published during January, February, and March of 1994 that relate to the Medicare and Medicaid programs. Section 1871(c) of the Social Security Act requires that we publish a list of Medicare issuances in the **Federal Register** at least every 3 months. Although we are not mandated to do so by statute, for the sake of completeness of the listing, we are including all Medicaid issuances and Medicare and Medicaid substantive and interpretive regulations (proposed and final) published during this timeframe.

We are also providing the content of revisions to the Medicare Coverage Issues Manual published between January 1, and March 31, 1994. On August 21, 1989 (54 FR 34555), we published the content of the Manual and indicated that we will publish quarterly any updates. Adding to this listing the complete text of the changes to the Medicare Coverage Issues Manual allows us to fulfill this requirement in a manner that facilitates identification of coverage and other changes in our manuals.

FOR FURTHER INFORMATION CONTACT:
Margaret Cotton, (410) 966–5260 (For Medicare instruction information)
Walter Rutemueller, (410) 966–5395 (For Medicare coverage information)
Pat Prete, (410) 966–3246 (For Medicaid instruction information)
Michael Robinson, (410) 966–5633 (For all other information)

SUPPLEMENTARY INFORMATION:

I. Program Issuances

The Health Care Financing Administration (HCFA) is responsible for administering the Medicare and Medicaid programs, which pay for health care and related services for 36 million Medicare beneficiaries and 33 million Medicaid recipients. Administration of these programs involves (1) Providing information to Medicare beneficiaries and Medicaid recipients, health care providers, and the public; and (2) effective communications with regional offices, State governments, State Medicaid Agencies, State Survey Agencies, various providers of health care, fiscal intermediaries and carriers who process claims and pay bills, and others. To implement the various statutes on which the programs are based, we issue regulations under authority granted the Secretary under sections 1102, 1871, and 1902 and related provisions of the Social Security Act (the Act) and also issue various manuals, memoranda, and statements necessary to administer the programs efficiently.

Section 1871(c)(1) of the Act requires that we publish in the **Federal Register** at least every 3 months a list of all Medicare manual instructions, interpretive rules, statements of policy, and guidelines of general applicability not issued as regulations. We published our first notice June 9, 1988 (53 FR 21730). Although we are not mandated to do so by statute, for the sake of completeness of the listing of operational and policy statements, we are continuing our practice of including Medicare substantive and interpretive regulations (proposed and final) published during the 3-month timeframe. Since the publication of our quarterly listing on June 12, 1992 (57 FR 24797), we decided to add Medicaid issuances to our quarterly listings. Accordingly, we are listing in this notice Medicaid issuances and Medicaid substantive and interpretive regulations published from January 1 through March 31, 1994.

II. Medicare Coverage Issues

We receive numerous inquiries from the general public about whether specific items or services are covered under Medicare. Providers, carriers, and intermediaries have copies of the Medicare Coverage Issues Manual, which identifies those medical items, services, technologies, or treatment procedures that can be paid for under Medicare. On August 21, 1989, we published a notice in the **Federal Register** (54 FR 34555) that contained all the Medicare coverage decisions issued in that manual.

In that notice, we indicated that revisions to the Coverage Issues Manual will be published at least quarterly in the **Federal Register**. We also sometimes issue proposed or final national coverage decision changes in separate **Federal Register** notices. Readers should find this an easy way to identify both issuance changes to all our manuals and the text of changes to the Coverage Issues Manual.

Revisions to the Coverage Issues Manual are not published on a regular basis but on an as-needed basis. We publish revisions as a result of technological changes, medical practice changes, responses to inquiries we receive seeking clarifications, or the resolution of coverage issues under Medicare. If no Coverage Issues Manual revisions were published during a particular quarter, our listing will reflect that fact.

Not all revisions to the Coverage Issues Manual contain major changes. As with any instruction, sometimes minor clarifications or revisions are made within the text. We have reprinted manual revisions as transmitted to manual holders. The new text is shown in italics. We will not reprint the table of contents, since the table of contents serves primarily as a finding aid for the user of the manual and does not identify items as covered or not.

III. How to Use the Addenda

This notice is organized so that a reader may review the subjects of all manual issuances, memoranda, substantive and interpretive regulations, or coverage decisions published during the timeframe to determine whether any are of particular interest. We expect it to be used in concert with previously published notices. Most notably, those unfamiliar with a description of our Medicare manuals may wish to review Table I of our first three notices (53 FR 21730, 53 FR 36891, and 53 FR 50577) and the notice published March 31, 1993 (58 FR 16837), and those desiring information on the Medicare Coverage Issues Manual may wish to review the August 21, 1989, publication (54 FR 34555).

To aid the reader, we have organized and divided this current listing into five addenda. Addendum I identifies updates that changed the Coverage Issues Manual. We published notices in the **Federal Register** that included the text of changes to the Coverage Issues Manual. These updates, when added to material from the manual published on August 21, 1989, constitute a complete manual as of March 17, 1994. Parties

interested in obtaining a copy of the manual and revisions should follow the instructions in section IV of this notice.

Addendum II identifies previous **Federal Register** documents that contain a description of all previously published HCFA Medicare and Medicaid manuals and memoranda.

Addendum III of this notice lists, for each of our manuals or Program Memoranda, a HCFA transmittal number unique to that instruction and its subject matter. A transmittal may consist of a single instruction or many. Often it is necessary to use information in a transmittal in conjunction with information currently in the manuals.

Addendum IV lists all substantive and interpretive Medicare and Medicaid regulations and general notices published in the **Federal Register** during the quarter covered by this notice. For each item, we list the date published, the **Federal Register** citation, the title of the regulation, the Parts of the Code of Federal Regulations (CFR) which have changed (if applicable), the agency file code number, the ending date of the comment period (if applicable), and the effective date (if applicable).

Addendum V sets forth the revisions to the Medicare Coverage Issues Manual that were published during the quarter covered by this notice. For the revisions, we give a brief synopsis of the revisions as they appear on the transmittal sheet, the manual section number, and the title of the section. We present a complete copy of the revised material, no matter how minor the revision, and identify the revisions by printing in italics the text that was changed. If the transmittal includes material unrelated to the revised section, for example, when the addition of revised material causes other sections to be repaginated, we do not reprint the unrelated material.

IV. How To Obtain Listed Material

A. Manuals

An individual or organization interested in routinely receiving any manual and revisions to it may purchase a subscription to that manual. Those wishing to subscribe should contact either the Government Printing Office (GPO) or the National Technical Information Service (NTIS) at the following addresses:

Superintendent of Documents, Government Printing Office, ATTN: New Order, P.O. Box 371954, Pittsburgh, PA 15250–7954, Telephone (202) 783–3238, Fax number (202) 512–2250 (for credit card orders); or

National Technical Information Service, Department of Commerce, 5825 Port Royal Road, Springfield, VA 22161, Telephone (703) 487–4630.

In addition, individual manual transmittals and Program Memoranda listed in this notice can be purchased from NTIS. Interested parties should identify the transmittal(s) they want. GPO or NTIS can give complete details on how to obtain the publications they sell.

B. Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. Interested individuals may purchase individual copies or subscribe to the **Federal Register** by contacting the GPO at the address indicated above. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

C. Rulings

Rulings are published on an infrequent basis by HCFA. Interested individuals can obtain copies from the nearest HCFA Regional Office or review them at the nearest regional depository library. We also sometimes publish Rulings in the **Federal Register**.

D. HCFA's Compact Disk-Read Only Memory (CD–ROM)

HCFA's laws, regulations, and manuals are now available on CD–ROM, which may be purchased from GPO or NTIS on a subscription or single copy basis. The Superintendent of Documents list ID is HCLRM, and the stock number is 717–139–00000–3. The following material is contained on the CD-ROM disk:

- Titles XI, XVIII, and XIX of the Act.
- HCFA-related regulations.
- HCFA manuals and monthly revisions.
- HCFA program memoranda.

The titles of the Compilation of the Social Security Laws are current as of the September 1, 1992. The remaining portions of CD–ROM are updated on a monthly basis.

The CD–ROM disk does not contain Appendices M (Interpretative Guidelines for Hospices) and R (Resident Assessment for Long Term Care Facilities) of the State Operations Manual. Copies of these appendices may be reviewed at a Federal Depository Library (FDL).

Any cost report forms incorporated in the manuals are included on the CD–ROM disk as LOTUS files. LOTUS software is needed to view the reports once the files have been copied to a personal computer disk.

V. How To Review Listed Material

Transmittals or Program Memoranda can be reviewed at a local FDL. Under the FDL program, government publications are sent to approximately 1400 designated libraries throughout the United States. Interested parties may examine the documents at any one of the FDLs. Some may have arrangements to transfer material to a local library not designated as an FDL. To locate the nearest FDL, individuals should contact any library.

In addition, individuals may contact regional depository libraries, which receive and retain at least one copy of most Federal government publications, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library.

Superintendent of Documents numbers for each HCFA publication are shown in Addendum III, along with the HCFA publication and transmittal numbers. To help FDLs locate the instruction, use the Superintendent of Documents number, plus the HCFA transmittal number. For example, to find the Carriers Manual, Part 3—Claims Process (HCFA–Pub. 14–3) transmittal entitled "Claims Involving Patients Who Have Elected Hospice Care," use the Superintendent of Documents No. HE 22.8/7, and the HCFA transmittal number 1475.

VI. General Information

It is possible that an interested party may have a specific information need and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing information contact persons to answer general questions concerning these items. Copies are not available through the contact persons. Copies can be purchased or reviewed as noted above.

Questions concerning Medicare items in Addenda III may be addressed to Margaret Cotton, Office of Issuances, Health Care Financing Administration, Room 688 East High Rise, 6325 Security Blvd., Baltimore, MD 21207, Telephone (410) 966–5260.

Questions concerning Medicaid items in Addenda III may be addressed to Pat Prete, Medicaid Bureau, Office of Medicaid Policy, Health Care Financing Administration, Room 233 East High Rise, 6325 Security Blvd., Baltimore, MD 21207, Telephone (410) 966–3246.

Questions concerning items in Addenda V may be addressed to Walter

Rutemueller, Office of Coverage and Eligibility Policy, Health Care Financing Administration, Room 401 East High Rise, 6325 Security Blvd., Baltimore, MD 21207, Telephone (410) 966–5395.

Questions concerning all other information may be addressed to Michael Robinson, Regulations Staff, Health Care Financing Administration, Room 132 East High Rise, 6325 Security Blvd., Baltimore, MD 21207, Telephone (410) 966–5633.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance, Program No. 93.774, Medicare—Supplementary Medical Insurance Program, and Program No. 93.714, Medical Assistance Program).

Dated: June 30, 1994.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Addendum I

This addendum lists the publication dates of the quarterly listing of program issuances and coverage decision updates to the Coverage Issues Manual.

March 20, 1990 (55 FR 10290)
February 6, 1991 (56 FR 4830)
July 5, 1991 (56 FR 30752)
November 22, 1991 (56 FR 58913)
January 22, 1992 (57 FR 2558)
March 16, 1992 (57 FR 9127)
June 11, 1992 (57 FR 24797)
October 16; 1992 (57 FR 47468)
January 7, 1993 (58 FR 3028)
March 31, 1993 (58 FR 16837)
July 9, 1993 (58 FR 36967)
September 1, 1993 (58 FR 46200)
December 22, 1993 (58 FR 67796)
March 17, 1994 (59 FR 12610)

Addendum II—Description of Manuals, Memoranda, and HCFA Rulings

An extensive descriptive listing of Medicare manuals and memoranda was published on June 9, 1988, at 53 FR 21730 and supplemented on September 22, 1988, at 53 FR 36891 and December 16, 1988, at 53 FR 50577. Also, a complete description of the Medicare Coverage Issues Manual was published on August 21, 1989, at 54 FR 34555. A brief description of the various Medicaid manuals and memoranda that we maintain was published on October 16, 1992, at 57 FR 47468.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS

[January Through March 1994]

Trans. No.		Manual/Subject/Publication Number
		Intermediary Manual **Part 2—Audits, Reimbursement Program Administration (HCFA–Pub. 13–2)** **(Superintendent of Documents No. HE 22.8/6–2)**
396	•	Maximum Payment Per Visit for Rural Health Clinics Maximum Payment Per Visit for Freestanding Federally Qualified Health Centers Payment Limit for Freestanding FQHC Networks Maximum Payment Per Visit for Rural Health Clinics Maximum Payment Per Visit for Freestanding Federally Qualified Health Centers
		Intermediary Manual **Part 3—Claims Process** **(HCFA–Pub. 13–3)** **(Superintendent of Documents No. HE 22.8/6)**
1612	•	HCPCS for Hospital Outpatient Radiology and Other Diagnostic Procedures Forms HCFA–700/701, Outpatient Rehabilitation Services Forms Instructions for Completion of Form HCFA–700, Plan of Treatment for Outpatient Rehabilitation Instructions for Completion of Form HCFA–701, Updated Plan of Progress For Outpatient Rehabilitation Coding Structures Diagnostic Radiology (Diagnostic Imaging) Other Diagnostic Services HCPCS Codes
1613	•	Drugs and Biologicals Separately Billable Drugs
1614	•	Frequency of Billing
1615	•	Contractor Data Security and Confidentiality Requirements EMC Audit Trails Security-Related Requirements for Subcontractor Arrangements with Network Services Electronic Data Interchange Agreements
1616	•	Allogeneic Bone Marrow Transplantation Autologous Bone Marrow Transplantation Notifying Carriers Bill Review for Partial Hospitalization Services Provided in Community Mental Health Centers Hospital Outpatient Partial Hospitalization Services Coding Structures
1617	•	Payment for Blood Clotting Factor Administered to Hemophilia Inpatients Reporting Outpatient Surgery and Other Services Clinical Diagnostic Laboratory Services Other Than to Inpatients Billing for Durable Medical Equipment and Orthotic/Prosthetic Devices Dialysis for ESRD—General Oral Cancer Drugs
1618	•	National EMC Formats Mammography Screening

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[January Through March 1994]

Trans. No.		Manual/Subject/Publication Number
		Carriers Manual **Part 3—Claims Process** **(HCFA–Pub. 14–3)** **(Superintendent of Documents No. HE 22.8/7)**
1475	•	Claims Involving Patients Who Have Elected Hospice Coverage
1476	•	Contractor Data Security and Confidentiality Requirements
		EMC Audit Trails
		Security-Related Requirements for Subcontractor Arrangements with Network Services
		Electronic Data Interchange Agreement
1477	•	Reasonable Charges as Basis for Payments
		Customary Charge Screens for New Physicians and Customary Charge/Fee Schedule Screens for Nonphysician Practitioners and Suppliers
		Customary Charge Screens for Services Rendered After 1993
		EKG Interpretations
		Payment at Medically Directed Payment Rate
		Participating Versus Nonparticipating Physician Differential
		New Physician/New Independently Practicing Physical Therapists/Occupational Therapists
		Conversion Factors for Anesthesia Services of Qualified Anesthetists Furnished on or After January 1, 1992
		New Practitioner Adjustment
		Limiting Charge
1478	•	Nurse-Midwife Services
1479	•	National Standard Format Maintenance Procedures
		National Standard Format Change Request Procedures
		Carrier Appeals Requests
		Checking Reports
		Report on Number of Participating Physicians and Suppliers
		Completion of Items on the Participating
		Physician/Supplier
		Checking Reports
1480	•	Surgical Dressings, and Splints, Casts, and Other Devices Used for Reductions of Fractures and Dislocations
1481	•	Services Furnished by Physical or Occupational Therapist in Independent Practice
		Covered Occupational Therapy
		Limitation on Reimbursement of Services Furnished by Physical or Occupational Therapist in Independent Practice
1482	•	ASC Covered Surgical Procedures
		Program Memorandum **Intermediary (HCFA–Pub. 60–A)** **(Superintendent of Documents No. HE 22.8/6–5)**
A–94–1	•	Implementation of A Quality Control and Internal Feedback Plan
		Program Memorandum **Intermediaries/Carriers (HCFA–Pub. 60–A/B)** **(Superintendent of Documents No. HE 22.8/6–5)**
AB–94–2	•	Coverage of Oral Anti-Cancer Drugs and Uniform Coverage of Off-Label Uses of Anti Cancer Drugs Provided for by the Omnibus Budget Reconciliation Act of 1993 (OBRA 1993)
		Program Memorandum **Carriers (HCFA–Pub. 60–B)** **(Superintendent of Documents No. HE 22.8/6–5)**
B–94–1	•	Preparing and Transmitting the Address File for the Physician Survey of Medicare Carrier Performance
B–94–2	•	Omnibus Budget Reconciliation Act of 1993 (OBRA 93) Provisions
		Program Memorandum **Medicaid State Agencies (HCFA–Pub. 17)** **(Superintendent of Documents No. HE 22.8/6–5)**
94–1	•	Title XIX, Social Security Act, Medicaid Third Party Liability
		Hospital Manual **(HCFA–Pub. 10)** **(Superintendent of Documents No. HE 22.8/2)**
658	•	Drugs and Biologicals
		Separately Billable Drugs
659	•	Frequency of Billing
661	•	Allogeneic Bone Marrow Transplantation
		Autologous Bone Marrow Transplantation
		Billing for Hospital Outpatient Partial Hospitalization Services

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[January Through March 1994]

Trans. No.		Manual/Subject/Publication Number
		Coding Structures
662	•	Billing for Mammography Screening
		Home Health Agency Manual (HCFA–Pub. 11) (Superintendent of Documents No. HE 22.8/5)
265	•	Frequency of Billing Skilled Nursing Facility Manual
		(HCFA–Pub. 12) (Superintendent of Documents No. HE 22.8/3)
326	•	Frequency of Billing
327	•	Billing for Mammography Screening
		Rural Health Clinic and Federally Qualified Health Center Manual (HCFA–Pub. 27) (Superintendent of Documents No. HE 22.8/19:985)
9	•	Frequency of Billing
10	•	Determination of Rate Rural Health Clinics Federally Qualified Health Centers Federally Qualified Health Center Networks Method of Medicare Payment for Rural Health Clinic and Federally Qualified Health Center Services
42	•	Billing for Mammography Screening by Rural Health Clinics and Federally Qualified Health Centers Note: This revision was erroneously numbered as Transmittal No. 42. It will be corrected and reissued as Transmittal No. 11.
		Renal Dialysis Facility Manual (Non-Hospital Operated) (HCFA–Pub. 29) (Superintendent of Documents No. HE 22.8/13)
64	•	Frequency of Billing
		Hospice Manual (HCFA-Pub. 21) (Superintendent of Documents No. HE 22.8/18)
40	•	Frequency of Billing
41	•	Identifying HICNs Notice of Election Completion of the Uniform (Institutional Provider) Bill (Form HCFA–1450) for Hospice Bills Billing for Covered Medicare Services After Hospice Benefits are Exhausted Billing for a Fourth Hospice Benefit Period
		Outpatient Physical Therapy and Comprehensive Outpatient Rehabilitation Facility Manual (HCFA–Pub. 9) (Superintendent of Documents No. HE 22.8/9)
115	•	Frequency of Billing
116	•	Billing Instructions for Partial Hospitalization Services Provided in Community Mental Health Centers Coding Structures
117	•	Completion of Form HCFA–1450 for Billing CORF, Outpatient Physical Therapy, Occupational Therapy or Speech Pathology Services
		Coverage Issues Manual (HCFA–Pub. 6) (Superintendent of Documents No. HE 22.8/14)
67	•	Thermography Infusion Pumps
68	•	Percutaneous Transluminal Angioplasty (PTA)
69	•	Magnetic Resonance Imaging
		Provider Reimbursement Manual Part 1 (HCFA–Pub. 15–1) (Superintendent of Documents No. HE 22.8/4)
376	•	Regional Medicare Swing-Bed SNF Rates
377	•	Qualifying for Extension Under OBRA 1987

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[January Through March 1994]

Trans. No.	Manual/Subject/Publication Number
	Qualifying for Extension Under OBRA 1993
	Provider Reimbursement Manual **Part 1—Chapter 27** **Reimbursement for ESRD and Transplant Services** **(HCFA–Pub. 15–1–27)** **(Superintendent of Documents No. HE 22.8/4)**
26	• ESRD Drugs Included Under Composite Rate Separately Billable ESRD Injectable Drugs
	State Operations Manual **Provider Certification (HCFA–Pub. 7)** **(Superintendent of Documents No. HE 22.8/12)**
262	• Ambulatory Surgical Centers (ASCs) Interpretive Guidelines and Survey Procedures—Ambulatory Surgical Services
263	• Hospitals and Hospital Units Excluded from the Prospective Payment System—Annual Self-Attestation General Information on PPS Exclusion Criteria for PPS-Excluded Hospitals Criteria for Psychiatric and Rehabilitation Units First-Time Verification Procedures for Hospitals and Units Reverification of PPS Excluded Hospitals and Units Model Letter Accompanying Self-Attestation Worksheets Attestation Statement
	Regional Office Manual **Standards and Certification (HCFA–Pub. 23–4)** **(Superintendent of Documents No. HE 22.8/8–3**
53	• General Criteria for First-Time Exclusion from PPS for Hospitals and Units Procedures for First-Time Exclusion of Hospitals or Units Verifying Continued Compliance With Exclusion Criteria by Currently Excluded Hospitals or Units Role of Fiscal Intermediaries in Reverification of PPS Excluded Hospitals and Units Model Letter Informing PPS-Excluded Hospitals/Units About Self-Attestation Model Letter Informing PPS-Excluded Hospitals/Units That Reverification Has Been Approved
	Peer Review Organization Manual **(HCFA-Pub. 19)** **(Superintendent of Documents No. HE 22.8/8–15)**
29	• Glossary Statutory/Regulatory References Commonly Used Acronyms File Specifications Authority and Scope of Beneficiary Complaint Review Complaints to be Reviewed Disposition of Complaints Timing of Review Receipt of Medical Records Disclosing Information Profiling Coordination Sample Beneficiary Complaint Intake Form Examples of Joint Review Issues How to Locate the Correct Hearing Office
	State Medicaid Manual **Part 3—Eligibility (HCFA–Pub. 45–3)** **(Superintendent of Documents No. HE 22.8/10)**
62	• Extended Medicaid Benefits to Families Who Lose AFDC Because of Earnings From Employment or Loss of Earnings Disregards General Definitions First Six-Month Period Return to AFDC Absence From State Second Six-Month Period Terminations Suspense Notice Requirements

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[January Through March 1994]

Trans. No.		Manual/Subject/Publication Number
		Scope of Services Allowable Premiums During Second Six-Month Period Territories Loss of AFDC Eligibility
		State Medicaid Manual Part 4—Services (HCFA–Pub. 45–4) (Superintendent of Documents No. HE 22.8/10)
64	•	Nurse-Midwife Services Services for Pregnant Women
65	•	Institutions for Mental Diseases
		State Medicaid Manual Part 7—Quality Control (HCFA–Pub. 45–7) (Superintendent of Documents No. HE 22.8/10)
50	•	Negative Case Action Process and Procedures
		Medicare/Medicaid Sanction—Reinstatement Report (HCFA–Pub. 69)
93–13	•	Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated
94–1	•	Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated
94–2	•	Cumulative Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated
94–3	•	Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated
94–4	•	Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated

ADDENDUM IV.—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER

Month: *January 1994*

Publication date	Vol. 59 FR page No.	CFR part	File code[1]	Regulation title	End of comment period	Effective date
01/03/94	108	401, 488, 489	HSQ–159–F	Medicare Program; Granting and Withdrawal of Deeming Authority to National Accreditation Organizations (CORRECTION).	2/22/94	
01/04/94	308–311		BPD–780–PN	Medicare Program; Withdrawal of Coverage of Diagnostic Nocturnal Penile Tumescence Testing (Impotence Testing.	03/07/94	
01/06/94	679–682	421	BPD–083–F	Medicare Program; Revisions to Criteria and Standards for Evaluating Intermediaries and Carriers.		02/07/94
01/06/94	682–685	493	HSQ–210–FC	Medicare, Medicaid and CLIA Programs; Personnel Requirements for Cytotechnologists.	03/07/94	01/06/94
01/06/94	714–717	406	BPD–738–	Medicare Program; Revisions to the Definition of End-Stage Renal Disease and Resumption of Entitlement.	03/0794	
01/06/94	755–760		BPD–778–PN	Medicare Program; Special Payment Limits for Home Blood Glucose Monitors.	03/07/94	
01/06/94	760–762		BPD–796–NC	Medicare Program; Elimination of Additional Payments for Administrative and General Costs of Hospital-Based Home Health Agencies.	03/07/94	10/01/93
01/06/94	762–767		BPD–795–NC	Medicare Program; Schedule of Limits for Skilled Nursing Facility Inpatient Routine Service Costs.	03/07/94	10/01/93
01/07/94	1020–1021		OPA–009–N	Medicare Program; Request for Nominations for Members for the Practicing Physicians Advisory Council.		
01/07/94	1021–1022		OPHC–030–N.	Health Maintenance Organizations; Qualification Determinations and Compliance Actions During the Period July 1, 1993, through September 30, 1993.		
01/10/94	1278–1285	405, 410, 413, 414	BPD–737–F	Medicare Program; Coverage of Epoetin (EPO) Used by Competent Home Dialysis Patients.		02/09/94

ADDENDUM IV.—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER—Continued

Month: *January 1994*

Publication date	Vol. 59 FR page No.	CFR part	File code[1]	Regulation title	End of comment period	Effective date
01/12/94	1654–1659	412–413	BPD–731–	Medicare Program; Payment of Preadmission Services.	0314/94	01/12/94
01/12/94	1659–1675	435,436	MB–020–	Medicare Program; Deduction of Incurred Medical Expenses (Spenddown).	03/14/94	03/14/94
01/13/94	195 –1968		ORD–066–N	Health Care Financing Research and Demonstration Cooperative Agreements and Grants for Fiscal Years Through 1996.		
01/31/94	4252–4255	435	MB–020–FC	Medicare Program; Computer Matching and Privacy Protection for Medicaid Eligibility.		04/01/94
01/31/94	4285–4288		BPO–094–GN.	Medicare Program; Medicare Secondary Payment.		
02/01/94	4597–4600	431	MB–068–IFC	Medicare Program; Freedom of Choice Waiver; Conforming Changes.	04/04/94	03/03/94
02/02/94	4880–4884	433	MB–039–P	Medicare Program; Third Party Liability (TPL) Cost-Effectiveness Waivers.	04/04/94	
02/10/94	6228–6230	489	BPD–748–P	Medicare Program; Change in Provider Agreement Regulations Related to Federal Employee.	04/11/94	
02/11/94	6570–6579	400, 410, 413, 480, 498	BPD–736–IFC.	Medicare Program; Partial Hospitalization Services in Community Mental Health Centers.	04/12/94	02/11/94
02/14/94	6937–6942	405	BPD–766–P	Medicare Program; Standards for Quality of Water Used in Dialysis and Revised Guidelines on Reuse of Hemodialysis Filters for End-Stage Renal Disease Patients.		
02/18/94	8138	435, 436, 440	MB–001–N	Medicare Program; Eligibility and Coverage Requirements.		02/17/94
02/18/94	8198		OPA–011–N	Medicare Program; Meeting of The Practicing Physicians Advisory Council.		
02/22/94	8429–8435	417	BPD–732–P	Medicare Program; Health Maintenance Organization and Competitive Medical Plan National Coverage Decisions.	04/25/94	
02/22/94	8435–8446	417	OCC–018–P	Medicare Program; Limits on Payment to Health Maintenance Organizations (HMOs), Competitive Medical Plans (CMPs), and Health Care Prepayment Plans (HCPPs).		
02/22/94	8446–8450	421	BPD–111–P	Medicare Program; Intermediary and Carrier Functions.	04/25/94	
03/04/94	10290–10299	405, 424	BPD–610–F	Medicare Program; Diagnosis Codes on Physician Bills.		04/04/94
03/09/94	11000–11003	412	BPD–769–FC	Medicare Program; Changes to the Requirement for Annual Physician Acknowledgement of Physician Attestation Responsibilities.	05/09/94	04/18/94
03/10/94	11230–11238	417	OCC–011–P	Medicare Program; Post-Contract Protections and Other Coordinated Care Issues.	05/09/94	
03/16/94	12172–12184	405, 417, 473	BPD–694–F	Medicare Program; Aggregation of Medicare Claims for Administrative Appeals.		04/15/94
03/17/94	12610–12618		OIS–024–N	Medicare and Medicaid Programs; Quarterly Listing of Program Issuances and Coverage Decisions-Fourth Quarter 1993.		
03/22/94	13458–13459	400, 410, 413, 489, 498	BPD–736–CN	Medicare Program; Partial Hospitalization Services in Community Mental Health Centers; CORRECTION.	03/07/94	02/11/94
03/22/94	13491–13493		BPD–106–FN	Medicare Program; Data, Standards and Methodology Used to Establish Fiscal Year 1993 Budgets for Fiscal Intermediaries and Carriers.		10/01/92

ADDENDUM IV.—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER—Continued

Month: *January 1994*

Publication date	Vol. 59 FR page No.	CFR part	File code[1]	Regulation title	End of comment period	Effective date
03/23/94	13666–13691	431, 435, 436, 440, 447	MB–13–P	Medicare Program; Low-Income Eligibility Groups and Coverage of Services; Legislative Changes.	05/23/94	.....

[1] GN—General Notice; PN—Proposed Notice; FN—Final Notice; P—Proposed Rule; F—Final Rule; FC—Final Rule with Comment Period; CN—Correction Notice; SW—Suspension Notice; WN—Withdrawal Notice; NR—Notice of HCFA Ruling; IFC—Interim Final Rule with Comment Period.

Addendum V—Medicare Coverage Issues Manual

(For the reader's convenience, new material and changes to previously published material are in italics. If any part of a sentence in the manual instruction has changed, the entire line is shown in italics. The transmittal includes material unrelated to revised sections. We are not reprinting the unrelated material.)

Transmittal No. 67; section 50–5, Thermography. CHANGED Procedures—Effective Date: Services Furnished on or After 12/21/92.

Section 50–5, Thermography.—This section excludes from coverage the use of thermography for all indications. Do not open previously processed claims. However, if individual claims are brought to your attention, reopen and process them retroactively to December 21, 1992.

50–5 Thermography (Effective for services performed on and after December 21, 1992.

Thermography is the measurement of self-emanating infrared radiation that reveals temperature variations at the surface of the body. The thermographic device senses body temperature and demonstrates areas of differing heat emission by producing brightly colored patterns. Each color represents a specific temperature level. Interpretation of these color patterns according to designated anatomic distribution is thought to aid in diagnosing a vast array of diseases.

Thermography for any indication (including breast lesions which were excluded from Medicare coverage on July 20, 1984) is excluded from Medicare coverage because the available evidence does not support this test as a useful aid in the diagnosis or treatment of illness or injury. Therefore, it is not considered effective. This exclusion was published as a HCFA Final Notice in the Federal Register on November 20, 1992.

Transmittal No. 67; Section, 60–14, Infusion Pumps. CHANGED Implementing Instruction—Effective Date: For services performed on or after 03/04/94.

Section 60–14, Infusion Pumps, has been revised to provide for coverage of implantable infusion pumps for use in the treatment of spasticity and chronic intractable pain of malignant or nonmalignant origin, if specified patient selection criteria are met.

This section has also been revised to permit coverage of other uses of an implantable infusion pump if the pump is being used to administer a drug that is included as an indicated use on the pump's approved labelling and the contractor's medical staff determines that such is reasonable and necessary for an individual patient.

60–14 Infusion Pumps

The Following Indications For Treatment Using Infusion Pumps Are Covered Under Medicare:

A. External Infusion Pumps.—

1. Iron Poisoning (Effective for Services Performed On or After 9/26/84).—When used in the administration of deferoxamine for the treatment of acute iron poisoning and iron overload, only external infusion pumps are covered.

2. Thromboembolic Disease (Effective for Services Performed On or After 9/26/84).—When used in the administration of heparin for the treatment of thromboembolic disease and/or pulmonary embolism, only external infusion pumps used in an institutional setting are covered.

3. Chemotherapy for Liver Cancer (Effective for Services Performed On or After 1/29/85).—The external chemotherapy infusion pump is covered when used in the treatment of primary hepatocellular carcinoma or colorectal cancer where this disease is unresectable or where the patient refuses surgical excision of the tumor.

4. Morphine for Intractable Cancer Pain (Effective for Services Performed On or After 4/22/85).—Morphine infusion via an external infusion pump is covered when used in the treatment of intractable pain caused by cancer (in either an inpatient or outpatient setting, including a hospice).

Other uses of external infusion pumps are covered if the contractor's medical staff verifies the appropriateness of the therapy and of the prescribed pump for the individual patient.

Note: Payment may also be made for drugs necessary for the effective use of an external infusion pump as long as the drug being used with the pump is itself reasonable and necessary for the patient's treatment.

B. Implantable Infusion Pumps.—

1. Chemotherapy for Liver Cancer (Effective for Services Performed On or After 9/26/84).—The implantable infusion pump is covered for intra-arterial infusion of 5–FUdR for the treatment of liver cancer for patients with primary hepatocellular carcinoma or Duke's Class D colorectal cancer, in whom the metastases are limited to the liver, and where (1) the disease is unresectable or (2) where the patient refuses surgical excision of the tumor.

2. Anti-Spasmodic Drugs for Severe Spasticity.—An implantable infusion pump is covered when used to administer anti-spasmodic drugs intrathecally (e.g., baclofen) to treat chronic intractable spasticity in patients who have proven unresponsive to less invasive medical therapy as determined by the following criteria:

- *As indicated by at least a 6-week trial, the patient cannot be maintained on noninvasive methods of spasm control, such as oral anti-spasmodic drugs, either because these methods fail to control adequately the spasticity or produce intolerable side effects, and*
- *Prior to pump implantation, the patient must have responded favorably to a trial intrathecal dose of the anti-spasmodic drug.*

3. Opioid Drugs for Treatment of Chronic Intractable Pain.—An implantable infusion pump is covered when used to administer opioid drugs (e.g., morphine) intrathecally or epidurally for treatment of severe chronic intractable pain of malignant or nonmalignant origin in patients who have a life expectancy of at least 3 months and who have proven unresponsive to less invasive medical therapy as determined by the following criteria:

• *The patient's history must indicate that he/she would not respond adequately to non-invasive methods of pain control, such as systemic opioids (including attempts to eliminate physical and behavioral abnormalities which may cause an exaggerated reaction to pain); and*

• *A preliminary trial of intraspinal opioid drug administration must be undertaken with a temporary intrathecal/epidural catheter to substantiate adequately acceptable pain relief and degree of side effects (including effects on the activities of daily living) and patient acceptance.*

4. Coverage of Other Uses of Implanted Infusion Pumps.—Determinations may be made on coverage of other uses of implanted infusion pumps if the contractor's medical staff verifies that:

• *The drug is reasonable and necessary for the treatment of the individual patient;*

• *It is medically necessary that the drug be administered by an implanted infusion pump; and*

• *The FDA approved labelling for the pump must specify that the drug being administered and the purpose for which it is administered is an indicated use for the pump.*

5. Implantation of Infusion Pump Is Contraindicated.—The implantation of an infusion pump is contraindicated in the following patients:

• *Patients with a known allergy or hypersensitivity to the drug being used (e.g., oral baclofen, morphine, etc.);*

• Patients who have an infection;

• *Patients whose body size is insufficient to support the weight and bulk of the device; and*

• *Patients with other implanted programmable devices since crosstalk between devices may inadvertently change the prescription.*

Note: Payment may also be made for drugs necessary for the effective use of an implantable infusion pump as long as the drug being used with the pump is itself reasonable and necessary for the patient's treatment.

The following indications for treatment using infusion pumps are not covered under medicare:

A. External Infusion Pumps.—

1. Diabetes (Effective for Services Performed On or After 1/29/85).—The use of an external infusion pump for the subcutaneous infusion of insulin in the treatment of diabetes is not covered.

B. Implantable Infusion Pump.—

1. Thromboembolic Disease (Effective for Services Performed On or After 9/26/84).—According to the Public Health Service, there is insufficient published clinical data to support the safety and effectiveness of the heparin implantable pump. Therefore, the use of an implantable infusion pump for infusion of heparin in the treatment of recurrent thromboembolic disease is not covered.

Transmittal No. 68. Section 50–32. CHANGED IMPLEMENTATION Instructions—Effective Date: For Services Performed on or After 03/17/94.

Section 50–32, Percutaneous Transluminal Angioplasty (PTA), is revised to provide for additional coverage of this procedure. PTA coverage is expanded to include treatment of atherosclerotic obstructions of vessels in the upper extremities. The upper extremities do not include head or neck vessels. Clarification is made that PTA is covered in the treatment of obstructive lesions of the arteriovenous dialysis fistulas through either an arterial or a venos approach.

50–32 Percutaneous Transluminal Angioplasty (PTA)

This procedure involves inserting a balloon catheter into a narrow or occluded blood vessel to recanalize and dilate the vessel by inflating the balloon. PTA is covered to treat the following indications:

• *Atherosclerotic obstructive lesions:*

– In the lower extremities, i.e., the iliac, femoral, and popliteal arteries, or in the upper extremities, i.e., the innominate, subclavian, axillary, and brachial arteries. The upper extremities do not include head or neck vessels.

– Of a single coronary artery for patients for whom the likely alternative treatment is coronary bypass surgery and who exhibit the following characteristics:

± Angina refractory to optimal medical management;

± Objective evidence of myocardial ischemia; and

± Lesions amenable to angioplasty;

– Of the renal arteries for patients in whom there is an inadequate response to a thorough medical management of symptoms and for whom surgery is the likely alternative. PTA for this group of patients is an alternative to surgery, not simply an addition to medical management.

• *Obstructive lesions of arteriovenous dialysis fistulas and grafts when performed through either a venous or arterial approach.*

PTA is not covered to treat obstructive lesions of the carotid, vertebral and cerebral arteries. The safety and efficacy of these procedures have not been established.

Transmittal No. 69. Section 50–13. Changed Implementing Instructions—Effective Date: Services performed on or after 03/22/94.

Section 50–13, Magnetic Resonance Imaging, provides for coverage of magnetic resonance imaging (MRI) to diagnose disc disease without regard to whether radiologic imaging has been tried first to diagnose the problem.

50–13 Magnetic Resonance Imaging (Effective for services performed on or after 11–22–85.)

Magnetic resonance imaging (MRI), formerly called nuclear magnetic resonance (NMR), is covered under Medicare when furnished as described below for the types of covered conditions described in this instruction.

A. General

1. Method of Operation.—Magnetic resonance imaging is a noninvasive method of graphically representing the distribution of water and other hydrogen-rich molecules in the human body. In contrast to conventional radiographs or CT scans, in which the image is produced by X-ray beam attenuation by an object, MRI is capable of producing images by several techniques. In fact, various combinations of MR image production methods may be employed to emphasize particular characteristics of the tissue or body part being examined. The basic elements by which MRI produces an image are the density of hydrogen nuclei in the object examined, their motion, and the relaxation times, the period of time required for the nuclei to return to their original states in the main, static magnetic field after being subjected to a brief additional magnetic field. These relaxation times reflect the physical-chemical properties of tissue and the molecular environment of its hydrogen nuclei. Only hydrogren atoms are present in human tissues in sufficient concentration for current use in clinical MRI.

2. General Clinical Utility.—Overall, MRI is a useful diagnostic imaging modality that is capable of demonstrating a wide variety of soft-tissue lesions with contrast resolution equal or superior to CT scanning in various parts of the body.

Among the advantages of MRI are the absence of ionizing radiation and the ability to achieve high levels of tissue contrast resolution without injected iodinated radiological contrast agents. Recent advances in technology have resulted in development and FDA approval of new paramagnetic contrast agents for MRI which allow even better visualization in some instances. Multislice imaging and the ability to image in multiple planes, especially sagittal and coronal, have provided a

flexibility not easily available with other modalities. Because cortical (outer layer) bone and metallic prostheses do not cause distortion of MR images, it has been possible to visualize certain lesions and body regions with greater certainty than has been possible with CT. The use of MRI on certain soft tissue structures for the purpose of detecting disruptive, neoplastic, degenerative, or inflammatory lesions has now become established in medical practice.

B. Covered Clinical Applications.—Although several uses of MRI are still considered investigational and some uses are clearly contraindicated (see subsection D), MRI is considered medically efficacious for a number of uses. Use the following descriptions as general guidelines or examples of what may be considered covered rather than as a restrictive list of specific coverages. Coverage is limited to MRI units which have received FDA premarket approval, and such units must be operated within the parameters specified by the approval. As with all items and services, the services must be reasonable and necessary for the diagnosis or treatment of the specific patient involved.

MRI is useful in examining the head, central nervous system, and spine. Multiple sclerosis can be diagnosed with MRI and the contents of the posterior fossa are visible. The inherent tissue contrast resolution of MRI makes it an appropriate standard diagnostic modality for general neuroradiology.

MRI can assist in the differential diagnosis of mediastinal and retroperitoneal masses, including abnormalities of the large vessels such as aneurysms and dissection. When a clinical need exists to visualize the parenchyma of solid organs to detect anatomic disruption or neoplasia, this can be accomplished in the liver, urogenital system, adrenals, and pelvic organs without the use of radiological contrast materials. When MRI is considered reasonable and necessary, the use of paramagnetic contrast materials may be covered as part of the study. MRI may also be used to detect and stage pelvic and retroperitoneal neoplasms and to evaluate disorders of cancellous bone and soft tissues. It may also be used in the detection of pericardial thickening.

Primary and secondary bone neoplasm and aseptic necrosis can be detected at an early stage and monitored with MRI. Patients with metallic prostheses, especially of the hip, can be imaged in order to detect the early stages of infection of the bone to which the prothesis is attached.

Effective for services provided on or after 03/22/94 MRI may also be covered to diagnose disc disease without regard to whether radiological imaging has been tried first to diagnose the problem.

C. Gating Devices and Surface Coils (Effective for Services On or After 3/04/91).—Gating devices which eliminate distorted images caused by cardiac and respiratory movement cycles are now considered state of the art techniques and may be covered. Surface and other specialty coils may also be covered, as they are used routinely for high resolution imaging where small limited regions of the body are studied. They produce high signal-to-noise ratios resulting in images of enhanced anatomic detail.

D. Contraindications and Non-Covered Uses.—

1. Contraindications.—MRI is not covered when the following patient-specific contraindications are present. It is not covered for patients with cardiac pacemakers or with metallic clips on vascular aneurysms. MRI during a viable pregnancy is also contraindicated at this time. The danger inherent in bringing ferromagnetic materials within range of MRI units generally constrains the use of MRI on acutely ill patients requiring life support systems and monitoring devices which employ ferromagnetic materials. In addition, the long imaging time and the enclosed position of the patient may result in claustrophobia, making patients who have a history of claustrophobia unsuitable candidates for MRI procedures.

2. Non-Covered Uses.—Several uses of MRI have been identified as investigational and are not covered. These include measurement of blood flow and spectroscopy. In addition, MRI is not suitable for the imaging of cortical bone and calcifications and for procedures involving spatial resolution of bone or calcifications.

[FR Doc. 94–19111 Filed 8–4–94; 8:45 am]
BILLING CODE 4120–01–P

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following requests have been submitted to OMB since the list was last published on Friday, July 29, 1994.

(Call PHS Reports Clearance Officer on 202–690–7100 for copies of requests)

1. NLM Online Application Packet—0925–0223 (Reinstatement)—NLM used the information provided by individuals and institutions for MEDLARS online system user code assignments and invoices for system use. Respondents: Individuals or households, State or local governments, Businesses or other for-profit, Federal agencies or employees, Non-profit institutions, Small businesses or organizations; Number of Respondents: 15,000; Number of Responses Per Respondent: 1; Average Burden per Response: 0.0833 hour; Estimated Annual Burden: 1,245 hours.

2. Survey of Community and Migrant Health Centers on Their Use of Case Management for Perinatal Care—New—A Survey of Community and Migrant Health Centers (C/MHCs) participating in the Comprehensive Perinatal Care Program will be conducted to evaluate the use of case management for perinatal care. The information will be used to plan case management and perinatal service delivery strategies in C/MHCs. Respondents: Non-profit institutions.

Title	Number of respondents	Number of responses per respondent	Average burden per response (hour)
Mail Survey	96	1	.25
Phone Survey	96	1	.42

Estimated Total Annual Burden 64 hours.

3. Survey of Health Care for the Homeless—Baseline Program Description—New—Descriptive program data on all grantees funded under the Public Health Service Health Care for the Homeless Program will be collected in order to gain an understanding of the range and nature of services being provided under this

program. Data will be used to guide program planning and future priorities. Respondents: Non-profit institutions.

Title	Number of respondents	Number of responses per respondent	Average burden per response (hours)
Administrative Component	89	1	3.5
Clinical Component	89	1	1.5

Estimated Total Annual Burden 445 hours.

Written comments and recommendations concerning the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated below at the following address: Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, room 10235, Washington, DC 20503.

Dated: July 29, 1994.

James Scanlon,

Director, Division of Data Policy, Office of Health Planning and Evaluation.

[FR Doc. 94–18940 Filed 8–4–94; 8:45 am]

BILLING CODE 4160–17–M

Substance Abuse and Mental Health Services Administration (SAMHSA)

Announcement of Advisory Council Meeting

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Substance Abuse and Mental Health Services Administration National Advisory Council in September 1994.

This is the second meeting of the SAMHSA National Advisory Council. The meeting will be open and include a report by SAMHSA's new Administrator, Dr. Nelba Chavez, a status report by the Council's four work groups on Health Care Reform, HIV/AIDS, Services Integration: Co-occurring Disorders, and Program Evaluation, and a discussion of other SAMHSA program and policy issues. Attendance by the public will be limited to space available.

A summary of the meeting and/or a roster of council members may be obtained from: Ms. Susan E. Day, Program Assistant, SAMHSA National Advisory Council, 5600 Fishers Lane, Room 12C–15, Rockville, Maryland 20857.

Substantive program information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Substance Abuse and Mental Health Services Administration National Advisory Council

Meeting Dates: September 19–20, 1994

Place: Holiday Inn—Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815

Open: September 19, 9:00 a.m. to 5:00 p.m., September 20, 9:00 a.m. to 1:00 p.m.

Contact: Toian Vaughn, Room 12C–15, Parklawn Building, Telephone (301) 443–4640. FAX (301) 443–1450

Dated: August 1, 1994.

Peggy W. Cockrill,

Committee Management Officer, SAMHSA.

[FR Doc. 94–19180 Filed 8–4–94; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–94–1917; FR–3350–N–95]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact David J. Pollack, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with Sections 2905 and 2906 of the National Defense Authorization Act for Fiscal Year 1994, P.L. 103–160 (Pryor Act Amendment) and with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the April 21, 1993 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C).

These properties reviewed are listed as suitable/available and unsuitable. In accordance with the Pryor Act Amendment the suitable properties will be made available for use to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Please be advised, in accordance with the provisions of the Pryor Act Amendment, that if no expressions of interest or applications are received by the Department of Health and Human Services (HHS) during the 60-day period, these properties will no longer be available for use to assist the homeless. In the case of buildings and properties for which no such notice is received, these buildings and properties shall be available only for the purpose of permitting a redevelopment authority to express in writing an interest in the use of such buildings and properties. These buildings and properties shall be available for a submission by such redevelopment authority exclusively for one year. Buildings and properties available for a redevelopment authority shall not be available for use to assist the homeless. If a redevelopment authority does not express an interest in the use of the buildings or properties or commence the use of buildings or properties within the applicable time period such buildings and properties shall then be republished as properties

available for use to assist the homeless pursuant to Section 501 of the Stewart B. McKinney Homeless Assistance Act.

Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (The is not a toll-free number). HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to David J. Pollack at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Navy: John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; (This not a toll-free number).

Dated: July 29, 1994.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 08/05/94

Suitable/Available Properties

BUILDINGS (by State)

Florida

81 Housing/Barracks
Naval Air Station, Cecil Field
Series 711, 721, 722, 724
Jacksonville Co: Duval FL 32215–
Landholding Agency: Navy Base Close
Property Number: 789430027
Status: Pryor Amendment
Base Closure Number of Units: 81
Comment: various sq. ft., 1–3 story, scheduled to be vacated 9/98

115 Personnel/Util. Facilities
Naval Air Station, Cecil Field
Series 730, 740, 800
Jacksonville Co: Duval FL 32215–
Landholding Agency: Navy Base Close
Property Number: 789430029
Status: Pryor Amendment
Base Closure Number of Units: 115
Comment: various sq. ft., 1–2 story which includes fire station, gym, chapel, stores, bowling alley, youth center, theater, sheds, scheduled to be vacated 9/98

20 Medical/Admin. Facilities
Naval Air Station, Cecil Field
Series 500, 600
Jacksonville Co: Duval FL 32215–
Landholding Agency: Navy Base Close
Property Number: 789430030
Status: Pryor Amendment
Base Closure Number of Units: 20
Comment: 143–46800 sq. ft., 1–2 story which includes disp. & dental clinic, offices/admin bldgs., bank, post office, scheduled to be vacated 9/98

21 Product./Storage Facilities
Naval Air Station, Cecil Field
Series 226, 421, 431, 441
Jacksonville Co: Duval FL 32215–
Landholding Agency: Navy Base Close
Property Number: 789430031
Status: Pryor Amendment
Base Closure Number of Units: 21
Comment: 126–60000 sq. ft., 1-story which includes storehouses, flammable storage bldgs., warehouses, scheduled to be vacated 9/98

66 Training/Maint. Facilities
Naval Air Station, Cecil Field
Series 170, 211–212, 215, 217–219
Jacksonville Co: Duval FL 32215–
Landholding Agency: Navy Base Close
Property Number: 789430032
Status: Pryor Amendment
Base Closure Number of Units: 66
Comment: various sq. ft., 1–2 story which includes training and maintenance bldgs., hangars, scheduled to be vacated 9/98

51 Fuel/Commun./Oper. Facs.
Naval Air Station, Cecil Field
Series 125, 138, 141, 143
Jacksonville Co: Duval FL 32215–
Landholding Agency: Navy Base Close
Property Number: 789430033
Status: Pryor Amendment
Base Closure Number of Units: 51
Comment: various sq. ft, which includes fuel facilities, operation bldgs., control tower, scheduled to be vacated 9/98

43 Housing/Mess Facilities
Naval Air Station, Cecil Field
Special Area "AE" Yellowater
Jacksonville Co: Duval FL 32215–
Location: Series 711, 722
Landholding Agency: Navy Base Close
Property Number: 789430034
Status: Pryor Amendment
Base Closure Number of Units: 43
Comment: 4634–10992 sq. ft., 1–2 story which includes family housing and a mess hall, scheduled to be vacated 9/98

12 Personnel Sup./Util. Facs.
Naval Air Station, Cecil Field
Special Area "AE" Yellowater
Jacksonville Co: Duval FL 32215–
Location: Series 730, 740, 800
Landholding Agency: Navy Base Close
Property Number: 789430036
Status: Pryor Amendment
Base Closure Number of Units: 12
Comment: various sq. ft., 1-story which includes mess hall, bus shelters, store, youth center, guard houses, scheduled to be vacated 9/98

15 Oper./Storage/Admin. Facs.
Naval Air Station, Cecil Field
Special Area "AE" Yellowater
Jacksonville Co: Duval FL 32215–
Location: Series 143, 421, 441, 600
Landholding Agency: Navy Base Close
Property Number: 789430037
Status: Pryor Amendment
Base Closure Number of Units: 15
Comment: various sq. ft., 1–2 story which includes marine hdqtr., operations, storage & admin. bldgs., scheduled to be vacated 9/98

5 Communications/Maint. Facs.
Naval Air Station, Cecil Field
Special Area "AE" Yellowater
Jacksonville Co: Duval FL 32215–
Location: Series 130, 212, 216, 219
Landholding Agency: Navy Base Close
Property Number: 789430038
Status: Pryor Amendment
Base Closure Number of Units: 5
Comment: various sq. ft., 1-story which includes transceiver bldg., storage/maintenance bldgs., scheduled to be vacated 9/98

9 Navigation/Oper. Facilities
Naval Air Station, Cecil Field
Outlying Landing Field Whitehouse
Jacksonville Co: Duval FL 32215–
Location: Series 133, 141, 143
Landholding Agency: Navy Base Close
Property Number: 789430039
Status: Pryor Amendment
Base Closure Number of Units: 9
Comment: 99—1800 sq ft., which includes operation and rescue bldgs., scheduled to be vacated 9/98

LAND (by State)

Florida

Land
Naval Air Station, Cecil Field
Jacksonville Co: Duval FL 32215–
Landholding Agency: Navy Base Close
Property Number: 789430028
Status: Pryor Amendment
Base Closure Number of Units: 1
Comment: approx. 9300 acres (small portion includes bldgs.—large portion undeveloped), scheduled to be vacated 9/98

Land
Naval Air Station, Cecil Field
Special Area "AE" Yellowater
Jacksonville Co: Duval FL 32215–
Landholding Agency: Navy Base Close
Property Number: 789430035
Status: Pryor Amendment
Base Closure Number of Units: 1
Comment: approx. 8100 acres (small portion includes bldgs.—large portion

undeveloped), scheduled to be vacated 9/98

Land
Naval Air Station, Cecil Field
Outlying Landing Field Whitehouse
Jacksonville Co: Duval FL 32215-
Landholding Agency: Navy Base Close
Property Number: 789430040
Status: Pryor Amendment
Base Closure Number of Units: 1
Comment: approx. 1900 acres (small portion includes bldgs.—large portion undeveloped), scheduled to be vacated 9/98

Unsuitable Properties

BUILDINGS (by State)

California

8 Detached Carports
Long Beach Naval Station—San Pedro Complex
Taper Avenue
Los Angeles Co: Los Angeles CA
Location: #3303-3310
Landholding Agency: Navy Base Close
Property Number: 789420102
Status: Pryor Amendment
Base Closure Number of Units: 8
Reason: Within 2000 ft. of flammable or explosive material
Comment: Incorrectly published as suitable in the Federal Register on 2/14/94

19 Bldgs. (2-units each)
Long Beach Naval Station—San Pedro Complex
Taper Avenue
Los Angeles Co: Los Angeles CA
Location: #3261-3262, 3265-3277, 3286-3289
Landholding Agency: Navy Base Close
Property Number: 789420103
Status: Pryor Amendment
Base Closure Number of Units: 19
Reason: Within 2000 ft. of flammable or explosive material
Comment: Incorrectly published as suitable in the Federal Register on 2/14/94

12 Bldgs. (4-units each)
Long Beach Naval Station—San Pedro Complex
Taper Avenue
Los Angeles Co: Los Angeles CA
Location: #3263-3264, 3278-3285, 3290-3291
Landholding Agency: Navy Base Close
Property Number: 789420104
Status: Pryor Amendment
Base Closure Number of Units: 12
Reason: Within 2000 ft. of flammable or explosive material
Comment: Incorrectly published as suitable in the Federal Register on 2/14/94

[FR Doc. 94-19179 Filed 8-4-94; 8:45 am]

BILLING CODE 4210-29-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-020-04-5440-10-A117; AZA-28647]

Notice of Realty Action Noncompetitive Sale of Public Lands in Mohave County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action, Noncompetitive Sale.

SUMMARY: The following public lands have been found suitable for direct sale under Section 203 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750; 43 U.S.C. 1713), at not less than the estimated fair market value to be established by appraisal. Improvements have existed on both parcels since rights-of-way were issued in 1981 and 1988 respectively and sale of the lands has been determined to be the most desirable solution to resolve the difficult and uneconomical management situation. The lands will not be offered for sale for at least 60 days after the date of this notice.

Gila and Salt River Meridian, Arizona

Township 21 North, Range 18 West
Parcel No. 1—Valley Pioneer—AZA-28647
Sec. 8, NW¼NW¼NW¼.
Consisting of 10 acres.

Only 2 acres of the above described land will be conveyed. Prior to conveyance, a survey will be completed to legally describe the public land.

Parcel No. 2—Valley Pioneer—AZA-28647
Sec. 8, NE¼NE¼NW¼NE¼NE¼.
Consisting of 0.625 acre;

The lands described are hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

Parcels No. 1 and No. 2 are being offered by direct sale to Valley Pioneer Water Company, Inc. If it is determined that there are no known mineral values, the mineral interests shall be determined suitable for sale under Section 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2757; 43 U.S.C. 1719) and may be conveyed simultaneously. Acceptance of the direct sale offer will qualify the purchaser to make application for conveyance of those mineral interests.

The conveyance document, when issued, will contain certain reservations to the United States and will be subject to any existing rights-of-way and any other valid existing rights. Detailed information concerning these sales is available for review at the Kingman Resource Area Office, Bureau of Land Management, 2475 Beverly Avenue, Kingman, Arizona 86401, (602) 757-3161.

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 Area Manager, Kingman Resource Area, at the above address. In the absence of timely objections, this proposal shall become the final determination of the Department of the Interior.

Dated: July 28, 1994.

John R. Christensen,

Acting District Manager.

[FR Doc. 94-19085 Filed 8-4-94; 8:45 am]

BILLING CODE 4310-32-M

[WO-240-04-4350-02-24 1A]

Interagency Memorandum of Understanding Concerning Animal Damage Control and National Environmental Policy Act (NEPA) Compliance

AGENCY: Bureau of Land Management; Interior.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Interior, Bureau of Land Management (BLM), and the Department of Agriculture, Animal and Plant Health Inspection Service (APHIS), are planning to sign a Memorandum of Understanding (MOU) that recognizes APHIS as the lead Federal agency for the conduct of animal damage management on lands administered by the BLM. Specifically, the MOU assigns responsibility for carrying out animal damage management (ADM) primarily for protection of livestock, including compliance with the National Environmental Policy Act (NEPA) and the issuance of records of decision to APHIS. Under the current MOU, BLM and APHIS divide ADM responsibilities, with BLM preparing site-specific environmental analyses. The proposed MOU recognizes the State's responsibilities for management of resident wildlife populations and the need for communication among the parties, the States, and other affected agencies such as the Forest Service.

Implementation of this MOU will place responsibilities where they logically belong and streamline the conduct of ADM. It will allow BLM to focus money and time on its own responsibilities and initiatives and allow APHIS to better carry out its responsibilities under the Animal Damage Control Act in compliance with NEPA.

DATES: Comments on this draft MOU must be submitted in writing by October 4, 1994. Comments received or postmarked after this date may not be considered in the issuance of the final MOU.

ADDRESSES: Comments and questions should be directed to Cal McCluskey, Bureau of Land Management, Division of Wildlife and Fisheries, 1849 C Street, N.W., Washington, D.C. 20240; telephone (202) 452–7765.

SUPPLEMENTARY INFORMATION: On September 7, 1993, Vice President Gore issued the National Performance Review report which detailed the re-invention of government with a focus on streamlining and an overall reduction in management. This MOU pursues both those goals by consolidating responsibilities for ADM in APHIS, thereby avoiding redundancy and expense.

Background

The Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. section 1701 *et seq.*, authorizes the Secretary of the Interior to manage the public lands under principles of multiple use and sustained yield. The Secretary, in managing the public lands, is subject to other applicable law, such as the Animal Damage Control Act. The FLPMA also allows the Secretary to permit other Federal agencies to use public lands through cooperative agreements. 43 U.S.C. 1732. The FLPMA does not enlarge or diminish the responsibility and authority of the States for management of fish and resident wildlife. 43 U.S.C. 1737. However, the Secretary may designate areas of the public lands where hunting and fishing are not allowed for reasons of "public safety, administration or compliance with provisions of applicable law." 43 U.S.C. 1732(b)

The Animal Damage Control Act, 7 U.S.C. section 426, 426(b), gives the Secretary of Agriculture the authority to conduct campaigns for the destruction or control of predatory animals on public and private lands. 7 U.S.C. 426, 426(b). It also provides that the Secretary may cooperate with public agencies, States and others. Id.

The purpose of this MOU is to consolidate program responsibility for ADM for protection of livestock with APHIS. Currently, APHIS creates an ADM plan and submits it to BLM. The BLM is then responsible for preparing environmental analyses (EA's) and records of decision authorizing APHIS's action on BLM lands. This dual-agency process is cumbersome for both agencies, unnecessary, and expensive. It places BLM in the position of analyzing the environmental consequences of another agency's action on public lands and issuing a record of decision to allow APHIS's action to occur.

Beginning in 1991 and extending through 1993, many administrative appeals were filed with the Interior Board of Land Appeals challenging the legal sufficiency of BLM's NEPA documentation on the APHIS's activities. In response, BLM issued an Instruction Memorandum in 1993 (IM No. 93-199), ordering all field offices to allow full, programmatic animal damage control only where NEPA documentation was complete and up to date. (The directive did not affect case-by-case emergency control, based on proof of kill.) The BLM continues to work on updating every District's EA and to deal with administrative appeals and Federal Court litigation on both sides of the issue for a program it does not administer. This process is an inefficient way of carrying out APHIS's mandate under the Animal Damage Control Act. By transferring NEPA compliance and decisionmaking authority to the action agency, administrative efficiency will be enhanced, and costs reduced.

The following is the draft MOU on which the public may comment:

Mike Dombeck,

Acting Director.

MASTER MEMORANDUM OF UNDERSTANDING between the ANIMAL AND PLANT HEALTH INSPECTION SERVICE UNITED STATES DEPARTMENT OF AGRICULTURE and the BUREAU of LAND MANAGEMENT DEPARTMENT OF THE INTERIOR

This MASTER MEMORANDUM OF UNDERSTANDING (MOU) is made and entered into by and between the UNITED STATES DEPARTMENT OF THE INTERIOR, BUREAU OF LAND MANAGEMENT, hereinafter referred to as the BLM, and UNITED STATES DEPARTMENT OF AGRICULTURE, ANIMAL AND PLANT HEALTH INSPECTION SERVICE, hereinafter referred to as APHIS-ADC.

I. Purpose

The purpose of this MOU is to: (1) identify responsibilities in compliance with the National Environmental Policy Act (NEPA) of the respective agencies and foster a partnership in discharging the Federal obligation under the Animal Damage Control Act of March 2, 1931 (46 Stat. 1468, 7 U.S.C. 426–426b), as amended, for the management of wild vertebrates causing damage on Bureau of Land Management (BLM) lands in accordance with the Federal Land Policy and Management Act (FLPMA) 43 U.S.C. Section 1201 et seq.; (2) establish general guidelines to assist field personnel in carrying out their animal damage management (ADM) responsibilities consistent with the policies of BLM and APHIS-ADC; (3) strengthen the cooperative approach to ADM on BLM lands through exchange of information and mutual program support; and (4) reaffirm working relationships with State governments.

II. Statement of Mutual Interest and Responsibilities

The parties recognize the importance of effective ADM on lands under the administrative jurisdiction of the BLM, including control of predation by individual animals or local populations to achieve land and resource management objectives. Further, it is mutually recognized that the tools and procedures available for managing populations must be used in a professional manner according to a plan developed in compliance with NEPA, the Endangered Species Act, Federal Land Policy and Management Act, and the Animal Damage Control Act.

Both agencies have an interest in limiting damage caused by and to wildlife, so as to protect other multiple-use values. They also agree that in evaluating the need for, and in conducting ADM programs, multiple-use values must be considered.

The parties also recognize that:

A. The BLM administers public lands located primarily in the Western States and Alaska amounting to about 270 million acres. These lands and resources are managed under multiple-use principles providing for a variety of uses, including timber harvesting, recreation, livestock grazing, mining and mineral development and fish and wildlife habitat management under the laws of Congress and regulations of the Department of the Interior.

B. The States are responsible for managing the resident wildlife within their respective borders on land owned by the United States, including lands within the jurisdiction of the BLM. For purposes of this agreement, the term "wildlife" shall not include wild horses or burros, as defined in Public Law 92–195 dated December 15, 1971. The State responsibilities include regulation of wildlife populations so the habitat on public lands will ensure productivity for future wildlife populations.

C. The APHIS-ADC is the agency with the authority and expertise under the Animal Damage Control Act of March 2, 1931, as amended, and the Rural Development, Agriculture and Related

Agencies Appropriations Act of 1988 for providing ADM services. This includes maintaining technical expertise in the science of ADC, control tools and techniques; conducting ADM research and management programs, and ensuring NEPA compliance on activities related to predator control primarily for livestock protection on public lands.

TO IMPLEMENT THE FOREGOING, the parties agree as follows where BLM lands are involved:

III. The BLM Shall

A. Cooperate with APHIS-ADC in the development and annual review of ADM plans affecting BLM lands and resources on those lands and ensure that they are consistent with FLPMA.

B. Provide information to APHIS-ADC as to where control actions should be prohibited or restricted for public safety reasons relating to resource management plans conformance.

C. When requested, provide information and assistance to APHIS-ADC during the NEPA process.

D. Complete NEPA compliance for nonpredator ADM activities initiated by BLM to protect natural resources and facilities.

IV. The APHIS-ADC Shall

A. Evaluate ADM needs in cooperation with State agencies and permittees.

B. Develop and update ADM annual plans in cooperation with the appropriate State and Federal agencies, permittees, and others. Cooperate with the BLM to identify human safety zones and other areas where mitigation or restriction may be needed to comply with BLM's Resource Management Plans.

C. Complete necessary NEPA documents and decision records on the ADM plans.

D. Conduct ADM on BLM lands in accordance with APHIS–ADC policies, consistent with BLM resource management plans.

E. Provide the BLM with technical information on recommended ADM tools and techniques, when requested.

V. It is Mutually Agreed By the Parties That

A. The parties will participate, as needed, in State ADM agreements with the appropriate State and Federal agencies.

B. The parties will ensure interagency coordination and review of the effects of predator control activities on BLM lands and resources before APHIS–ADC makes decisions on predator control plans.

C. The parties will meet on a State or regional basis, as needed, to coordinate ADM operations. Representation shall be by the BLM State Director and the APHIS–ADC Regional Director, State Director of State Wildlife Agencies, State Department of Agriculture, and Regional Forester of the Forest Service or their designated representatives.

D. The parties will elevate any problems regarding implementation of this agreement that cannot be resolved to the next higher level for resolution.

E. Nothing in this MOU is intended to modify in any manner the present cooperative programs of either Agency with States, other public agencies, or educational institutions.

F. This MOU shall supersede the existing MOU between APHIS–ADC and BLM and supplements and amendments thereto relating to the conduct of ADM programs by the parties.

G. This MOU is neither a fiscal nor a funds obligation document. Any endeavor involving reimbursement or contribution of funds between the parties to this MOU will be handled in accordance with applicable laws, regulations, and procedures including those for Government procurement and printing. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate statutory authority. This MOU does not provide such authority.

H. Nothing in this memorandum shall obligate either the BLM or APHIS–ADC to expend appropriations or to enter in any contract or other obligations.

I. All ADM programs on BLM lands will be coordinated with appropriate State and Federal agencies.

This MOU may be modified or amended upon written consent of both parties or may be terminated with 30-day written notice of either party.

A. The principal contacts for this agreement are:

Cal McCluskey, Wildlife Program Manager, Division of Wildlife & Fisheries, Bureau of Land Management, 1849 C Street, N.W. (LSB Rm. 204), Washington, D.C. 20240, Phone: 202–452–7770

Donald Hawthorne, Associate Deputy Administrator, USDA Animal and Plant Health, Inspection Service, P.O. Box 96464, Washington, D.C. 20090, Phone: 202–720–2054

VI. Effective Date

In witness whereof, the parties hereto have executed this MOU as of the last written date below.

U.S. Department of the Interior, Bureau of Land Management

Director

Date

U.S. Department of Agriculture, Animal and Plant Health Inspection Service

Administrator

Date

[FR Doc. 94–19103 Filed 8–4–94; 8:45 am]
BILLING CODE 4310–84–P

Fish and Wildlife Service

Availability of Final Environmental Impact Statement for the proposed Patoka River National Wetlands Project, Pike and Gibson County, IN

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

Final Environmental Impact Statement for the Proposed Patoka River National Wetlands Project.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) has prepared a Final Environmental Impact Statement (FEIS), which is available for public review. The FEIS evaluates a proposal to establish the Patoka River National Wetlands Project in Pike and Gibson Counties in southwest Indiana.

DATES: A decision whether to implement the preferred alternative will be made after a 30-day waiting period from the date of this notice of availability.

ADDRESSES: Individuals wishing copies of this FEIS for review should contact: Project Manager, U.S. Fish and Wildlife Service, Patoka River National Wetlands Project, 510½ West Morton Street, Box 217, Oakland City, Indiana 47660; or U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, Attention: Ms. Jeanne Holler.

FOR FURTHER INFORMATION CONTACT: William McCoy, Project Manager, telephone (812) 749–3199; or Jeanne Holler, Wildlife Biologist, telephone (612) 725–3306.

SUPPLEMENTARY INFORMATION: The FEIS evaluates a proposal to establish the Patoka River National Wetlands Project in Pike and Gibson Counties in southwest Indiana. Four alternatives, including a No Action alternative are being considered. The three action alternatives are aimed at protecting and enhancing the valuable resources of the Patoka River valley. The Project encompasses one of the last remaining stretches of bottomland forest in Indiana

and the Midwest. It provides some of the best wood duck production habitat in the State and is used by threatened and endangered species including bald eagles and Indiana bats. Alternative 4 is the Service's preferred alternative. It proposes to acquire 22,083 acres of land from willing sellers. Full acquisition may take 20 years or more. 6,800 acres would be purchased as the Patoka River National Wildlife Refuge and Wildlife Management Areas would be purchased from within an adjacent 15,283-acre selection area. Project lands would be managed to protect and enhance bottomland hardwood forests, other wetland habitats, and complementary uplands. The goal would be to provide essential food, cover and resting areas for migratory birds, threatened and endangered species, and resident fish and wildlife; and to improve outdoor recreation and education opportunities for the American people. Copies of the FEIS have been sent to all landowners within the proposed Project boundaries; to federal, state and local government officials; interested parties; and to all individuals, agencies, and organizations who requested copies.

Sam Marier,

Regional Director.

[FR Doc. 94–18567 Filed 8–4–94; 8:45 am]

BILLING CODE 4310–55–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32549]

Burlington Northern Inc. and Burlington Northern Railroad Company—Control and Merger—Santa Fe Pacific Corporation and the Atchison, Topeka and Santa Fe Railway Company

AGENCY: Interstate Commerce Commission.

ACTION: Notice of prefiling notification and request for comments.

SUMMARY: Pursuant to 49 CFR 1180.4(b), applicants have notified the Commission of their intent to file an application seeking authority for Burlington Northern Inc.'s acquisition of control of and merger with Santa Fe Pacific Corporation, the result in a common control of Burlington Northern Railroad Company and The Atchison, Topeka and Santa Fe Railway Company by the merged company, and the merger of the two railroad entities. The Commission finds this to be a major transaction as defined in 49 CFR Part 1180. Applicants have proposed an accelerated procedural schedule, on which the Commission invites comments by interested persons.

DATES: Written comments must be filed with the Interstate Commerce Commission no later than August 22, 1994. Applicants' reply is due by September 1, 1994.

ADDRESSES: An original and 20 copies of all documents must refer to Finance Docket No. 32549 and must be sent to Office of the Secretary, Case Control Branch, Attn: Finance Docket No. 32549, Interstate Commerce Commission, Washington, DC 20423.

In addition, one copy of all documents in this proceeding must be sent to each of applicants' representatives: (1) Betty Jo Christian, Esq., Steptoe & Johnson, 1330 Connecticut Avenue, N.W., Washington, DC 20036–1795; and (2) Erika Z. Jones, Esq., Mayer, Brown & Platt, 2000 Pennsylvania Avenue, N.W., Suite 6500, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: On July 8, 1994, Burlington Northern Inc. (BNI), Burlington Northern Railroad Company (BN), Santa Fe Pacific Corporation (SFP), and The Atchison, Topeka and Santa Fe Railway Company (Santa Fe) (collectively, applicants) filed a notice of intent indicating that they will file an application seeking Commission approval and authorization under 49 U.S.C. 11343–47 for: (1) BNI's acquisition of control of and merger with SFP; (2) the resulting common control of BN and Santa Fe by the merged company; and (3) the merger of the two railroad entities.

Under an Agreement and Plan of Merger dated June 29, 1994, BNI and SFP have agreed that SFP will merge with and into BNI in accordance with Delaware law. The merger is subject to certain conditions, including Commission approval. During the pendency of the Commission's review of the application, BNI and SFP, including their carrier subsidiaries, will continue to operate as independent companies, each headquartered in its current city and operating under the direction of its current board and management. Upon Commission approval, SFP will be merged with and into BNI, which will be the surviving company and will change its name to Burlington Northern Santa Fe Corporation. Each share of SFP common stock will be exchanged for 0.27 of a share of newly issued BNI common stock.

Following the merger of BNI and SFP, the merged company will directly control both BN and Santa Fe, and the operations of the two railroads will be fully integrated pursuant to that common control. Applicants also are seeking authority to merge the two railroad legal entities.

Applicants will use the year 1993 for purposes of their impact analyses to be filed in the application. Applicants anticipate filing their application approximately 3 to 4 months after the July 8, 1994 filing of this Notice.

The Commission finds that this is a major transaction, as defined at 49 CFR 1180.2(a), as it is a control and merger transaction involving two or more class I railroads. The application must conform to the regulations set forth at 49 CFR Part 1180 and must contain all information required therein for major transactions, except as modified by any advance waiver. The carriers are also required to submit maps with overlays that show the existing routes of both carriers and their competitors.

By petition also filed July 8, 1994, applicants sought a protective order to protect confidential, highly confidential, and proprietary information, including contract terms, shipper-specific traffic data, and other traffic data to be submitted in connection with the control application. A protective order was entered in a decision served July 15, 1994.

Also on July 8, 1994, applicants filed a petition to establish a proposed procedural schedule.[1] The Commission seeks comments now on applicants' proposed procedural schedule. Applicants' proposed procedural schedule is as follows:[2]

PROPOSED PROCEDURAL SCHEDULE

F	Primary application filed.
F+30 ...	Commission notice of acceptance of primary application published.
F+75 ...	Comments on primary application (except DOJ, DOT) due.
F+90 ...	DOJ, DOT comments on primary application due.

[1] Applicants also state that they intend to seek a waiver of the Commission's regulations governing the filing of directly related applications in order to permit the filing of any related abandonment applications up to 3½ months after the filing of the primary application.

[2] In addition to submitting an original and 20 copies of all documents filed with the Commission, the parties are encouraged to submit all pleadings and attachments as computer data contained on a 3.5-inch floppy diskette which is formatted for WordPerfect 5.1 (or formatted so that it can be converted by WordPerfect 5.1). The computer data contained on the computer diskettes submitted are subject to the protective order attached to the Commission's decision served July 15, 1994, and is for the exclusive use of Commission employees working directly with review of substantive matters in this proceeding. The flexibility provided by such computer file data will facilitate expedited review by the Commission and its staff.

PROPOSED PROCEDURAL SCHEDULE—Continued

F+105 .	Second lists of protective conditions due. Applications for abandonment, petitions for exemption, and all related verified statements due. (Notice of intent to abandon will be filed within 30 days prior to the filing of applications for abandonment; notices of intent will not be filed as to petitions for exemption.)
F+120 .	Responsive applications due; opposition to primary application due.
F+130 .	Commission notice of acceptance of applications for abandonment published.
F+150 .	Commission notice of acceptance of responsive applications published.
F+240 .	Government parties' evidence due; opposition to responsive applications due; rebuttal in support of primary application due. Opposition to applications for abandonment and to petitions for exemption, and all related verified statements due.
F+285 .	Responses to government parties' evidence due; rebuttal in support of responsive applications due.
F+306 .	Hearing on all evidence; witnesses to be to cross-examined only to the extent specific need is shown in order to resolve material issues of disputed fact.
F+335 .	Opening briefs due.
F+360 .	Reply briefs due.
F+380 .	Oral argument.
F+430 .	Final decision.

Under the proposal, immediately upon each evidentiary filing, the filing party will place all documents relevant to the filing (other than documents that are privileged or otherwise protected from discovery) in a depository open to all parties, and will make its witnesses available for discovery depositions. Access to documents subject to protective order will be appropriately restricted. Parties seeking discovery depositions may proceed by agreement. Relevant excerpts of transcripts will be received in lieu of cross-examination at the hearing, unless cross-examination is needed to resolve material issues of disputed fact. Discovery on responsive applications will begin immediately upon their filing. The Chief Administrative Law Judge will have the authority: (1) to revise the schedule as may appear necessary; and (2) initially to resolve any discovery disputes. The dates for filing post-hearing briefs and for oral argument before the Commission will be set upon completion of oral hearing before the Chief Administrative Law Judge.

The proposed schedule contains substantially shorter time periods than those provided for in our rules at 49 CFR 1180.4(a)-(e). For example, 1180.4(e) which tracks the statute at 49 U.S.C. 11345(b)(3), requires that the evidentiary proceedings for a major transaction be completed in 24 months after acceptance of the primary application, with a final decision to be issued within 180 days thereafter.

We invite interested persons to submit written comments on the proposed procedural schedule. Comments must be filed by August 22, 1994. Applicants may reply by September 1, 1994.

Decided: July 29, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, and Commissioners Simmons and Morgan.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–19218 Filed 8–4–94; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–337 (Sub-No. 3X)]

Dakota, Minnesota & Eastern Railroad Corporation—Abandonment Exemption—in Brown and Cottonwood Counties, MN

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by Dakota, Minnesota & Eastern Railroad Corporation of a 13.5-mile line of railroad, known as the Comfrey Line, between milepost 240.5, near Sanborn Junction and milepost 227.0, at Comfrey, in Brown and Cottonwood Counties, MN, subject to standard labor protective conditions and an historic preservation condition.

DATES: Provided no formal expressions of intent to file an offer of financial assistance (OFA) have been received, this exemption will be effective on September 4, 1994. Formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2)[1] must be filed by August 15, 1994. Petitions to stay must be filed by August 22, 1994. Requests for a public use condition conforming to 49 CFR 1152.28(a)(2) must be filed by August 25, 1994, and petitions to reopen must be filed by August 30, 1994.

ADDRESSES: Send pleadings, referring to Docket No. AB–337 (Sub-No. 3X), to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423; and (2) Petitioner's representative: Byron D. Olsen, FELHABER, LARSON, FENLON & VOGT, P.A., 4200 First Bank Place, 601 Second Avenue South, Minneapolis, MN 55402–4302.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 927–5610. [TTD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TTD services (202) 927–5721.]

Decided: July 27, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, and Commissioners Simmons and Morgan.

Vernon A. Williams,

Acting Secretary.

[FR Doc. 94–19105 Filed 8–4–94; 8:45 am]

BILLING CODE 7035–01–P

[1] *See Exempt. of Rail Line Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in

accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Massachusetts:
MA940001 (Feb. 11, 1994)
MA940002 (Feb. 11, 1994)
New Jersey:
NJ940002 (Feb. 11, 1994)
NJ94003 (Feb. 11, 1994)
NJ940004 (Feb. 11, 1994)
NJ940007 (Feb. 11, 1994)
NJ940015 (Mar. 18, 1994)
New York:
NY940006 (Feb. 11, 1994)
NY940007 (Feb. 11, 1994)
NY940027 (Feb. 11, 1994)
NY940028 (Feb. 11, 1994)
NY940031 (Feb. 11, 1994)
NY940041 (Feb. 11, 1994)

Volume II

Pennsylvania:
PA940006 (Feb. 11, 1994)
West Virginia:
WV940002 (Feb. 11, 1994)
WV940003 (Feb. 11, 1994)
WV940006 (Feb. 11, 1994)

Volume III

Alabama:
AL940017 (Feb. 11, 1994)
AL940042 (Mar. 25, 1994)
Florida:
FL940017 (Feb. 11, 1994)

Volume IV

Illinois:
IL940001 (Feb. 25, 1994)
IL940002 (Feb. 11, 1994)
IL940003 (Feb. 11, 1994)
IL940005 (Feb. 11, 1994)
IL940006 (Feb. 11, 1994)
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IL940020 (Mar. 04, 1994)
IL940023 (Apr. 15, 1994)
IL940024 (Apr. 15, 1994)
IL940029 (Apr. 15, 1994)
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IL940097 (Apr. 15, 1994)
IL940099 (Apr. 15, 1994)
Indiana:
IN940001 (Feb. 11. 1994)
IN940002 (Feb. 11, 1994)
IN940004 (Feb. 11, 1994)
IN940005 (Feb. 11, 1994)
IN940006 (Feb. 11, 1994)
IN940016 (Feb. 11, 1994)
IN940018 (Feb. 11, 1994)
Ohio:
OH940001 (Feb. 11, 1994)
OH940002 (Feb. 11, 1994)
OH940003 (Feb. 11, 1994)
OH940014 (Feb. 11, 1994)
OH940026 (Feb. 11, 1994)
OH940027 (Apr. 01, 1994)
OH940028 (Feb. 11, 1994)
OH940029 (Feb. 11, 1994)
OH940034 (Feb. 11, 1994)

Volume V

Louisiana:
LA940001 (Feb. 11, 1994)
LA940004 (Feb. 11, 1994)
LA940005 (Feb. 11, 1994)
LA940009 (Feb. 11, 1994)
LA940012 (Feb. 11, 1994)
LA940018 (Feb. 11, 1994)
Oklahoma:
OK940013 (Feb. 11, 1994)
OK940014 (Feb. 11, 1994)
OK940016 (Feb. 11, 1994)
OK940017 (Feb. 11, 1994)
OK940018 (Feb. 11, 1994)
OK940019 (Feb. 11, 1994)
OK940020 (Feb. 11, 1994)
OK940024 (Feb. 11, 1994)
Texas:
TX940003 (Feb. 11, 1994)
TX940005 (Feb. 11, 1994)
TX940010 (Feb. 11, 1994)
TX940114 (May 13, 1994)

Volume VI

Arizona:
AZ940002 (Feb. 11, 1994)
AZ940016 (Feb. 18, 1994)
Montana:
MT940044 (May 27, 1994)
North Dakota:
ND940001 (Feb. 11, 1994)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be

found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate volumes, arranged by State. Subscriptions include in annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 29th day of July 1994.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 94–18853 Filed 8–4–94; 8:45 am]

BILLING CODE 4510–27–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–08724]

Environmental Assessment Finding of No Significant Impact Related to Amendment of Materials License No. SUB–1357, Chemetron Corporation, Inc., Cuyahoga Heights, OH

The U.S. Nuclear Regulatory Commission is considering issuing an amendment of Materials License No. SUB–1357, held by Chemetron Corporation, Inc., to authorize the remediation of the McGean-Rohco Complex buildings and equipment located at 2910 Harvard Avenue in Cuyahoga Heights, Ohio.

Environmental Assessment

Background

By the letter of March 24, 1994, Chemetron Corporation, Inc. (Chemetron) requested that NRC amend their license to authorize them to perform the remediation of the Harvard Avenue and Bert Avenue sites in accordance with their remediation plan entitled, "Site Remediation Plan Chemetron Remediation Project Harvard and Bert Avenue Sites Chemetron Corporation, Inc. Newburgh Heights, Ohio," dated October 1, 1993, November 1, 1993, and November 11, 1993. By letter of April 4, 1994, Chemetron requested that the NRC separately review the sections of the remediation plan pertaining to the McGean-Rohco buildings, located at 2910 Harvard Avenue, in Cuyahoga Heights, Ohio. Chemetron indicated that they wished to initiate the remediation of these buildings as quickly as possible.

Proposed Action

The proposed action is the issuance of a license amendment authorizing Chemetron to perform remediation of the McGean-Rohco Complex buildings located at 2910 Harvard Avenue in Cuyahoga Heights, Ohio.

Need for Proposed Action

The purpose of the proposed action is to decommission the McGean-Rohco Complex buildings, by removing depleted uranium contamination on building surfaces and in equipment, so that the buildings and equipment can be released for unrestricted use. These buildings are currently in use by McGean-Rohco, Inc. personnel. Remediating the buildings will allow McGean-Rohco to utilize the buildings and equipment without the radiological controls and training requirements that are currently required.

Environmental Assessment

The NRC staff reviewed the levels of contamination, the proposed remediation methods, and radiological and environmental controls that will be used during the remediation. These controls include worker dosimetry, the As Low As Reasonably Achievable (ALARA) program, area air monitoring, routine surveys, a bioassay program for workers, and routine monitoring of both airborne and liquid effluent releases to meet 10 CFR Part 20 requirements. Worker and public doses will be limited so that exposures will not exceed 10 CFR Part 20 requirements. Chemetron proposed to remediate building surfaces and equipment to the levels in "Guidelines for Decontamination of Facilities and Equipment Prior to Release for Unrestricted Use of Termination of Licenses for Byproduct, Source, or Special Nuclear Material," dated August 1987.

In Chemetron's remediation plan, Chemetron proposed to dispose of protective clothing, equipment, and roofing wastes, generated in the McGean-Rohco remediation, by disposing them either at a licensed low-level radioactive waste disposal site. Contaminated building materials, such as bricks, blocks, and concrete, would be disposed of in the disposal cell being proposed for the Harvard Avenue site. By letter of July 8, 1994, Chemetron proposed to store wastes, generated in the McGean-Rohco Complex remediation, in Building 16. On July 29, 1994, Chemetron proposed to also use Building 14 for waste storage. While wastes are in storage, Buildings 14 and 16 will be secured and monitored.

Expected release to airborne and liquid pathways, as well as other environmental impacts will be small and acceptable.

The NRC requested a review by the Ohio Historic Preservation Office (OHPO) of the McGean-Rohco Complex. In the OHPO letter of June 14, 1994, they concluded that the project, if completed as proposed, would have no effect on properties listed on or eligible for the National Register of Historical Places.

Conclusions

The proposed remediation of the McGean-Rohco Complex buildings will enable Chemetron to release buildings and equipment, currently being used by McGean-Rohco, Inc., for unrestricted use, and enable McGean-Rohco, Inc. personnel access to these areas without having radiological controls or training requirements. On the basis of the NRC staff's evaluation of Chemetron's proposed remediation approach for the McGean-Rohco Complex, and analysis of the environmental impacts of the proposed action, the staff concludes that the proposed remediation activities will not result in any significant environmental or radiologic impact.

Alternatives to the Proposed Action

Leaving the depleted uranium contamination in place is the only alternative to the proposed action. This alternative would result in the necessity of keeping radiological controls and training requirements. Without remediation of the contamination, industrial incidents, such as the chemical explosion that occurred in December 1993, could cause releases of radioactive material and increased costs to remediate the contaminated areas.

Alternative use of Resources

The activities leading to the proposed action would result in the irreversible use of energy resources in the conduct of the proposed McGean-Rohco Complex remediation. A small amount of land at the waste disposal sites would be irreversibly committed for waste disposal. There are no reasonable alternatives to these resource uses, and the proposed activities do not involve any unresolved conflicts concerning uses of available resources.

Agencies and Persons Consulted, and Sources Used

The EA was prepared by NRC staff. The Cuyahoga County Board of Health, and the Ohio Department of Health reviewed the proposed remediation plan. Neither of these agencies had comments applicable to the McGean-Rohco Complex decommissioning activities. The OHPO reviewed applicable documents and photographs to assess eligibility for the National Register of Historical Places, and concluded that the proposed action would have no effect on properties listed on or eligible for the National Register of Historical Places.

Finding of No Significant Impact

The NRC staff prepared this EA evaluating the environmental impacts related to the license amendment requested from Chemetron Corporation, Inc., to authorize the remediation of the McGean-Rohco Complex buildings and equipment. This EA examines the radiological impacts associated with these proposed activities. As indicated above the EA did not identify any significant environmental impact associated with these proposed license amendment actions, the staff concluded that a Finding of No Significant Impact (FONSI) is justified and appropriate.

Opportunity for a Hearing

On April 11, 1994, the NRC published in the **Federal Register** a notice of Consideration of Amendment to Chemetron Corporation License and Opportunity for Hearing. In response to this notice, the Earth Day Coalition submitted a petition for hearing. The proceeding is currently before the Presiding Officer.

Dated at Rockville, Maryland, this 1st day of August 1994.

For the Nuclear Regulatory Commission.

John H. Austin,

Chief, Low-Level Waste and Decommissioning Projects Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

References

1. "Site Remediation Plan Chemetron Remediation Project Harvard and Bert Avenue Sites Chemetron Corporation, Inc. Newburgh Heights, Ohio," dated October 1, 1993, November 1, 1993, and November 11, 1993, with supplemental correspondence dated February 7, 1994, April 15, 1994, July 8, 1994, and July 27, 1994.

2. "Radiological Control Plan," Revision 1, December 1993.

3. "Radiological Worker Handbook and Training Manual," Revision 1, January 1994.

4. "Guidelines for Decontamination of Facilities and Equipment Prior to Release for Unrestricted Use or Termination of Licenses for Byproduct, Source, or Special Nuclear Material," dated August 1987.

5. Letter from M. Raymond, Ohio Historic Preservation Office, to T.C. Johnson, U.S. Nuclear Regulatory Commission, June 14, 1994.

[FR Doc. 94–19112 Filed 8–4–94; 8:45 am]

BILLING CODE 7590–01–M

Final Meeting of the CONTAIN Peer Review Committee

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The CONTAIN Peer Review Committee will meet to review the technical adequacy of the CONTAIN code, and present findings to the NRC.

DATES: August 11–12, 1994.

TIME: August 11th, 8:30 a.m. until 5:00 pm. at (1). August 12th, 8:30 a.m. until 12:00 noon at (2).

ADDRESSES: (1) Energy Research, Inc. 6290 Montrose Road, Rockville, Maryland. (2) U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland, Conference Room 01–F–7/9.

FOR FURTHER INFORMATION CONTACT: A. Notafrancesco, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 415–6499.

SUPPLEMENTARY INFORMATION: The objective of this effort is to organize and conduct a peer review of the CONTAIN code, light water reactor version. The peer review is to provide an independent assessment of the modeling capabilities and limitations, and adequacy of the CONTAIN code. The results of the peer review are to be documented in a summary report that describes the results of the independent assessment by the peer review participants and the technical acceptability of the code.

A peer review committee has been organized using recognized experts from the national laboratories, universities, CONTAIN user community and independent contractors. Meetings are held to discuss and evaluate the applicability and state of validation of the various CONTAIN phenomenological methods. The meeting scheduled for August 11–12, 1994, is the final meeting of the CONTAIN Peer Review Committee. The committee will finalize its findings and present them to the NRC.

Dated at Rockville, Maryland, this 29th day of July, 1994.

For the Nuclear Regulatory Commission.

Farouk Eltawila,

Chief, Accident Evaluation Branch, Division of Systems Research, Office of Nuclear Regulatory Research.

[FR Doc. 94–19113 Filed 8–4–94; 8:45 am]

BILLING CODE 7590–01–M

Draft Policy Statement on Agreement State Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft policy statement on Agreement State Program.

The Nuclear Regulatory Commission staff is releasing the proposed policy statement on the Agreement State Program for public comment. The draft policy statement establishes Agreement State program principles, and describes the respective roles and responsibilities of the NRC and the States in the administration of this program, which is authorized by Section 274 of the Atomic Energy Act of 1954, as amended. Agreement States are States which have assumed regulatory authority from NRC over the possession and use of certain radioactive materials.

On August 25, 1993, the Commission requested the NRC staff to recommend improvements to the NRC's Agreement States Program to assure adequate protection of the public health and safety. This draft policy statement responds to the first area the Commission requested be considered, "improvements in guidance and principles of operations for the Agreement State Program." This draft document is an "umbrella" policy statement which will serve as broad guidance in delineating the NRC's and the State's respective responsibilities and expectations. In this regard, the NRC especially requests comments on the following:

The Commission has proposed that the categories of findings made about adequacy of an Agreement State's program be Adequate, Marginally Adequate and Inadequate. For the Marginally Adequate finding, the NRC action could be either (a) followup reviews, or (b) probation with followup reviews, depending on whether or not NRC were confident that the State would address the program deficiencies in an expeditious and effective manner. Comment is requested as to whether these three categories are appropriately and sufficiently descriptive of the performance, or whether the "Marginally Adequate" category needs to be subdivided such that States placed on probation are not identified in the same category as those which are not placed on probation.

In addition to the draft proposed "Statement of Principles and Policy For

the Agreement State Program," a document provided to the Commission entitled "Specific Review Area Recommendations," and draft internal procedures on the NRC process to be applied when a State agreement is suspended or terminated, also are being made available for public comment. We also request specific comments on the use of 10 CFR Part 2, Subpart L "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings" for suspension and termination decisions, in lieu of the hearing procedures detailed in the internal procedures published with this Notice for suspension and termination of an agreement, sections V and VI, respectively.

The staff is soliciting comments from the Agreement States and the public at this informal stage by publishing the documents and also placing them in the Nuclear Regulatory Commission's Public Document Room located at 2120 L Street, NW. (Lower Level), Washington, DC. Comment period expires October 4, 1994. Comments received after this date will be considered if it if practical to do so, but the Commission is able to assure consideration only for comments received on or before this date. Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Services Branch. Deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:45 am and 4:15 pm on Federal workdays. For further information contact Ms. Maria Lopez-Otin, Federal Liaison, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504–2598. Once the comments are received, the staff will develop a final draft of the policy statement for Commission review. After obtaining Commission approval, the proposed policy statement will once again be issued for a final round of public comment.

Two other policy statements continue to be applicable, in large part, but future revisions to these existing policy statements will be necessary to reflect the new "umbrella" policy statement. The two existing policy statements are: "Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States Through Agreement" (46 FR 7540; January 23, 1981 as amended by policy statements published at 46 FR 36969; July 16, 1981 and 48 FR 33376, July 21, 1983) and "NRC Review of Agreement State Radiation Control Programs, Final General Statement of Policy" (57 FR 22495; May 28, 1992).

This draft statement of policy does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (434 U.S.C. 3501 et seq.).

Dated at Rockville, Maryland this 29th day of July, 1994.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

I. Purpose

The purpose of this Statement of Principles and Policy is to clearly describe the respective roles and responsibilities of the U.S. Nuclear Regulatory Commission (NRC) and States in the administration of programs carried out under Section 274 of the Atomic Energy Act of 1954, as amended. Section 274 provides broad authority for the NRC to establish Federal and State cooperation in the administration of regulatory programs for the protection of public health and safety in the industrial, medical, and research uses of nuclear materials.

This policy statement addresses the Federal-State interaction under the Atomic Energy Act to: (1) establish and maintain agreements with States under section 274(b) to provide for discontinuance by the NRC, and the assumption by the State, of responsibility for administration of a regulatory program for the use of byproduct, source, and small quantities of special nuclear material; and (2) guide post-agreement interactions to ensure that NRC and Agreement State radiation control programs are coordinated and compatible and that Agreement State programs continue to ensure adequate protection of the public health and safety.

This policy statement establishes principles, objectives, and goals that should be reflected in the implementing guidance and programs of the NRC and Agreement States to meet their respective program responsibilities and which should be achieved in the administration of these programs.

II. Statement of Legislative Intent

The Atomic Energy Act of 1954 did not specify a role for the States in regulating the use of nuclear materials. Many States were concerned as to what their responsibilities in this area might be and expressed interest in seeing that the boundaries of Federal and State authority were clearly defined. This need for clarification was particularly important in view of the fact that although the Federal government retained sole responsibility for protecting the public health and safety from the radiation hazards of byproduct, source, and special nuclear material, the responsibility for protecting the public from the radiation hazards of other sources such as x-ray machines and radium had for many years been borne by the States.

Consequently, in 1959 Congress enacted Section 274 of the Atomic Energy Act to establish a statutory framework under which States could assume certain regulatory jurisdiction over byproduct, source, and special nuclear material in quantities less than a critical mass. The primary purpose of the legislation was to authorize the Commission to relinquish to the States its regulatory authority over the use of these materials. The Commission retained regulatory authority over the licensing of certain facilities and activities such as nuclear reactors, larger quantities of special nuclear material, and the export and import of nuclear materials.

In considering the legislation, Congress recognized that the Federal government would need to assist the States to ensure that they developed the capability to exercise their regulatory authority in a competent and effective manner. Accordingly, the legislation authorized the Commission to provide training and other services to State officials and employees. However, in rendering this assistance, the Congress did not intend that the Commission would provide any grants to a State for the administration of a State regulatory program. This was fully consistent with the objectives of Section 274 to qualify States to assume independent regulatory authority over certain defined areas of regulatory jurisdiction and to permit the Commission to discontinue its regulatory responsibilities in those areas.

In order to relinquish its authority to a particular State, the Commission must find that the program is compatible with the Commission's program for the regulation of radioactive materials and that the State program is adequate to protect the public health and safety. In addition, the Commission has an obligation to review existing Agreement State programs to ensure continued adequacy and compatibility. Section 274(j) of the Act provides that the NRC may terminate or suspend all or part of its agreement with a State if the Commission finds that such termination is necessary to protect the public health and safety or the State has not complied with the provisions of Section 274(j). In these cases, the Commission must offer the State reasonable notice and

opportunity for hearing. In addition, the Commission may temporarily suspend all or part of an agreement in the case of an emergency situation.

III. Principles of Program Implementation

III.1. Regulatory Program Excellence

The principles of excellence contained in this section provide a common philosophical basis on which Agreement States and NRC regulatory programs should be formulated and implemented. NRC and the Agreement States should strive for excellence in the administration of their programs and in their collective efforts to establish a credible, coherent, consistent program for the regulation of Atomic Energy Act materials throughout the United States. Both the NRC and the Agreement States should continually improve their regulatory program effectiveness and efficiency based on their respective and collective experience. Excellence in radiation safety regulation should include striving to improve assurance of the adequacy of public health and safety. In order to achieve excellence, the highest standards of public accountability, ethical conduct, and professionalism should be applied to individual and organizational performance.

Regulatory decisions and actions should be developed and implemented in an open and publicly credible manner and should be able to withstand scrutiny. Such scrutiny should be welcomed by the regulator. The regulator should be, and appear to be, independent and impartial in its actions and free from pressure and inappropriate influences from the regulated community. Regulations and regulatory decisions should be based on assessments of the best available information from affected and interested individuals and organizations, as well as on the best available knowledge from research and operational experience. Significant decisions should be documented with the rationale for such decisions explained. The public should have an opportunity for early involvement in significant regulatory program decisions. Where several effective alternatives are available, the alternative that best assures safety while considering differing views should be adopted, considering the resources needed to implement that alternative. Regulations should be necessary, or appropriate, to assure safety, and should be clear, coherent, logical, and practical. Regulatory actions should be fully consistent with regulations and good public policy and should lead to stability and predictability in the planning and implementation of radiation control programs.

Failure to adhere to these principles of excellence in the conduct of operations should be a sufficient reason for a regulatory program to self-initiate program changes that will result in needed improvements. There is an obligation by all involved to identify and express concerns relating to a program that appears to be operating contrary to these principles of excellence.

It is not intended that these principles of excellence be established as formal criteria against which NRC and Agreement State programs would be assessed. Rather, the expectation is that these principles will be incorporated into the day-to-day operational fabric of NRC and Agreement State materials programs. These principles should be used in the formulation of policies and programs, implementation of those policies and programs, and assessments of program effectiveness. Application of these principles will ensure that complacency will be minimized, that adequate levels of protection of public health and safety are being provided, and that government employees tasked with the responsibility for these Federal and State regulatory programs serve the public in an effective, efficient, and responsive manner. These principles are primarily for the use of materials program managers and staff in the self assessment of their programs and to use in the establishment of goals and objectives for the continual improvement of their respective programs. However, in the normal conduct of NRC Region and Agreement State formal program performance reviews, any deficiencies that indicate the program is not adhering to these principles of excellence should be noted.

III.2. Coherent National Program

NRC acknowledges its responsibility to ensure that there is a coherent national radiation control program and NRC through this program establishes national radiation protection standards. The basic elements of such a program include ability to ensure adequate protection of the public health and safety, compatibility in areas of national interest, sufficient flexibility to accommodate local needs and conditions, ability to assess program performance on a consistent and systematic basis, and excellence in program administration.

Each of these elements is reflected and addressed in specific sections of this policy statement.

III.3. Adequate to Protect the Public Health and Safety

NRC and Agreement State radiation control programs share a responsibility to ensure adequate protection of the public health and safety in the administration of their respective regulatory programs controlling the uses of nuclear materials and facilities. Accordingly, NRC and Agreement State programs shall possess the requisite supporting legislative authority, implementing organization structure and procedures, and financial and human resources to effectively administer a radiation control program that ensures adequate protection of the public health and safety.

III.4. Compatible in Areas of National Interest

NRC and Agreement State radiation control programs share a responsibility to ensure that a consistent and compatible radiation control program is administered. Such a radiation protection program should be based on a common regulatory philosophy including use of common definitions and standards. It should not only be effective, and cooperatively implemented by NRC and the Agreement States, but also should provide uniformity and consistency in program areas having national significance.

Such areas include those affecting interstate commerce, movement of goods and provision of services. Also necessary is the ability to communicate using a nationally accepted set of terms with common understanding, the ability to ensure an adequate level of protection of public health and safety that is consistent and stable across the nation, and the ability of NRC and each Agreement State to evaluate the effectiveness of the national radiation control program. States will not have the flexibility to deviate from the program elements that the Commission requires for compatibility.

III.5. Flexibility

With the exception of national radiation protection standards, to the extent possible, Agreement State radiation control programs should be provided with flexibility in program implementation to accommodate individual State preferences, State legislative direction, and local needs and conditions. However, the exercise of such flexibility should not bar or preclude, or effectively preclude, a practice authorized by the Atomic Energy Act, and in the national interest. That is, a State would have the

flexibility to design its own program, including incorporating more stringent requirements provided that the requirements for adequacy are still met, and the more stringent requirements do not preclude or effectively preclude a practice within the national interest without an adequate public health and safety or environmental basis.

IV. New Agreements

IV.1. Overall Process of Becoming an Agreement State

Section 274 of the Atomic Energy Act requires that once a decision to seek Agreement State status is made by the State, the Governor of that State must certify to the NRC that the State desires to assume regulatory responsibility and has a program for the control of radiation hazards adequate to protect the public health and safety with respect to the materials within the State covered by the proposed agreement and compatible with the Commission's program. This certification will be provided in a letter to the NRC which includes a number of documents in support of the certification. These documents include the State's enabling legislation, the radiation control regulations, a narrative description of the State program's policies, practices and procedures, and a proposed agreement.

The NRC has published criteria describing the necessary content these documents are required to cover. The NRC reviews the request and publishes notice of the proposed agreement in the **Federal Register** to provide an opportunity for public comment. After consideration of public comments, if the Commission determines that the State program is adequate and compatible, and approves the agreement, a formal agreement document is signed by the Governor and the Chairman of the NRC.

IV.2. Phased Implementation

The NRC believes that a formal phased implementation process, during which a State initially assumes authority over smaller, less complex licenses, would be advantageous to both NRC and the Agreement State. It would provide the NRC an opportunity to obtain important information on the State's program and validation of the State's capabilities before turning over a major portion of the program. At the end of the initial phase, the NRC would have greater confidence in the State's ability to protect the public health and safety and to administratively manage the program. From the State perspective, it should provide new States an opportunity to work out start up problems with their program prior to having responsibility for more complex licenses.

Therefore, upon the effective date of a full agreement, a mandatory phased implementation process will be used. In the initial phase, the State will assume full regulatory authority over categories of licensees programs of lesser complexity. During this phase, the State will perform all regulatory functions for the transferred licenses. At the end of this phase, the NRC will evaluate the State program to determine that the State program continues to be adequate to protect public health and safety and compatible with the Commission's program. If, at the end of the initial implementation phase, the Agreement State program is adequate and compatible, and the State has demonstrated an ability to assume authority for more complex licensed activities, the remaining categories of licensees will be transferred to the State.

V. Mutual Program Assistance

NRC will provide training and other assistance to States, such as assistance in developing regulations and program descriptions to help individual States prepare for entrance into Agreements and to help them during transition periods of assumption of regulatory authority. Following assumption of regulatory authority, NRC will continue to provide training and other assistance such as review of proposed regulatory changes to help States administer their regulatory responsibilities. NRC would also use its best efforts to provide specialized technical assistance to Agreement States to address unique or complex licensing, inspection, and enforcement issues. Similarly, Agreement States will assist the NRC and other Agreement States in addressing areas where Agreement States have particular expertise or are in the best position to provide immediate assistance. In addition, NRC and Agreement States shall use their best efforts to keep each other informed about relevant aspects of their programs. NRC will provide an opportunity for Agreement States to have early and substantive involvement in rulemaking, policy, and guidance development activities. Agreement States will provide a similar opportunity to the NRC to make it aware of, and to provide the opportunity to review and comment on, proposed changes in Agreement State programs, regulations, policies, and regulatory guidance.

Following assumption of regulatory authority by an Agreement State, if it experiences difficulty in program administration, NRC would use its best efforts to assist the State in maintaining the effectiveness of its radiation control program. Such assistance could address an immediate difficulty or a chronic difficulty affecting the State's ability to discharge its responsibility to continue to ensure adequate protection of the public health and safety.

VI. Performance Evaluation

Under Section 274 of the Atomic Energy Act of 1954, as amended, NRC retains authority for ensuring that Agreement State programs continue to provide adequate protection of the public health and safety. In fulfilling this statutory responsibility, NRC will provide oversight of Agreement State radiation control programs to ensure that they are adequate and compatible prior to entrance into a Section 274(b) agreement and that they continue to be adequate and compatible after an Agreement is effective. NRC, in cooperation with the Agreement States, will establish and implement a performance evaluation program to provide NRC and Agreement State management with systematic, integrated, and reliable evaluations of the strengths and weaknesses of their respective radiation safety control programs and identification of areas needing improvement.

As a part of this performance evaluation process, NRC will take any necessary actions to ensure that Agreement State radiation control programs remain adequate and compatible. These actions include: (1) biennial assessments of Agreement State radiation control programs against established review criteria; (2) provision of assistance to help address weaknesses or areas within an Agreement State radiation control program requiring improvement; (3) placing a State on a probationary status for serious program deficiencies that require heightened oversight; (4) temporary suspension of an agreement and reassertion of regulatory authority in an emergency if an Agreement State program experiences any immediate program difficulties preventing the State from continuing to ensure adequate protection of the public health and safety; and (5) suspension or termination of an agreement and reassertion of NRC regulatory authority if the Agreement State program experiences difficulties which jeopardize the State's ability to continue to ensure adequate protection of the public health and safety. The basis for NRC's actions will be based on a well defined and predictable process and a performance evaluation program which will be consistently and fairly applied.

VII. Levels of Agreement State Program Review Findings

The following discussion outlines the nature of NRC findings regarding the NRC's Agreement State review process.

Finding 1—Adequate to Protect Public Health and Safety and Compatible

If the NRC finds that a State program has met all of the Agreement State program review criteria or that only minor deficiencies exist, the Commission would find that the State's program is adequate to protect the public health and safety. If the NRC determines that a State program contains all required NRC program elements for compatibility, or only minor discrepancies exist, the program would be found compatible.

Finding 2—Marginally Adequate [1]

If the NRC finds that a State program protects public health and safety, but is deficient in meeting some of the review criteria, the NRC may find that the State's program is marginally adequate. The NRC would consider in its determination plans that the State has to address any of the deficiencies noted during the review. In cases where less significant Agreement State deficiencies previously identified have been uncorrected for a significant period of time, NRC may also find that the program is marginally adequate.

Finding 3—Inadequate to Protect Public Health and Safety and/or not Compatible

If the NRC finds that a State program is significantly deficient in some or all of the review criteria, the NRC would find that the State's program is not adequate to protect the public health and safety. If the NRC determines that a State, after a substantial period of time, has either failed to adopt a significant item(s) of compatibility or has failed to adopt several of the required compatibility items, or has refused to revise state regulations which are inconsistent with the required NRC compatibility elements, the program would be found not compatible.

VIII. NRC Actions as a Result of These Findings

The following discussion outlines the options available to the NRC as a result of making any of the above findings. None of these actions are automatic. The appropriate action will be determined on a case-by-case basis by NRC management.

Letters

In all cases, subsequent to an Agreement State program review, the findings would be recounted in a letter to senior level State management. In the event that the NRC finds that a State program is adequate and compatible, no further action would be required. In the case where minor deficiencies are noted, the State would be requested to describe their proposed corrective action. If the corrective action appears appropriate, no further NRC review is required. If additional clarification of the corrective actions is needed, additional correspondence may be necessary.

Follow-up Reviews

In the event that deficiencies are noted during the program review, NRC may increase the frequency of contacts with the State to keep abreast of developments and conduct onsite follow-up reviews to assure that progress is being made on correcting program deficiencies. If, during follow-up reviews, it is shown that the State has taken corrective actions, a letter finding the State adequate and compatible would be provided.

Probationary Status

There are three circumstances which can lead to a marginally adequate or incompatible State program being placed in a probationary status: (1) There are cases in which program deficiencies may be serious enough to require immediate heightened oversight; (2) In other cases, Agreement State program deficiencies previously identified may have been uncorrected for a significant period of time; and (3) If the NRC determines that a State program has been late in adopting either a significant item(s) of compatibility or has not adopted several of the required compatibility elements. If the NRC was not confident that the State would address the program deficiencies in an expeditious and effective manner, the Commission would place the State program on probation.

As a result of placing a State program on probation, the NRC would communicate its findings to a higher level of State management. Notice of such probationary status would normally be addressed to the Governor of the State. Notice would also be published in the **Federal Register**. A copy of the letter to the Governor would be placed in the Public Document Room and a press release would be issued.

Once a State program is placed on probation, the NRC would heighten its oversight of the program. This would include obtaining commitments from the State in the form of a management plan to describe actions to be taken by the State to address the program deficiencies, including specific goals and milestones. The NRC would increase observation of State program activities under the Agreement to assure adequate protection of the public health and safety. In some cases, the NRC would consider providing technical support for the maintenance of the regulatory program. The probationary period would last for a specified period of time. This period would not normally be more than one year, but could be extended based on extenuating circumstances. At the end of that time, if the State has not addressed the deficiencies, the NRC would institute suspension or termination proceedings.

Suspension

Section 274j of the Atomic Energy Act gives the Commission authority to suspend all or part of its agreement with a State if the suspension is required to protect the public health and safety, or if the State has not complied with one or more of the requirements of the Act. In cases where the Commission finds that program deficiencies related to either adequacy or compatibility are such that the Commission must take action due to a lack of confidence in the State's ability to protect the public health and safety, the Commission would suspend all or part of its agreement with the State. If the situation is not resolved, termination will be considered.

Before reaching a final decision on suspension, the Commission will notify the State and provide the State an opportunity for a hearing on the proposed suspension. Notice of the proposed suspension will also be published in the **Federal Register**. Suspension, rather than termination, would be the preferred option in those cases where the State provides evidence that the program deficiencies are temporary and that the State is committed to correcting the deficiencies that led to the suspension.

In addition to the normal suspension authority, Section 274j.(2) of the Act also addresses emergency situations and gives the Commission authority to temporarily suspend all or part of its agreement with a State without notice or hearing if, an emergency situation exists requiring immediate action to protect public health and safety, and the State

[1] Since the compatibility finding is made on the basis of a State having program elements which are "identical", "essentially identical", or "essentially verbatim", there can be no intermediate finding between compatible and not compatible. In terms of the compatibility evaluation, and the need for possible NRC action, the significance of an individual element in a State program will be judged on the basis of its impact on the national radiation protection program.

has failed to take necessary action within a reasonable time.

Termination

Section 274j of the Atomic Energy Act gives the Commission authority to terminate its agreement with a State if such termination is required to protect the public health and safety, or if the State program has not complied with one or more of the requirements of the Act (e.g., is found to be not compatible with the Commission's program). When the Commission finds such significant program deficiencies, the Commission would institute proceedings to terminate its agreement with the State.

In cases where a State has failed to respond in an acceptable manner during the probationary period and there is no prospect for improvement, termination will be considered. Before reaching a final decision on termination, the Commission will notify the State and provide the State an opportunity for a hearing on the proposed termination. Also, notice of the proposed termination will be published in the **Federal Register**. There may be cases where termination will be considered even though the State program has not been placed on probation.

IX. Program Funding

NRC will continue to provide training and other assistance to Agreement States to the extent permitted by statute and budgetary resources. Currently, Section 274 does not allow federal funding for the administration of Agreement State radiation control programs. Section 274 does authorize the NRC to offer training and other assistance to a State in anticipation of entering into an Agreement with NRC, however, it is NRC practice not to fund the establishment of new Agreement State programs.

Given the importance in terms of protection of the public health and safety to have a uniform national program of well trained radiation control program personnel, the NRC intends to continue funding training and travel for Agreement State staff. NRC staff would also provide technical assistance to Agreement States to address complex licensing and compliance issues and other specialized technical assistance.

X. Regulatory Development

NRC and Agreement States will cooperate in the development of new regulations and policy. Agreement States will have early and substantive involvement in the development of new regulations affecting protection of the public health and safety and of new policy affecting administration of the Agreement State program. Likewise, the NRC expects to have the States provide it with early and substantive involvement in the development of new Suggested State Regulations. NRC and Agreement States will keep each other informed about their individual regulatory requirements (i.e., regulations or license conditions) and the effectiveness of those regulatory requirements so that each has the opportunity to make use of proven regulatory approaches to further the effective and efficient use of resources.

XI. Program Evolution

The NRC-Agreement State program is dynamic and the NRC and Agreement States will continue to jointly assess the overall national program to identify specific changes which should be considered based on experience or to further improve overall performance and effectiveness of the national program. The changes considered should include possible legislative changes. The program should also include the formal sharing of information and views such as briefings of the Commission by the Agreement States.

Specific Review Area Recommendations

- Whether two separate policies, one for entering into an agreement and one for evaluation of existing state programs, are needed.

The PAG has considered this issue and recommends that a single "umbrella" policy covering the NRC and Agreement State Program be issued. The existing policy statements that address entering into an Agreement and the evaluation of State programs will be modified or converted to procedures.

- Evaluation of whether a formal transition period should be established during which new Agreement State programs could be phased gradually.

The PAG recommendation, which includes a formal transition period for new Agreement State programs, has been incorporated as section IV of the draft Policy Statement.

- Reevaluation of the criteria and elements used for adequacy and compatibility reviews so that the less significant items are eliminated and the focus is on those things which must be complied with to provide reasonable assurance of adequate protection of the public health and safety.

The new compatibility policy and criteria are being developed. The pilot program under the Integrated Materials Performance Evaluation Program (IMPEP) will consist of gathering information on the common performance indicators in addition to the normal program reviews. Criteria for adequacy are contained in the IMPEP procedures. The PAG will maintain cognizance of these initiatives and serve as an integrative mechanism.

- Identification of the information which NRC needs from the Agreement States and establishment of a requirement for the reporting of such information. In addition, why this information is needed and how it benefits health and safety.

The PAG review of existing Agreements between the NRC and Agreement States found that the Agreements contain a commitment for the Agreement State and the NRC to use their best efforts to keep each other informed on regulatory changes to assure that the State and Commission programs are coordinated and compatible. Currently, representatives of the Agreement States and NRC staff in AEOD, OSP, and NMSS are evaluating options for the development of a database on events involving Atomic Energy Act-regulated materials. The database is intended to provide Agreement State and NRC staffs with information to assist in the evaluation of regulatory effectiveness, and aid in the prediction of safety trends.

The PAG will consider the current initiatives to obtain information on events in conjunction with its examination of the merits of codifying State agreement practices in a new part of the NRC rules and regulations, including the need to codify a requirement for reporting of event data by Agreement States. The PAG will factor in the information derived from these initiatives when it examines the codification issue.

- Identification of the minimum administrative-type provisions the NRC will consider necessary in assessing the adequacy and compatibility of Agreement State programs. This covers such things as: hearing opportunities, rulemaking procedures, environmental assessments, the separation of regulatory and promotional responsibilities, investigative capabilities, enforcement policies, criminal sanctions, and other similar provisions.

In establishing compatibility criteria, the staff will address these issues. IMPEP is also considering a number of these areas. The PAG will maintain cognizance of these initiatives and serve as an integrative mechanism.

- Evaluation of the present practice of placing Agreement State approved devices on the NRC registration list so that they can be used nationwide.

OSP, NMSS, and OGC are evaluating the current practice and will provide recommendations to the Commission describing approaches which will result in improved effectiveness and efficiency in sealed source and device reviews.

• Review and make appropriate recommendations on the adequacy of the documentation and control procedures currently being used by the NRC for the Agreement State program.

Although Commission regulations do not specifically impose data reporting requirements on Agreement States, the NRC criteria for the approval of new programs and the periodic review of existing State programs, necessitate that a State provide sufficient documentation to the NRC for the evaluation of the program. In addition to the documentation needed for the NRC to evaluate a State program against the NRC approval or review criteria, existing State programs routinely submit a wide variety of information and documentation, including copies of licenses and orders issued by the State, statistical data on licensing and inspection activities, draft and proposed regulations, copies of sealed source and device registrations, licensing guides, and similar documents.

The PAG explored the handling of documents generated and received by NRC in relation to Agreement State and State Liaison program business, e.g., program reviews, followup letters, and other incoming documents and correspondence, as well as the management of information contained in these documents. OSP has informed the PAG that initiatives have begun that will improve the document control procedures used by the Office of State Programs. OSP has also initiated efforts to integrate its document tracking, control, and filing systems with those used throughout NRC. OSP will establish procedures to assure that appropriate documents are placed in the Public Document Room, use NRC Central Files as the official agency file for OSP correspondence, and use NUDOCS and RIDS for document distribution and retrieval. Other program improvements, such as procedures to implement the Integrated Materials Performance Evaluation Program, will result in satisfactory documentation of the important elements of OSP programs.

Additionally, OSP, with support from IRM, will establish an INTERNET-based E-mail and file transfer system for use by NRC and the Agreement States. This system should permit electronic communication between NRC and the Agreement States. The system will also permit the electronic transfer of large documents between regulators. This system began operation in May 1994. As a longer term project, OSP and IRM will establish an Agreement State program electronic information base that will permit faster retrieval and analysis of programmatic information in the future.

OSP indicates that these documentation and document control improvements should result in assurance that appropriate OSP documents are available to the public through use of the PDR; provide an administrative resource savings to OSP by using Central Files, RIDS and NUDOCS; and provide a resource savings to OSP and the Agreement States generally through (1) greater use of electronic communication, (2) more easily retrievable correspondence through the use of Central Files and NUDOCS, and (3) electronic retrieval and analysis of electronic data base information.

• Until performance indicators are in place and provide beneficial regulatory insight, staff should (keeping in mind the importance of a short turnaround time) provide the Commission with the results of each Agreement State program evaluation for which a finding is withheld concerning adequacy or compatibility prior to issuing a letter to the state.

It is now staff practice to provide the Commission with the results of each Agreement State program evaluation for which a finding of either adequacy or compatibility is withheld.

• Propose a method to accelerate the process of issuing letters to States which notify State management of the status of the State program following NRC's formal review.

The proposed IMPEP review process is designed to achieve and institutionalize an accelerated procedure for issuing review letters. The goal is to have letters, which contain factual program review findings, issued in one month. The PAG agrees with this approach.

• Determine criteria for placing (or removing) a State program in a status category which would serve to put State officials and the public on notice that their program is failing to fully meet an acceptable norm for public health and safety protection or compatibility.

The PAG's recommendations in this area have been incorporated into the draft Policy Statement, and can be found at section VIII.

• Evaluate and propose internal procedures/guidance on the NRC process to take over when a state agreement is suspended or terminated, in whole or in part, or is temporarily suspended.

You will find the PAG's proposed internal procedures in the following pages. Note that the concept of a Management Review Board (MRB) as described in these procedures, is a pilot initiative to evaluate the effectiveness of indicator information in adequacy and compatibility determinations.

Post Agreement Activities

Guidelines for Suspension of a Section 274b Agreement

I. Introduction

A. This procedure provides the guidelines that will be followed by NRC staff when considering whether or not to exercise the authority contained in Section 274j(2) of the Atomic Energy Act to suspend an Agreement for a State.

B. This procedure will not address the emergency situation where there is a danger to the public health and safety. Guidelines for emergency suspension are found in Procedure _____.

II. Suspension

A. Section 274j. of the Atomic Energy Act gives the Commission authority to suspend all or part of its agreement with a State if the suspension is required to protect the public health and safety, or if the State has not complied with one or more of the requirements of the Act. In cases where the Commission finds that program deficiencies related to either adequacy or compatibility are such that the Commission must take action, the Commission will suspend all or part of its agreement with the State.

B. Before reaching a final decision on suspension, the Commission will notify the State and provide the State an opportunity for a hearing on the proposed suspension as discussed in Part VI. Notice of the proposed suspension will also be published in the **Federal Register**. Suspension, rather than termination, will be the preferred option in those cases where the State provides evidence that the program deficiencies are temporary and that the State is committed to implementing program improvements.

III. Management Review Board Role

A. The Management Review Board (MRB) is responsible for making the adequacy assessment of each Agreement State's program based on the reviews of the program, using both common performance indicators and non-common performance indicators and the compatibility determination. The management review board consists of senior NRC managers, or their designees, to include:

Executive Director for Operations

Director, Office of Nuclear Material Safety and Safeguards
Director, Office of State Programs
Director, Office of Analysis and Evaluation of Operational Data
General Counsel

B. The MRB will consider the results of the Agreement State review and any other appropriate information in making a determination of adequacy and compatibility with respect to an Agreement State. MRB meetings to discuss specific program review findings normally will be open and Agreement States representatives will be invited to attend. MRB internal deliberations regarding the overall Agreement State program rating may be closed, given the predecisional nature of those discussions.

C. If it is the recommendation of the MRB that NRC initiate the proceedings to suspend an Agreement, the Office of State Programs will be assigned the lead for preparation of the Commission paper. The Commission paper will contain the information supporting the suspension as described in Part IV, and will assess potential resource implications of NRC reasserting authority. The Commission paper will be coordinated with OGC, NMSS and the region.

IV. Staff Work

A. Before the opportunity for hearing and issuance of the **Federal Register** notice, OSP will draft a Commission paper for the signature of EDO on the suspension of regulatory authority in the State based on the initial recommendations of the MRB. In preparation of the Commission paper, the assigned Project manager should coordinate with OGC as to the form or type of Commission paper. The draft Commission paper (Appendix A) should contain the following information:

1. Background information (Appendix B)
2. MRB recommendations (Appendix C)
3. Proposed Commission Order Reasserting Authority (Appendix D)
4. Proposed **Federal Register** Notice regarding the Suspension and Reassertion of NRC authority (Appendix E)
5. Letter to the Governor regarding the Commission decision (Appendix F)
6. A public announcement to be issued by Public Affairs (Appendix G)
7. Proposed letters to the appropriate Congressional Committees on the Commission Decision (Appendix H)

V. Hearings

Before the Commission can suspend a State's program, it must provide reasonable notice and opportunity for a hearing to the State as required by Section 274j(1). Section 274j(1) does not require such a hearing if suspension is requested by the Governor.

Before the opportunity for a hearing can arise, the Office of State Programs must submit to the Commission a paper containing a recommendation to suspend the State program in question. This Commission paper will include the recommendations of the MRB and any other material pertinent to the staff's recommendation to suspend the Agreement. Before a decision is made on the OSP recommendation, the Commission must provide the State with notice and an opportunity to request a hearing on the issue. If the State does not request a hearing, the Commission will make a final decision on the issue. If the State does request a hearing, the Commission will initiate the hearing process described below.

The hearing for the suspension of an Agreement State program will be an informal hearing conducted either by the Commission itself, or at the Commission's discretion, by a Special Agreement State Board appointed by the Commission. In cases where the Commission determines that a Special Board will be used, the Board will consist of three members: (1) the chair of the Organization of Agreement States (OAS) (unless the chair is from the State in question, in which case the Agreement State representative will be the past chair of the OAS); (2) an official from the Office of General Counsel, and (3) the Deputy Director of an NRC regional office (outside of the region in which the State is located).

The Commission, or the Special Board, as appropriate, will conduct an informal hearing to address the issues in question. At the hearing, the NRC staff, representatives of the Agreement State, and interested third parties will have an opportunity to testify, answer questions from the Special Board, and submit written materials. Third parties may submit written material to the Special Board and may testify for a limited period of time. After consideration of the issues, the Commission or the Special Board will issue a decision on suspension. A majority of the Commission or the Special Board will be required to support a decision. In cases where a Special Board is used, the Commission will have discretion to review the decision of the Special Board, and either uphold or overturn the Board's decision.

VI. Additional Coordination During the Suspension

A. NRC will conduct a meeting with the licensees in the State to explain the reassertion of NRC authority and the present fee structure. Lead for the meeting should be the Region in consultation with NMSS, OGC and OC.

B. After the suspension of the Agreement, OSP will prepare a letter to the Department of Labor advising the Department of the effective date of the termination of the Agreement (Appendix J).

C. The Regional State Agreements Officer (RSAO) should obtain from the State a computer printout of all specific and general licenses affected by the suspension of the State's agreement. Mailing labels should be obtained if possible from the State. A letter should be prepared notifying each licensee of the suspension and reassertion by NRC and appropriate information (Appendix K).

D. OSP will prepare a letter to all Agreement and Non-Agreement States notifying them of the effective date of the suspension and if appropriate, enclosing a copy of the order or **Federal Register** notice (Appendix L).

E. The RSAO will coordinate with the State so that all necessary action is taken to have license files transferred or made available to the NRC.

VII. Withdrawal of Suspension/ Recommendation for Termination

A. When the situation requiring the suspension has been corrected or eliminated, the Management Review Board will consider all factors and recommend to the Commission whether to lift the suspension.

B. If the situation is not resolved, termination will be considered and the Procedure _____ for termination should be followed.

Appendices to Suspension Procedure

Appendix	Subject
A	Commission Paper for Suspension of all or part of a Agreement and request for special board for hearings
B	Background information on the Agreement State
C	Management Review Board Recommendations
D	Proposed Commission Order Reasserting Authority
E	Proposed FEDERAL REGISTER Notice regarding the Suspension and Reassertion of NRC authority
F	Letter to Governor regarding the Commission decision on suspension

Appendix	Subject
G	Public Announcement to be issued by Public Affairs
H	Letters to Congressional Committees
I	Special Board's report to Commission on hearings
J	Letter to Department of Labor on suspension
K	Letter to licensees regarding suspension and reassertion
L	Letter to All States regarding suspension and reassertion

Post Agreement Activities

Guidelines for Emergency Suspension of a Section 274b Agreement

I. Introduction

This procedure provides the guidelines that will be followed by NRC staff when considering whether or not to exercise the authority contained in Section 274j(2) of the Atomic Energy Act.

II. General

Section 274j(2) of the Act addresses emergency situations and gives the Commission authority to temporarily suspend all or part of its agreement with a State without notice or hearing if an emergency situation exists requiring immediate action to protect public health and safety and the State failed to take steps within a reasonable time. The NRC will invoke this authority to temporarily suspend all or part of its agreement with an Agreement State only as a last resort, where an emergency creates a danger to the public health or safety, and the Agreement State has failed to take, or is prevented from taking, the necessary steps to protect the public health and safety. The Commission will exercise this authority whenever necessary to contain or eliminate the danger, and only during the period of the emergency. Prior to any emergency suspension of all or part of the NRC's agreement with a State, the NRC will notify the governor of the State. The NRC will consider invoking this authority with respect to a single facility or location if the emergency situation and the criteria of Part V or the guidelines so warrant after considering the factors stated in Part VI.

III. Emergency

The NRC recognizes that a severe threat to public health and safety would have to exist before a emergency suspension of all or part of its agreement with an Agreement State would be invoked. Under existing practices, an Agreement State could, if necessary, request technical assistance from NRC for a specific emergency situation. NRC continues to encourage State requests for technical assistance. The exercising of NRC authority to temporarily suspend an agreement would occur for those highly unusual events which would require prompt remedial action to protect the public health and safety.

IV. Initiation of Emergency Suspension Action

1. Under section 274j(2), if a State requests that the NRC temporarily suspend part of its agreement, the State shall make the request by telephone call to the Executive Director for Operations (telephone number), in coordination with the Director of Office of State Program or in off hours, to the NRC Emergency Operation Center, telephone ( ). Such a request should be made by the Governor, or the Governor's designee, and include the specific nature of the emergency and its possible impacts as related to the criteria and factors in Parts V and VI below. This request may be made only by the Agreement State that has regulatory authority under which the licensee is operating when the emergency occurs.

2. When the NRC determines an event warrants emergency suspension of an agreement it will follow the guidelines and criteria stated in Parts V below.

3. The Governor and the radiation control program director of the affected State will be consulted and kept fully informed of the actions taken by the NRC. For events which may warrant consideration of emergency suspension but for which there is a reasonable basis for presumption that a State can satisfactorily resolve the emergency situation, the NRC will inform the State of necessary actions that the State should take to avert further consideration of emergency suspension under section 274j(2) and will provide appropriate technical assistance within the limits of its resources.

4. The Executive Director for Operations, in consultation with OSP, NMSS, the involved Regional Office and OGC will issue an order regarding the emergency suspension (Appendix A). The Commission will be kept informed as to the nature of the emergency situation and the actions taken to contain or eliminate the danger (Appendix B).

5. A press release regarding the emergency suspension will be prepared and issued by the Office of Public Affairs (Appendix C).

6. State Programs will coordinate with the Office of Congressional Affairs in order to notify the appropriate State representatives and congressional committees (Appendix D).

7. Notification to the affected licensee or groups of licensees in the State will be made by the Regions after obtaining information regarding the affected licensee or groups of licensees from the Agreement State Radiation Control Program (Appendix E).

V. Minimum Criteria

1. The NRC will consider suspension of an agreement pursuant to Section 274j(2) in the case of an emergency involving byproduct, source or special nuclear material when the situation presents an immediate, significant, or unacceptable threat to the public health and safety and immediate action by the Commission is needed because the Agreement State program is not able to effectively carry out mitigative actions to ensure continued protection of the public health and safety.

2. In evaluating such emergency situations, the NRC staff will consider whether the Agreement State has failed to take, or is prevented from taking, necessary steps to protect the public health and safety. Factors the staff would consider include:

A. The timeliness and adequacy of actions being taken by the State in response to the emergency;

B. Whether the State can satisfactorily resolve the emergency situation; and

C. Whether the State is implementing or is committed to implement program improvements to address systemic deficiencies.

3. The following type of conditions, if not appropriately addressed by the State to prevent the threat or prevent the threat from recurring, are example candidates that could result in a consideration of emergency suspension:

A. Conditions that caused or threaten to cause individuals to receive a dose exceeding those basic dose limits set forth in Subpart C of 10 CFR Part 20,

B. Conditions that caused or threaten to cause individual members of the public to receive a dose exceeding those basic dose limits set forth in Subpart D of 10 CFR Part 20, or

C. Conditions that caused or threaten to cause individuals to receive a dose exceeding those dose limits applicable to a certain class of licenses set forth in other parts of 10 CFR, such as Part 35 limits for patient release.

D. Conditions specified by the Commission where an emergency has been or appears to need immediate action by the Commission to protect public health and safety.

VI. Withdrawal of Emergency Suspension

When the emergency situation is contained or eliminated, the EDO will

consider all factors and recommend to the Commission whether to lift the suspension.

The Executive Director for Operations will notify the Governor of the State the emergency suspension is no longer in effect (Appendix F). Such a decision will be made only after NRC has determined that the conditions which initiated the emergency suspension no longer exist and are unlikely to be repeated. The NRC will inform the State of continuing actions which the State must carry out in order to prevent another emergency.

VII. Impact of the Emergency Suspension

The State's inability to address the emergency situation will be considered by the Management Review Board in the evaluation of the Agreement State's continued ability to protect public health and safety. Depending on the nature of the emergency, it may be necessary to place the State on probation, with NRC heightening its oversight of the program.

Appendices to Emergency Suspension Procedure

Appendix	Subject
A	Order for Emergency Suspension.
B	Memorandum to the Commission regarding the emergency suspension of all or part of an Agreement.
C	Public Announcement to be issued by Public Affairs.
D	Letters to Congressional Committees concerning the emergency suspension.
E	Notification to affected Agreement State licensees regarding the emergency suspension.
F	Notification of lifting suspension.

Post Agreement Activities

Guidelines for Termination of a Section 274b Agreement

I. Introduction

This procedure provides the guidelines that will be followed by NRC when considering whether or not to terminate an agreement pursuant to the authority contained in Section 274j(1) of the Atomic Energy Act.

This procedure will describe the method for processing the termination whether initiated at the request of the State or at the initiative of the NRC.

II. Objectives

The objectives of these procedures are to:

A. Provide guidelines for timely action on termination of an agreement at the State's request or at the initiation by the NRC staff and

B. Provide an orderly transition in the discontinuance of certain regulatory authority by the State and assumption thereof by the NRC.

III. Background

Section 274j of the Atomic Energy Act gives the Commission authority to terminate its agreement with a State if such termination is required to protect the public health and safety, or if the State has not complied with one or more of the requirements of the Act (e.g. is found to be not compatible with the Commission's program). Section 274j(1) also provides that an agreement may be terminated at the request of the Governor of a State. When the Commission finds that program deficiencies are such that the State can no longer protect the public health and safety, the Commission will institute proceedings to terminate the agreement with the State. Procedures to address emergency situations to temporarily suspend all or part of an agreement with a State can be found in Procedure _____.

In cases where a State has failed to respond in an acceptable manner during the probationary or suspension period, and there is no prospect for improvement, the Commission may also institute formal proceedings to terminate the agreement. Before reaching a final decision on termination, the Commission will notify the State and provide the State the opportunity for a hearing on the proposed termination as discussed in Part VI. Notice of the proposed termination will also be published in the **Federal Register**.

IV. Minimum Criteria for Termination

A. At the request of the Governor, NRC may terminate all or part of its agreement with a State and reassert its authority. The letter should be addressed to the Chairman, NRC, from the Governor (Appendix A).

B. The Commission, on its own initiative, will institute formal procedures to terminate an agreement under the following circumstances:

1. The State radiation control program is found to be inadequate to protect public health and safety, and no compensating program has been implemented,

2. The State has been on probation for a period of time during which it failed to respond to NRC concerns regarding the States ability to carry out a program to protect public health and safety, and

3. The State radiation control program is not compatible with the NRC program and the State has refused or is unable to address those areas previously identified as compatibility concerns and the non-compatibility is disruptive to the national program for the regulation of Atomic Energy Act material.

C. The following are examples of situations where NRC would consider initiating formal procedures to terminate an agreement. This list is not inclusive and other situations may require consideration by the Commission at the recommendation of the Management Review Board.

1. Significant loss of staff which includes number of staff or those with critical skills, coupled with a State's inability to hire appropriate replacements

2. Continual management problems which manifest in the State's inability to perform adequate inspections or issue appropriate licenses

3. State's inability to adopt compatible program elements over significant period of time

4. Continued probationary or suspension status for a State program.

V. Management Review Board Role

A. The Management Review Board (MRB) is responsible for making the adequacy assessment of each Agreement State's program based on the reviews of the program, using both common performance indicators and non-common performance indicators, and the compatibility determination. The management review board consists of senior NRC managers, or their designees, to include:

Executive Director for Operations
Director, Office of Nuclear Material Safety and Safeguards
Director, Office of State Programs
Director, Office of Analysis and Evaluation of Operational Data
General Counsel

B. The MRB will consider the results of the Agreement State review and any other appropriate information in making a determination of adequacy and compatibility with respect to an Agreement State. MRB meetings to discuss specific program review findings normally will be open and Agreement State representatives will be invited to attend. MRB internal deliberation regarding the overall Agreement State program rating may be closed, given the predecisional nature of those discussions.

C. If it is the recommendation of the MRB that NRC initiate the proceedings to terminate an Agreement, the Office of State Programs will be assigned the lead for preparation of the Commission paper. The Commission paper will

contain the information supporting the termination. The Commission paper will be coordinated with OGC, NMSS and the region.

VI. Staff Work

A. Before the opportunity for hearing and issuance of the **Federal Register** notice, OSP will draft a Commission paper for the signature of EDO on the termination of regulatory authority in the State based on the initial recommendations of the MRB. In preparation of the Commission paper, the assigned Project manager should coordinate with OGC as to the form or type of Commission paper. The draft Commission paper (Appendix B) should contain the following information:

1. Background information (Appendix C)
2. MRB recommendations (Appendix D)
3. Letter from Governor requesting termination—if appropriate (Appendix A)
4. Proposed Commission Order Reasserting Authority (Appendix E)
5. Proposed **Federal Register** Notice regarding the Termination and Reassertion of NRC authority (Appendix F)
6. Letter to the Governor regarding the Commission decision (Appendix G)
7. A public announcement to be issued by Public Affairs (Appendix H)
8. Proposed letters to the appropriate Congressional Committees on the Commission Decision (Appendix I)

VII. Hearings

Before the Commission can terminate a State's program, it must provide reasonable notice and opportunity for a hearing to the State as required by Section 274j(1). Section 274j(1) does not require such a hearing if termination is requested by the Governor.

Before the opportunity for a hearing can arise, the Office of State Programs must submit to the Commission a paper containing a recommendation to terminate the State program in question. This Commission paper will include the recommendations of the MRB and any other material pertinent to the staff's recommendation to terminate the Agreement. Before a decision is made on the OSP recommendation, the Commission must provide the State with notice and an opportunity to request a hearing on the issue. If the State does not request a hearing, the Commission will make a final decision on the issue. If the State does request a hearing, the Commission will initiate the hearing process described below.

The hearing for the termination [including the termination of a program that had been previously suspended] of an Agreement State program will be an informal hearing conducted either by the Commission itself, or at the Commission's discretion, by a Special Agreement State Board appointed by the Commission. In cases where the Commission determines that a Special Board will be used, the Board will consists of three members: (1) the chair of the Organization of Agreement States (OAS) (unless the chair is from the State in question, in which case the Agreement State representative will be the past chair of the OAS); (2) an official from the Office of General Counsel, and (3) the Deputy Director of an NRC regional office (outside of the region in which the State is located).

The Commission, or the Special Board, as appropriate, will conduct an informal hearing to address the issues in question. At the hearing, the NRC staff, representatives of the Agreement State, and interested third parties will have an opportunity to testify, answer questions from the Special Board, and submit written materials. Third parties may submit written material to the Special Board and may testify for a limited period of time. After consideration of the issues, the Commission or the Special Board will issue a decision on termination. A majority of the Commission or the Special Board will be required to support a decision. In cases where a Special Board is used, the Commission will have discretion to review the decision of the Special Board, and either uphold or overturn the Board's decision.

VIII. Agreement State and NRC Activities During Termination Proceedings

During the period of time NRC is pursuing termination of an Agreement with a State, State and NRC activities should be coordinated so that there is continued protection of the public health and safety. The State should be urged to request technical assistance in any area where there is a concern regarding the State's ability to carry out its responsibilities under the Agreement. OSP will coordinate with the State, region and NMSS as to the necessary technical assistance to continue the protection of public health and safety.

IX. Additional Coordination After Terminations

A. NRC will conduct a meeting with the licensees in the State to explain the reassertion of NRC authority and the present fee structure. Lead for the meeting should be the Region in consultation with NMSS, OGC and OC.

B. After the termination of the Agreement, OSP will prepare a letter to the Department of Labor advising the Department of the effective date of the termination of the Agreement (Appendix K).

C. The Regional State Agreements Officer (RSAO) should obtain from the State a computer printout of all specific and general licenses under the State's agreement. Mailing labels should be obtained if possible from the State. A letter should be prepared notifying each licensee of the termination, reassertion by NRC and appropriate information (Appendix L).

D. OSP will prepare a letter to all Agreement and Non-Agreement States notifying them of the effective date of the termination and, if appropriate, enclosing a copy of the order or **Federal Register** notice (Appendix M).

E. The RSAO will coordinate with the State so that all necessary action is taken to have the files for the licenses transferred to the NRC.

X. Renewed Interest in 274b

After a State has terminated an agreement, it may at a later date express interest in obtaining a new agreement. The State should be treated as other non-agreement States interested in agreements and Procedure C.1 for processing new agreements should be followed for these negotiations.

Appendices to Termination Procedure

Appendix	Subject
A	Letter from Governor requesting NRC reassert its authority.
B	Commission Paper for reassertion of NRC authority in an Agreement State and special board for hearings.
C	Background information on the Agreement State.
D	Management Review Board recommendations.
E	Proposed Commission Order Reasserting Authority.
F	Proposed FEDERAL REGISTER Notice regarding Reassertion.
G	Letter to Governor regarding the Commission decision on termination.
H	Public Announcement to be issued by Public Affairs.
I	Letters to Congressional Committees.
J	Special Board's report to Commission on hearings.
K	Letter to Department of Labor on termination.
L	Letter to licensees regarding termination and reassertion.
M	Letter to All States regarding termination and reassertion.

[FR Doc. 94–19115 Filed 8–4–94; 8:45 am]
BILLING CODE 7590–01–P

[Docket No. 50–139]

Renewal of Facility License No. R–73; University of Washington

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 16 to Facility License No. R–73, issued to the University of Washington (the licensee), which converts the operating license to a possession only license and renews the license for the facility located on the University campus in Seattle, Washington. The renewed license will expire on February 14, 1999.

The amended license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I. Those findings are set forth in the license amendment. Notice of Consideration and opportunity for hearing was afforded in the notice of the proposed issuance of this renewal in the **Federal Register** on March 17, 1994 (59 FR 12629). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The Commission has prepared a related Safety Evaluation of the renewal of Facility License No. R–73 and has, based on that evaluation, concluded that the facility can continue to be maintained by the licensee without endangering the health and safety of the public.

The Commission also has prepared an Environmental Assessment which was published in the **Federal Register** on July 27, 1994 (59 FR 38213), for the renewal of Facility License No. R–73 and has concluded that this action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see: (1) Application for amendment dated August 10 and 31, 1989, as modified on February 14 and May 2, 1994; (2) Amendment No. 16 to Facility License No. R–73; (3) the related Safety Evaluation; and (4) the Environmental Assessment. These items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland, this 28th day of July 1994.

For the Nuclear Regulatory Commission.

Seymour H. Weiss,

Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 94–19114 Filed 8–4–94; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–34471; File No. SR–Amex–94–22]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval to Proposed Rule Change by American Stock Exchange, Inc. Relating to Amendments To Exchange Rule 103

August 1, 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 June 15, 1994, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. On July 11, 1994, the Exchange submitted to the Commission Amendment No. 1 to the proposed rule change in order to clarify which Exchange members would be affected by the proposal.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend Amex Rule 103 to permit a member, while on the trading floor, to initiate a proprietary stock transaction while he has a position in a listed option overlying the stock. The text of the proposed rule change is available at the Office of the Secretary, Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Amex Rule 103 prohibits a member, while on the trading floor, from initiating a proprietary stock transaction while he has a position in an option overlying the stock, or while he has knowledge that any account in which his member organization or any other member, allied member or approved person in such organization is directly or indirectly interested has such an option position.

Rule 103 was adopted in 1935 in response to a Commission request to each national securities exchange, and was intended to control various abuses in the use of options connected to the operations of manipulative "pools" during the late 1920s and early 1930s.

In 1977, shortly after the start of trading in listed options, the Commission reviewed the issue of whether the restriction should be eased with respect to listed options, and agreed to lift the restriction for regional exchange members, citing the small percentage of total orders in the underlying equity flowing to any one regional exchange.[2] Indicating a desire to progress very cautiously in this area, however, the Commission declined to permit a change in the rule at the primary markets, the New York Stock Exchange ("NYSE") and the Amex. The Commission did indicate a willingness to study whether specialists should be allowed to hedge in options on their specialty stocks, and a rule to that effect with specific hedging guidelines was ultimately adopted.[3] Such hedging by specialists is specifically permitted by Rule 103.

Accordingly, the impact of Rule 103(a) is now limited to the Registered Equity Traders [4] and Registered Equity

[1] *See* letter from Claudia Crowley, Special Counsel, Legal & Regulatory Policy Division, Amex, to Beth Stekler, Attorney, Division of Market Regulation, SEC, dated July 1, 1994 ("Amendment No. 1").

[2] *See* Report of the Special Study of the Options Markets to the SEC, p. 870 et seq. (1978).

[3] *See* Amex Rule 175 and the Guidelines for Specialists' Specialty Stock Options Transactions.

[4] *See* Amendment No. 1, *supra*, note 1. A Registered Equity Trader is an Amex member who is authorized to initiate proprietary transactions on the floor of the Exchange but who is not registered as a specialist or odd-lot dealer. *See* Amex Rules

Continued

Market Makers ("REMMs"),[5] who are the remaining classes of members who initiate proprietary transactions on the floor in equities while restricted by Rule 103(a) from doing so if they hold a position in the overlying options. The Amex is proposing to lift the Rule 103 restriction with respect to listed options. The NYSE recently received Commission approval for similar amendments to its comparable rule.[6]

As the Commission noted in its order approving the NYSE rule change, this proposal may reduce the current disincentive for options market participants to act as stock traders, thereby increasing the capital committed to such market making activities and improving the depth and liquidity of such markets, particularly in times of market stress.

Further, the Exchange believes that, similar to the NYSE, the Amex's surveillance and compliance programs would enable the Exchange to identify and investigate stock and/or options transactions which raise manipulative concerns, and to detect and deter intermarket manipulation and other fraudulent or abusive practices.

Finally, the Amex also proposes to correct a cross reference in Rule 103(b) to Rule 175, which was not done when Rule 175 was last amended.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to facilitate securities transactions and perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. 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, D.C. 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 inspections and copying at the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-94-22 and should be submitted by August 26, 1994.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b).[7] In particular, the Commission believes the proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

In light of the changes in market structure that have taken place since Rule 103 was adopted, the Commission believes that the benefits of the Amex proposal outweigh an burdens it may impose. Specifically, the Commission has concluded that the proposed rule change should enhance the quality of the Amex market. The Amex established the membership categories of Registered Equity Trader and REMM to provide a means by which Amex members could, under certain conditions, add depth and liquidity to the market by initiating proprietary transactions on the floor of the Exchange.[8] The Commission, however, notes that Rule 103 may frustrate that purpose,[9] to the extent it may be unnecessarily restrictive given the risks posed by Registered Equity Traders' and REMMs' dealings in stocks in which they (or their member organization) have an option position.[10]

After careful review, the Commission believes that the Amex proposal may reduce the current disincentive for members, especially options market participants and their associated persons, to act as a Registered Equity Trader or REMM given Rule 103's restrictions.[11] For instance, Amex members currently serving as Registered Equity Traders and REMMs could initiate proprietary floor trades in situations where they presently cannot do so; moreover, other members might be encouraged to service in that capacity. In the Commission's view, an increase in the capital committed to such supplemental market making activities could improve the depth and liquidity of the Amex market, particularly in times of market stress.

Furthermore, the Commission is satisfied that the Amex proposal contains adequate safeguards to protect investors in the securities markets. In this respect, the Commission notes that a comprehensive regulatory framework has been developed for the trading of listed securities, including listed options.[12] For example, in 1983, an Intermarket Surveillance Group ("ISG") was formed to coordinate more effectively surveillance and information sharing arrangements between the stock

110 and 111(f). Registered Equity Traders exist pursuant to, and must comply with the requirements of, Section 11(a)(1)(G) of the Act. *See also* SEC Rule 11a1-1(T). In addition, the Amex requires that 75% of a Registered Equity Trader's monthly transactions must be stabilizing transactions under the tick-test. *See* Amex Rule 111(e).

[5] A REMM is a Registered Trader who is a designated to act as a market maker in certain securities. REMMs are authorized to initiate proprietary transactions on the floor of the Exchange and have an affirmative obligation to maintain a fair and orderly market. *See* Amex Rule 114(b). In addition, REMMs must comply with a complex series of rules about the price at which they can trade and the size of those trades. *See* Amex Rule 114, Commentary .02(c).

[6] *See* Securities Exchange Act Release No. 34135 (May 31, 1994), 59 FR 29463 (June 7, 1994) (File No. SR-NYSE-93-17) (approving amendments to NYSE Rule 96 that permit an NYSE Floor professional who has a listed option position in a stock to initiate an on-Floor proprietary trade in that stock) ("NYSE approval order").

[7] 15 U.S.C. 78f(b) (1988).

[8] For further discussion of the conditions for Registered Equity Trader and REMM participation, *see supra*, notes 4-5.

[9] The Amex argues that there is a disincentive for any Amex member who participates in the options market (or who is associated with a member organization that participates in the options market) to be active as a Registered Equity Trader or REMM.

[10] For further discussion of the risks of such activity and the safeguards contained in the Amex proposal, *see infra*, notes 12-16 and accompanying text.

[11] *See supra*, note 9 and accompanying text.

[12] Listed options are standardized contracts traded in an open auction market environment. Exchange-traded options are subject, among other things, to real-time quotation and last-sale reporting; anti-fraud provisions; and minimum criteria for initial and continued listing. Transactions in listed options become part of the integrated audit trail.

In contrast, over-the-counter options are individualized contracts that are negotiated between the counterparties. There is minimal, if any, public disclosure and a relatively illiquid secondary trading market.

and options markets.[13] Using procedures developed in that forum, among other things, the national securities exchanges identify and investigate stock and/or options transactions that, based on certain parameters, raise manipulative concerns. The Commission believes that this regulatory scheme, including Amex monitoring and surveillance of amended Rule 103, should be sufficient to detect and deter intermarket manipulation and other fraudulent or abusive practices.

Specifically, the Amex has informed the Commission that the Exchange will increase the frequency and scope of its examination of the trading activity of Registered Equity Traders and REMMs. The Commission expects that Amex staff will utilize such information as part of its on-going efforts to ensure compliance with the Act, the rules and regulations thereunder and Exchange rules. In this respect, the Exchange has assured the Commission that, if a transaction raises concerns about intermarket manipulation, Amex staff, with the cooperation of the options exchanges where appropriate, will conduct a thorough examination of all the relevant facts. Accordingly, the Commission believes that the Amex's monitoring and surveillance of Rule 103, as amended, will aid the Exchange in detecting any trading abuses.

More generally, the Commission believes that, independent of Rule 103, other Amex rules, which the Amex will continue to monitor for compliance, should help to keep floor professionals from being in a position where they can engage in trading abuses. These include, among other things, the yielding requirement imposed on certain on-floor orders for a member's account,[14] and the conditions placed on when a Registered Equity Trader or REMM can initiate a proprietary floor trade.[15] Further, Registered Equity Traders and REMM, like other Amex members, are subject to the prohibition on frontrunning of block transactions.[16]

Finally, the Commission notes that, Registered Equity Traders and REMMs currently are not prohibited from trading in stocks in which they have an existing option position. Such transactions, however, must be initiated off-floor. To the extent that the amended rule will permit such transactions to be initiated on-floor, Amex surveillance should detect and deter any trading abuses derived from informational advantages. In sum, the Commission believes that the proposed rule change should not materially affect the Amex's ability to address the regulatory concerns raised by floor professionals' intermarket trading activity.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof. This will permit the benefits of the proposed rule change to be realized as soon as possible. In addition, the Exchange's proposal is identical to an NYSE proposal that was published in the **Federal Register** for the full comment period and was approved by the Commission.[17]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–Amex–94–22), including Amendment No. 1, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

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BILLING CODE 8010–01–M

[Release No. 34–34465; File No. SR–CBOE–93–30]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Stopping of Option Orders by Market-Makers and Designated Primary Market-Makers

July 29, 1994.

I. Introduction

On June 24, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposal that establishes procedures for permitting market makers and designated primary market makers to grant stops to option orders.[3]

Notice of the proposed rule change was published for comment in Securities Exchange Act Release No. 33013 (Oct. 4, 1993), 58 FR 53005. No comments were received on the proposal. This order approves the CBOE proposal.

II. Description of the Proposal

The Exchange states that the purpose of the Rule is to implement a comprehensive method for executing "stopped" options transactions on the Exchange, comparable to stopping rules that are in operation at other exchanges. The proposed rule change provides that an Exchange market-maker ("market-maker") or designated primary market-maker ("DPM") is authorized, though not required, to grant a stop on an option transaction and that a floor broker is authorized, but not required, to accept a stop. In addition, the proposed rule change sets forth the conditions which attach to a market-maker's or DPM's granting of a stop.

A "stop" is defined as a guarantee that an option order will be executed at the stop price or better. The Exchange believes that the practice of stopping an option order provides many benefits for marketplace participants, market-makers or DPMs, floor brokers, and customers alike. The Exchange also believes a stop benefits the customer by providing an opportunity for the floor broker to try to obtain a better price for that customer without risk. According to the Exchange, a stop provides one means whereby a floor broker may satisfy the "due diligence" standard which he or she is required to meet under Exchange rules and enables the floor broker to lock in a desirable price while attempting to better that price. Additionally, the Exchange believes that a stop also provides the market-maker or DPM with an opportunity to compete for order flow by better meeting the needs of floor brokers, and it provides additional price discovery for the trading crowd.

The conditions under which an Exchange market-maker or DPM may grant, and a floor broker may accept, a stop are set forth in paragraph (b) of the proposed rule. First, a market-maker or DPM granting a stop on a straight order or on only the option portion of a buy-write transaction must make the trading crowd and the Order Book Official

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[13] The full members of the ISG are the Amex; the Boston Stock Exchange; the Chicago Board Options Exchange; the Chicago Stock Exchange; the National Association of Securities Dealers; the NYSE; the Pacific Stock Exchange; and the Philadelphia Stock Exchange.

[14] *See, e.g.*, Rule 111(d).

[15] *See supra*, notes 4–5.

[16] *See, e.g.*, Information Circular Nos. 90–147 (September 14, 1990); 82–37 (July 6, 1982); and 79–12 (February 27, 1979). *See also* Article V, Section 4(h) of the Amex Constitution.

[17] No comments were received in connection with the proposed rule change that amended the comparable NYSE rule. *See* NYSE approval order, *supra*, note 6.

[18] 15 U.S.C. 78s(b)(2) (1988).

[19] 17 CFR 200.30–3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1993).

[3] When a market maker of DPM agrees to a floor broker's request to "stop" a market order, the market maker of DPM is obligated to execute the order at the best bid or offer, or better if obtainable. The stopped order then becomes the new inside bid or offer.

aware of the terms, price, and size of the stop. Second, all stopped orders must be time-stamped by the floor broker at the time the stop is granted. Third, a market-maker or DPM must be prepared to execute, if requested, one or more additional orders up to, but not to exceed in aggregate, the total quantity of contracts executed in the original stopped transaction at the same stop price or better. Fourth, floor brokers are required to either execute the stopped order at the stop price and size at the time a transaction occurs in the crowd at the stop price, or to release the market-maker or DPM from his or her guarantee. Finally, proposed Exchange Rule 8.17(b)(5) describes how a floor broker must bid or offer to improve on the stop price guarantee: "In improving on the stop price once a floor broker has accepted a stop, a floor broker must bid no more than one fractional trading increment less than the stop and must offer no more than one fractional trading increment greater than the stop. A fractional trading increment is the minimum fractional change allowed for bids and offers consistent with [Exchange] Rule 6.42." When attempting to better the stop price, any bid or offer that improves the established market for a particular option series would be reflected on the screen.[4]

Paragraph (c) of the Rule establishes priority for "stopped" orders over new crowd orders, excluding the public limit order book, when the stop order is properly granted, accepted, and time-stamped by the floor broker at the time the stop is granted and accepted. Paragraph (d) of the Rule requires notice be given to a customer by the floor broker or member organization within a reasonably practicable time after that customer's order has been stopped. Paragraph (e) of the Rule details the reporting requirements applicable to the execution of stopped orders on the tape and on cards used for reporting Exchange transactions.

Paragraph (f) of the Rule addresses the effect of a trading halt on the priority and pricing of a stopped order. This aspect of the Rule, which the Exchange asserts is substantially the same as an American Stock Exchange, Inc. ("Amex") provision covering the same subject, establishes procedures for the benefit of customers by requiring the floor broker to use due diligence to obtain any better price at which an option might re-open after a halt, while maintaining priority at the stop price if the reopening is at that price or an inferior price. Finally, paragraph (g) of the Rule explicitly states that the market-maker granting the stop is held to that guarantee by placing the liability for correcting an erroneous or inaccurate price on the market-maker or DPM that granted the stop.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of Section 6(b)(5) in that the proposal is designed to promote just and equitable principles of trade and to protect investors and the public interest.[5] In addition, the Commission finds that the proposal is consistent with the requirement under Section 11(b) of the Act and the rules thereunder that require specialist transactions to be consistent with the maintenance of fair and orderly markets.[6]

Historically, the Commission has been concerned about the practice of granting stopped orders. In the 1963 Report of the Special Study of Securities Markets,[7] the Commission commented that in many instances "[t]he practice of stopping stock against orders on the specialist's book * * * involves too great a compromise of the specialist's fiduciary obligation for personal profit without any offsetting gain to his market making function."[8] The Special Study's concern with stopping stock was that unexecuted customer limit orders on the specialist's book would be bypassed by the stopped order. The Commission, nevertheless, has allowed the practice of stopping stock in markets where the spread is twice the minimum variation because the possible harm to orders in the book would be offset by the possibility of price improvement when the spread between the bid and offer is reduced.[9]

The Commission believes that the same concerns attendant to the practice of stopping stock are equally applicable to the stopping of options orders. However, the Commission believes the CBOE proposal addresses adequately these concerns by adopting sufficently stringent safeguards. For example, the proposal requires a market-maker or DPM to alert the trading crowd and Order Book Official of the terms, price and size of the stop on a straight order or on the option portion of a buy-write. Second, the proposal also requires a market-maker or DPM to be ready to execute additional orders equal to the total quantity of contracts executed in the original stopped transaction at the stopped price. The Commission believes these conditions will serve to enhance market depth and liquidity by increasing the trading opportunities available to the crowd by apprising them of the order and allowing them to better the current market, and by giving other orders the opportunity to receive the stopped price.

The proposal establishes guidelines on how a floor broker must improve on the stop price. Once accepting a stop, a floor broker may only bid one fractional trading increment less than the stop and may only offer one fractional trading increment greater than the stop.[10] As a result of this requirement, the practice of granting stops will be limited to markets where the spread is twice the minimum variation allowable (under CBOE Rule 6.42). Accordingly, under the CBOE's proposal, the floor broker's requirement to gain price improvement for the stopped order will result in narrowing the spread between the bid and offer. This narrower spread in the quotes will be available on the quotation screen to all market participants, and should provide benefits to the market that offset any potential harm to the customer limit order book.

The proposal also requires a floor broker to either immediately execute the stopped order at the stop price and size when a transaction at the same price occurs in the crowd, or to release the market-maker from the guarantee. The Commission believes that this requirement will ensure that a floor broker exercises due diligence in filling an order at the stop price while at the same time serving to ensure, once a

[4] Telephone conversation between Barbara Casey, CBOE, and Stephen M. Youhn, Derivative Products Regulations, SEC (July 14, 1994).

[5] 15 U.S.C 78f(b)(5) (1982).

[6] 15 U.S.C. 78k (1982) and 17 CFR 240.11b–1. The Commission notes that CBOE Rule 8.1 provides that "[R]egistered Market-Makers are designated as specialists on the Exchange for all purposes under the Securities Exchange Act of 1934 and the Rules and Regulations thereunder." Accordingly, market-makers are considered specialists for the purposes herein.

[7] SEC, Report of the Special Study of Securities Markets of the Securities and Exchange Commission, H.R. Doc. No. 95, 88th Cong., 1st Sess., Pt. 2 (1963).

[8] *Id.* at 166.

[9] *See* Amex Rule 109(c); New York Stock Exchange ("NYSE") Rule 116.30. The Commission has also approved, on a pilot program basis, proposals by the NYSE and Amex that permit stopping stock in minimum variation markets under certain limited circumstances where there is an imbalance on the opposite side from the order being stopped, and the imbalance is of sufficient size, given the characteristics of the security, to suggest the likelihood of price improvement. *See* Securities Exchange Act Release No. 28999 (March 21, 1991), 56 FR 12964 (March 28, 1991).

[10] Minimum fractional trading increments are governed by CBOE Rule 6.42.

transaction at the stop price occurs, that the market maker or DPM is not under a limitless obligation to guarantee the order.

The Commission also believes that the CBOE proposal sufficiently limits the practice of stopping orders to situations where the market-maker or DPM granting the stop would not unduly impinge upon the fiduciary obligations to orders on the public customer limit order book. The proposal grants priority to stopped orders over new crowd orders only, and not the public customer limit order book. Additionally, when a floor broker attempts to improve upon a stop price guarantee and the subsequent bid/offer matches the best bid/offer in the customer limit order book, in accordance with CBOE Rule 6.45, the customer limit order will have priority at that price, should an execution occur. The Commission believes these are critical aspects of the CBOE proposal, in that they are designed to enable market-makers to grant stops while ensuring that customer's orders on the limit order book will not be disadvantaged. The time stamping of all stop orders when granted will establish an audit trail and provide a reliable method for establishing priority. Moreover, the Commission believes that the CBOE has adequately addressed customer notification concerns, the effect of a trading halt on the priority and pricing of a stopped order, and reporting requirements applicable to the execution of stopped orders on the tape. Finally, the Exchange has agreed to issue an Information Circular to its members which will specify the circumstances under which a stop may be granted.

The Commission also believes that the proposal is consistent with the prohibition in Section 11(b) against providing discretion to a specialist (or market maker) in the handling of an order.[11] Section 11(b) was designed, in part, to address potential conflicts of interest that may arise as a result of the specialist's dual role as agent and principal in executing stock or option transactions. In particular, Congress intended to prevent specialists from unduly influencing market trends through their knowledge of market interest from the specialist's book and their handling of discretionary agency orders. The Commission has stated that, pursuant to Section 11(b), all orders other than market or limit orders are discretionary and therefore cannot be accepted by specialists.

[11] *See supra* note 6.

After careful review, the Commission concludes that it is appropriate to treat stopped orders as equivalent to limit orders. A limit order is an order to buy or sell a stated amount of option contracts at a specified price, or at a better price if obtainable.[12] In this instance, the Commission believes that stopped orders are equivalent to limit orders because once the stop has been granted, the market maker or DPM is obligated to execute the order at the best bid or offer, or better if obtainable. As with limit orders, the market maker or DPM exercises no control or discretion over whether the order is subsequently executed. Therefore, the Commission believes the CBOE proposal establishes sufficiently stringent guidelines to ensure that a market maker or DPM complies with his market duties and Section 11(b).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[13] that the proposed rule change (SR–CBOE–93–30) is approved.

For the Commission, by the Division of Market regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–19107 Filed 8–4–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–34469; File No. SR–CHX–93–19]

Self-Regulatory Organizations; Notice of Amendment Nos. 1, 2, 3 and 4 to Proposed Rule Change by Chicago Stock Exchange, Inc. Relating to the Creation of the Chicago Match System

August 1, 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 April 4, 1994, May 4, 1994, June 7, 1994 and July 12, 1994, the Chicago Stock Exchange, Inc. ("CHX") filed with the Securities and Exchange Commission ("Commission") Amendment Nos. 1, 2, 3 and 4 to a proposed rule change [1] as described in Items I, II and III below, which items have been prepared by the self-regulatory organization.[2] The Commission is publishing this notice to solicit comments on Amendment Nos. 1, 2, 3 and 4 to the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to Section 19(b)(1) of the Act, the Chicago Stock Exchange is amending the rules for its institutional matching system, the Chicago Match (formerly known as the Match Market Exchange Facility).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CHX submitted to the Commission Amendment Nos. 1, 2, 3 and 4 to request that the Commission amend its proposed rules relating to the proposed Chicago Match System ("Chicago Match").

The purpose of Amendment No. 4 is to further amend the proposed rules relating to the Chicago Match by (i) changing the cross price of the match to the mid-point between the consolidated best bid and offer regardless of the size of the spread; (ii) reporting to the consolidated tape or NASDAQ the cross price plus or minus the average liquidity fee for each stock stated in 256ths; (iii) limiting the maximum liquidity fee or liquidity credit (received or paid) to ½ of the spread of the consolidated best bid and offer at cross time (regardless of the size of the spread); and (iv) not permitting orders

[12] *See* CBOE Rule 6.53(b).

[13] 15 U.S.C. 78s(b)(2) (1982).

[14] 17 CFR 200.30–3(a)(12) (1993).

[1] File No. SR–CHX–93–19. The proposed rule change was originally filed on August 6, 1993, and was published for comment in Securities Exchange Act Release No. 33542 (January 28, 1994), 59 FR 5451.

[2] *See* Letter Amendment No. 1 to SR–CHX–93–19, from David T. Rusoff, Attorney, Foley & Lardner to Sandy Sciole, Special Counsel, Division of Market Regulation, Commission, dated March 29, 1994; Letter Amendment No. 2 to SR–CHX–93–19, from David T. Rusoff, Attorney, Foley & Lardner to Sharon M. Lawson, Assistant Director, Division of Market Regulation, dated May 4, 1994; Letter Amendment No. 3 to SR–CHX–93–19, from David T. Rusoff, Attorney, Foley & Lardner to Sharon M. Lawson, Assistant Director, Division of Market Regulation, dated June 7, 1994, and Amendment No. 4 to SR–CHX–93–19, dated July 11, 1994.

to sell short to be entered with a liquidity fee.

As stated above, this amendment changes the proposed cross price for the Chicago Match. As initially proposed, all matched orders will be executed at a random time within a pre-determined ten minute window period at the market price at such time. The market price will still be calculated based upon the spread of a particular issue. However, rather than changing the price depending on whether there is a 1/8, 1/4, 3/8, etc. spread and determining whether there is an order imbalance, Amendment No. 4 proposes to have the Chicago Match calculate the market price as the mid-point between the consolidated best bid and offer regardless of the size of the spread. For example, if the consolidated best bid and best offer for stock X was 20–20 1/8, the cross price would be 20 1/16.

As a result of the above change, Amendment No. 4 also changes the way trades in the Chicago Match are reported to the Consolidated Tape or NASDAQ. As proposed, the Exchange will report one trade for each stock executed in the Chicago Match. That trade report will include the total number of shares executed in that stock and a price equal to the cross price plus (or minus) the volume weighted average of liquidity fees paid (or liquidity credits received) for that stock.

Also as a result of the above change to the cross price, limited price orders, orders with a liquidity fee or credit entered in cents, and orders that are entered with a liquidity fee or credit relative to the consolidated best bid or offer or as a computed quantity (in addition to liquidity fees or credits entered in cents) will be eligible to be displayed orders. The Exchange will assign numeric values to these orders based on the then current consolidated best bid and offer. It is anticipated that initially the Exchange will update this information at least every 15 minutes or such less time that is possible.

In addition to the above changes, Amendment No. 4 changes how orders in a specialist's book interact with the Chicago Match and limits the maximum size of liquidity fees and credits. As before, the CHX's CQS quotation will automatically be fed into the Chicago Match facility on a real-time basis. These bids and/or offers will be entered as an order in Chicago Match. Rather than limiting interaction with the book to 1/8 spread issues however, the revised rules would enter the CHX CQS quotation into the match in all issues. If entered, these orders will have the highest priority of execution at that liquidity credit level.

As stated above, the Chicago Match will limit the maximum size of liquidity fees and liquidity credits. With respect to the limitation of the size of *liquidity fees*, if a liquidity fee is greater than 1/2 of the spread of the Consolidated Best Bid and Offer at cross time it will be reduced to 1/2 of the spread at cross time. For example, if 1/2 of the spread is 6 1/4 cents, and an order with a liquidity fee of 10 cents entered, the maximum liquidity fee that order can pay is 6 1/4 cents. Liquidity credits, on the other hand, will be treated differently than liquidity fees. For *liquidity credits*, the Chicago Match will not permit liquidity credits to be received in an amount greater than 1/2 of the spread of the Consolidated Best Bid and Offer. For example, if the spread of the Consolidated Best Bid and Offer at cross time was 1/2, the maximum liquidity credit allowed would be 25 cents.[3] If an order was entered with a liquidity credit greater than 25 cents, the user would have an option of either having the liquidity credit reduced to the Consolidated Best Bid and Offer or having the order be excluded from the match.

The final change proposed by this amendment concerns short sales. In order to ensure that any order to sell short can have no market impact and not contribute to a volume weighted average liquidity fee that is less than the middle of the spread, no order to sell short will be permitted to be executed if it includes a liquidity fee. Liquidity credits, however, will be allowed.

In addition to the amendments submitted in Amendment No. 4, the Exchange also made changes to the Chicago Match Rules in Amendment Nos. 1, 2 and 3. Amendment No. 1 changed the name of this proposed system from "Match Market Exchange" ("MMX") to "Chicago Match". Amendment No. 1 changed the definition of size conditions (in Rule 2(ab)) to be considered for a near match to be a specific number entered by the User instead of the former procedure of designating the size conditions as "small," "medium," and "large." Amendment No. 1 required that liquidity fees and credits be entered in cents and entered relative to the Consolidated Best Bid and Offer at cross time or entered as a computed quantity (in Rule 6(e)(9)). Amendment No. 1 also made technical changes and corrections that do not affect the substance of the proposal and made other substantive changes that subsequently were amended.

[3] This would be 1/2 of the 1/2 spread or 1/4 which is 25 cents.

Amendment No. 2 changed the definition of "Near Match" (in Rule 2(w)) to clarify that it means two orders for a particular security in which (i) the number of shares of each order equals or exceeds the minimum size specified by the other order; and (ii) the Liquidity Credit required by one side is greater than the Liquidity Fee offered by the other side. Amendment No. 2 clarified the meaning and intent of proposed Rule 6(e)(8) which permits a user to enter another user's name in order to prevent any matches between those two users, thereby excluding certain users when necessary to comply with ERISA. Amendment No. 2 also clarified the meaning and intent of proposed Rule 6(e)(7) which permits a user to exclude an entire category of contra parties. Amendment No. 2 further clarified that Conditional Orders may not be Displayed Orders and that all confirmations will comply with the requirements of Rule 10b–10 under the Act; and it noted that non-member users will be required to have $10 million for investment purposes.

Amendment No. 3 amended Rule 3 to delete references to the Exchange permitting orders for securities that are not listed or admitted to unlisted trading privileges on the Exchange to be entered into the Chicago Match System. Amendment No. 3 also made substantive changes to proposed Rule 9(b) (which attempted to eliminate any argument that trades executed in the Chicago Match could trade through other market's published quotations) which were subsequently amended in Amendment No. 4.

2. Basis

The proposed rule change is consistent with Section 6(b)(5) of the Securities Exchange Act of 1934 in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition.

The Exchange believes that no burden will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal

Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 fifth Street, NW., Washington DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to File No. SR–CHX–93–19 and should be submitted by August 22, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–19157 Filed 8–4–94; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Application To Withdraw From Listing and Registration; (Computer Data Systems, Inc., Common Stock, $0.01 Par Value) File No. 1–6002

August 1, 1994.

Computer Data Systems, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the Boston Stock Exchange, Inc. ("BSE").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, its Common Stock is listed on the BSE. According to the Company, nearly all of the trading volume of the Company's Common Stock is now transacted through NASDAQ/NMS and the Company does not believe that the limited benefit it would obtain through continuation of its listing on the BSE would justify the cost and expense involved.

Any interested person may, on or before August 22, 1994 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–19108 Filed 8–4–94; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Application To Withdraw From Listing and Registration; (Maxxim Medical, Inc., Common Stock, $.001 Par Value; 6¾% Convertible Subordinated Debentures Due 2003) File No. 1–10600

August 1, 1994.

Maxxim Medical, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, its common stock and convertible subordinated debentures are listed on the New York Stock Exchange, Inc. ("NYSE"). The Company's common stock and 6¾% Convertible Subordinated Debentures commenced trading on the NYSE at the opening of business on December 22, 1993 and concurrently therewith such stock was suspended from trading on the Amex.

In making the decision to withdraw its Common Stock and 6¾% Convertible Subordinated Debentures from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant in maintaining the dual listing of its Common Stock and 6¾% Convertible Subordinated Debentures on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of its Common Stock and 6¾% Convertible Subordinated Debentures and believes that dual listing would fragment the market for the Common Stock and 6¾% Convertible Subordinated Debentures.

Any interested person may, on or before August 22, 1994 submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–19109 Filed 8–4–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–26094]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

July 29, 1994.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposal transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by

August 22, 1994 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney of law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Georgia Power Company (70–8443)

Georgia Power Company ("Georgia Power"), 333 Piedmont Avenue, N.E., Atlanta, Georgia 30308, a wholly-owned electric public-utility subsidiary company of The Southern Company, a registered holding company, has filed an application-declaration under Sections 6(a), 7, 9(a), 10 and 12(d) of the Act and Rules 44 and 54 thereunder.

Georgia Power proposes to enter into a loan agreement or installment sales agreement ("Agreement") on or before December 31, 1997 in connection with the issuance and sale by the Development Authority of Burke County, Georgia ("Authority") of $60 million aggregate principal amount of its Pollution Control Revenue Bonds (Georgia Power Company Plant Vogtle Project), Sixth Series 1994 ("Revenue Bonds "). The Revenue Bonds will be issued to refinance the costs of certain pollution control and/or sewage and solid waste disposal facilities at Georgia Power's facilities located in Burke County.

The Revenue Bonds will bear an interest rate equal to 6.375% per annum, which may be convertible to a rate that fluctuates in accordance with a specified prime or base rate or rates or may be determined pursuant to certain remarketing or auction procedures. The Authority has entered into underwriting arrangements pursuant to which the underwriters will purchase the Revenue Bonds from the Authority at a purchase price of 100% of the principal amount thereof. Georgia Power will pay the underwriting fee, which is equal to 1.498% of the aggregate principal amount of the Revenue Bonds. Such arrangements will result in a true interest cost to Georgia Power of 6.489% per annum.

The Revenue Bonds will mature on August 1, 2024 and may, if it is deemed advisable for purposes of marketability, be entitled to the benefit of a mandatory redemption sinking fund calculated to retire a portion of the aggregate principal amount of the Revenue Bonds prior to maturity.

Pursuant to the Agreement, the Authority will lend to Georgia Power the proceeds of the sale of the Revenue Bonds. Under the Agreement, Georgia Power will pay the Authority amounts at times and in amounts which shall correspond to the payments with respect to the principal of, premium, if any, and interest on the related Revenue Bonds whenever and in whatever manner the same shall become due, whether at stated maturity, upon redemption or declaration or otherwise.

Proceeds from the sale of the Revenue Bonds will be deposited with a trustee ("Trustee") under an indenture to be entered into between the Authority and the Trustee, pursuant to which such Revenue Bonds are to be issued and secured. Also, the Agreement will provide for the assignment to the Trustee of the Authority's interest in, and of the monies receivable by the Authority under, the Agreement.

Georgia Power may be required to purchase any of the Revenue Bonds, or any of the Revenue Bonds may be subject to mandatory redemption, at any time if the interest thereon is determined to be subject to federal income tax. Also in the event of taxability, interest on those Revenue Bonds may be effectively converted to a higher rate, and Georgia Power also may be required to indemnify the bondholders against any other additions to interest, penalties and additions to tax.

Georgia Power currently has outstanding certain first mortgage bonds issued under an indenture dated as of March 1, 1941 between Georgia Power and Chemical Bank, as trustee, as supplemented and amended ("Mortgage"). In order to obtain the benefit of ratings for the Revenue Bonds equivalent to the rating of these mortgage bonds, Georgia Power will deliver to the Trustee a series of first mortgage bonds, to be issued under the Mortgage, as collateral for its obligations to the Authority related to the Revenue Bonds ("Collateral Bonds"). The aggregate principal amount of such Collateral Bonds would be equal to either: (1) the principal amount of the related Revenue Bonds, if the Collateral Bonds are interest-bearing; or (2) the sum of such principal amount of those Revenue Bonds plus interest payments thereon for a specified period, if the Collateral Bonds are not interest-bearing. The Collateral Bonds will mature on the maturity date of the Revenue Bonds.

The proceeds from the sale of the Revenue Bonds will be applied by Georgia Power to the redemption of $126.725 million principal amount of Development Authority of Burke County (Georgia), 12% Pollution Control Revenue Bonds (Georgia Power Company Plant Vogtle Project), Third Series 1984.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–19088 Filed 8–4–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IA–1430; 803–92]

Valmora Partners, L.P.; Notice of Application

July 29, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Advisers Act of 1940 (the "Advisers Act").

APPLICANT: Valmora Partners, L.P.

RELEVANT ACT SECTION: Sections 206A and 205(a)(1).

SUMMARY OF APPLICATION: Applicant is a limited partnership that a family formed to facilitate investments of family trusts and custodianships, and it requests an order to permit registered investment advisers to charge it performance-based advisory fees.

FILING DATE: The application was filed on April 29, 1994 and amended on July 29, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the applicant will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on August 23, 1994 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, c/o Marsh Operating Company, Suite 3400, 1999 Bryan Street, Dallas, Texas 75201.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Staff Attorney, at (202) 942–0574, or Robert A. Robertson, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a Texas limited partnership that a particular family formed to facilitate and simplify investments of multiple family trusts and custodianships. Applicant is excepted from registration under the Investment Company Act of 1940, under section 3(c)(1). Applicant requests an order under section 206A of the Advisers Act that would grant an exemption from section 205(a)(1) of that Act to permit registered investment advisers to charge it performance-based advisory fees.

2. Applicant's general partners, Tom F. Marsh, is responsible for making investment decisions for applicant. Mr. Marsh is the chief executive officer and the sole owner of March Operating Company ("MOC"), an oil and gas exploration and production company. Mr. Marsh's wife, his mother, one of his brothers, MOC, two long-term family employees, fifteen trusts established under Texas law, and four custodianships established under the Texas Uniform Gifts to Minor's Act (the "UGMA") are the limited partners of applicant. Thus, each of the limited partners is either: (a) A Marsh family member; [1] (b) an entity wholly-owned by Mr. Marsh; (c) a long-term family employee; [2] or (d) a trust or custodianship having Marsh family members as beneficiaries and a Marsh family member or a long-term family employee as trustee or custodian. The trustee or custodian makes the decision for each of the relevant entities to invest in applicant.

3. Applicant is essentially a family investment vehicle, and no management, performance, or other fee is charged to the limited partners. Mr. Marsh acts as applicant's general partner without any compensation. Applicant reimburses MOC for direct costs it incurs in providing certain administrative and support services to applicant, such as preparing applicant's financial statement and making and keeping its books and records.

4. Virtually all of applicant's assets consist of limited partnership interests of privately placed investment limited partnerships. These limited partnerships are not registered as investment companies in reliance on section 3(c)(1) of the Investment Company Act, and they are charged performance-based advisory fees by investment advisers. Neither applicant, nor any Marsh family member or long-term family employee who acts as trustee or custodian of any of the trusts or custodianships that are limited partners of applicant is an affiliated person of any adviser.

Legal Analysis

1. Section 205(a)(1) of the Advisers Act generally prohibits a registered investment adviser from receiving compensation on the basis of a share of capital gains in or capital appreciation of a client's account. Section 206A of the Advisers Act provides that the SEC may exempt any person or transaction from any provision of the Advisers Act "if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of [the Advisers Act]."

2. Rule 205–3 provides an exemption from the prohibition against performance-based compensation in section 205(a)(1) provided that the conditions of the rule are satisfied. Paragraph (b)(1) of the rule requires each client entering into an investment advisory contract that provides for such compensation to be: (a) a natural person or a company who immediately after entering into the contract has at least $500,000 under management of the investment adviser; or (b) a person who the registered investment adviser reasonably believes prior to entering into the contract, is a natural person or a company whose net worth at the time the contract is entered into exceeds $1,000,000. Paragraph (b)(2) of the rule provides that the term "company" does not include a private investment company such as applicant unless each of its equity owners is a natural person or a company as defined therein that meets the eligibility requirements of paragraph (b)(1) of the rule. A trust is expressly included within the definition of "company." Applicant believes that a custodianship should be viewed as a type of trust for this purpose because, under UGMA, a custodian is a fiduciary whose duties and powers are similar to those of a trustee.

3. Mr. Marsh, his wife, his mother, his brother, MOC, the long-term family employees, and five of the fifteen trusts qualify under the client eligibility requirements of rule 205–3(b). The remaining ten trusts and the four custodianships (the "non-qualifying trusts") do not individually satisfy the requirements of the rule. Thus, applicant requests an exemption under section 206A from section 205(a)(1) to let it invest in privately placed limited partnerships that are managed by registered investment advisers that charge performance fees. Applicant requests that the relief also cover applicant in the event that trusts and custodianships formed in the future having family members or long-term family employees as trustee or custodian may become limited partners of applicant. Such future trusts and custodianships will comply with the representations set forth in the application.

4. The client eligibility requirements of rule 205–3 reflect the SEC's recognition that certain high net worth clients have the capacity to bear the perceived additional risks of performance fees, as well as the ability to protect themselves adequately against the potential abuses of performance fees. Applicant is unable to rely on the rule because the non-qualifying trusts do not meet the $500,000 under management or $1,000,000 net worth requirement. However, applicant believes that exemptive relief from section 205(a)(i) is appropriate because: (a) the individuals charged with making the investment decisions for applicant and the non-qualifying trusts satisfy the net worth requirements, are financially sophisticated, and are fully able to assess the potential risks of performance fees; (b) the trustees and custodians of the non-qualifying trusts are either close family members or long-term family employees, have substantial assets invested in applicant and are therefore subject to the same risks as the beneficiaries; and (c) the net worth of each beneficiary of the non-qualifying trust exceeds $1,000,000. Applicant believes the beneficiaries of the non-qualifying trusts are wealthy investors who, together with the trustees and custodians, can understand the effect on their investment of performance-based compensation and bear the potential risks of such fees.

5. Because those exercising investment authority for the non-qualifying trusts have such intimate and

[1] The term "family member," as used herein, means: (i) Mr. Marsh; (ii) Mr. Marsh's mother; (iii) Mr. Marsh's brothers; (iv) Mr. Marsh's children; (v) any and all of the spouses and issue (lineal and adopted) of individuals in categories (i), (iii), and (iv); and (vi) siblings of spouses referred to in (v).

[2] The term "long-term family employee," as used herein, means: a senior-level manager with five or more years' employment by one or more (a) Marsh family members, and/or (b) entities in which Marsh family members own beneficially more than 25%.

strong familial relationships to the beneficiaries, applicant believes it is not unreasonable to presume that the commonality of such interest will result in the decision-maker behaving in the best interests of the beneficiaries. Except for the requested exemption for the non-qualifying trusts and custodianships, the requirements of rule 205–3(b) are satisfied in all other respects. Thus, applicant believes that granting the requested exemption is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Advisers Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–19089 Filed 8–4–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended July 29, 1994

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 49679
Date filed: July 26, 1994
Parties: Members of the International Air Transport Association
Subject: TC12 Fares 0438 dated July 26, 1994; US–UK Add-ons (Resolution 015h)
Proposed Effective Date: October 1, 1994

Docket Number: 49681
Date filed: July 27, 1994
Parties: Members of the International Air Transport Association
Subject: PAC/Reso/385 dated July 14, 1994; Finally Adopted Resolutions r–1 to r–22
Proposed Effective Date: Nov. 1, 1994 (unless noted otherwise)

Docket Number: 49684
Date filed: July 27, 1994
Parties: Members of the International Air Transport Association
Subject: TC31 Reso/P 1036 dated July 5, 1994; South Pacific Resolutions r–1 to r–27
Proposed Effective Date: October 1, 1994

Docket Number: 49688
Date filed: July 29, 1994
Parties: Members of the International Air Transport Association
Subject: COMP Telex Reso 024f— Botswana
Proposed Effective Date: August 1, 1994

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94–19146 Filed 8–4–94; 8:45 am]

BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended July 29, 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: 49682
Date filed: July 27, 1994
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 24, 1994
Description: Application of Surplus Air, d/b/a Leisure Jet, pursuant to Section 401(d)(3) of the Act, and Subpart Q of the Regulations, for a Certificate of Public Convenience and Necessity authorizing interstate and overseas charter air transportation.

Docket Number: 49683
Date filed: July 27, 1994
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 24, 1994
Description: Application of Surplus Air, Inc., d/b/a Leisure Jet, pursuant to Section 401(d)(3) of the Act and Subpart Q of the Regulations for a Certificate of Public Convenience and necessity authorizing Foreign Charter Air Transportation.

Docket Number: 49686
Date filed: July 28, 1994
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 25, 1994
Description: Application of Continental Airlines, Inc., pursuant to Section 49 U.S.C. Section 41110(a) and Subpart Q of the Regulations, requests the Department to add the following condition to its certificates of public convenience and necessity for Routes 29–F, 59, 82–F, 157, 165, 381, 383, 482, 509, 514, and 629: ( ) The holder is authorized to combine services on this certificate with its other services authorized by certificate and exemption, provided however, that such operations are in compliance with applicable bilateral aviation agreements.

Docket Number: 49689
Date filed: July 29, 1994
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 26, 1994
Description: Application of Soho Express Sky Lines, Inc., pursuant to Section 401(d)(1) of the Act and Subpart Q of the Regulations for the issuance of a Certificate of Public Convenience and Necessity so as to authorize Soho to provide scheduled foreign transportation of persons, property and mail between various points in the United States (U.S.) and the United Kingdom (U.K.) (New York-London (Stansted).

Docket Number: 49690
Date filed: July 29, 1994
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 26, 1994
Description: Application of Viking International Airlines, Inc., d/b/a Eagle Airlines, pursuant to Section 401(d)(3) of the Act and Subpart Q of the Regulations, to engage in foreign charter air transportation of persons, property, and mail: Between any point in any State of the United States or the District of Columbia, or any territory or possession of the United States, and any point outside thereof.

Docket Number: 48075
Date filed: July 28, 1994
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 25, 1994
Description: Sixth Amendment to Application of Laker Airways (Bahamas) Limited, pursuant to Section 402 of the Act and Subpart Q of the Regulations, amends its currently pending application to permit Laker to add the co-terminal points Greenville/Spartanburg, SC and Detroit, MI to the co-terminal points Laker has applied to serve from Freeport, Bahamas.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94–19145 Filed 8–4–94; 8:45 am]

BILLING CODE 4910–62–P

Coast Guard

[CGD8–94–017]

Houston/Galveston Navigation Safety Advisory Committee; Solicitation for Membership

AGENCY: Coast Guard, DOT.

ACTION: Notice of solicitation for new members.

SUMMARY: The U.S. Coast Guard has extended the deadline for applications for appointment to membership on the Houston/Galveston Navigation Safety Advisory Committee.

DATES: Requests for applications should be received no later than August 19, 1994. Completed applications should be returned no later than September 2, 1994.

ADDRESSES: Persons interested in applying should write to Commander, Eighth Coast Guard District (oan), Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396.

FOR FURTHER INFORMATION CONTACT: Mr. Monty Ledet, USCG, Executive Secretary, Houston/Galveston Navigation Safety Advisory Committee, c/o Commander Eighth Coast Guard (oan), Room 1211, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396, telephone number (504) 589–4686.

SUPPLEMENTARY INFORMATION: The Committee shall consist of eighteen members, who have particular expertise, knowledge, and experience regarding the transportation, equipment, and techniques that are used to ship cargo and to navigate vessels in the inshore and the offshore waters of the Gulf of Mexico:

(1) Two members who are employed by the Port of Houston Authority or have been selected by that entity to represent them.

(2) Two members who are employed by the Port of Galveston or the Texas City Port Complex or have been selected by those entities to represent them.

(3) Two members from organizations that represent shipowners, stevedores, shipyards, or shipping organizations domiciled in the State of Texas.

(4) Two members representing organizations that operate tugs or barges that utilize the port facilities at Galveston, Houston, and Texas City Port Complex.

(5) Two members representing shipping companies that transport cargo from the Ports of Galveston and Houston on liners, break bulk, or tramp steamer vessels.

(6) Two members representing those who pilot or command vessels that utilize the Ports of Galveston and Houston.

(7) Two at-large members who may represent a particular interest group but who utilize the port facilities at Galveston, Houston, and Texas City.

(8) One member representing labor organizations which load and unload cargo at the Ports of Galveston and Houston.

(9) One member representing licensed merchant mariners other than pilots, who perform shipboard duties on vessels which utilize the port facilities of Galveston and Houston.

(10) One member representing environmental interests.

(11) One member representing the general public.

To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in receiving applications from minorities and women.

The purpose of the committee is to provide local expertise on such matters as communications, surveillance, traffic control, anchorages, aids to navigation, and other related topics dealing with navigation safety in the Houston/Galveston area as required by the Coast Guard. The committee normally meets three times a year at various locations in the Houston/Galveston area. Members serve voluntarily, without compensation from the Federal Government for salary, travel, or per diem. Term of membership will not exceed the expiration of the charter, October 1, 1996.

Dated: July 20, 1994.

R.C. North,

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

[FR Doc. 94–19175 Filed 8–4–94; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

[Summary Notice No. PE–94–28]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before August 25, 1994.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. D. Michael Smith, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–7470.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on August 1, 1994.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 008SW.

Petitioner: Bell Helicopter Textron, Inc.

Sections of the FAR Affected: 14 CFR 29.1303(g)(1).

Description to Relief Sought: To allow the use of a required standby attitude indicator for all Bell Helicopter Model 412 series type designs that will provide useable indication through flight attitudes of +/−60 degrees. The standards require useable indication through flight attitudes of +/−80 degrees pitch.

Docket No.: 26936.

Petitioner: Woods Air Fuel, Inc.

Sections of the FAR Affected: 14 CFR 91.9.

Description to Relief Sought: To permit Woods Air Fuel, Inc., to increase the zero fuel weight and landing weight

by 5 percent from its DC–6 aircraft, serial number 43522, registration number N861TA.

Docket No.: 27155.

Petitioner: Saab Aircraft AB.

Sections of the FAR Affected: 14 CFR 25.562(c)(5).

Description to Relief Sought: To extend Exemption No. 5623, as amended, which granted partial exemption from the HIC requirements of § 25.562(c)(5) for the front row passenger seats, and the floor deformation requirements of § 25.562(b)(2) for cockpit seats.

Docket No.: 27739.

Petitioner: Captain Edward R. Collins.

Sections of the FAR Affected: 14 CFR 121.383(c).

Description to Relief Sought: To permit Captain Collins to pilot an aircraft operated under part 121 of the FAR after he has reached his 60th birthday.

Docket No.: 27786.

Petitioner: Douglas Aircraft Company.

Sections of the FAR Affected: 14 CFR 91.511.

Description to Relief Sought: To permit an operator to dispatch MD–11 and derivative aircraft with one Flight Management Computer inoperative.

Docket No.: 27788.

Petitioner: San Bernardino County Sheriff's Department.

Sections of the FAR Affected: 14 CFR 133.1 (a) and (b) and 135.1(a)(3).

Description to Relief Sought: To permit the San Bernardino County Sheriff's Department to operate its aircraft without obtaining certificates by the FAA under parts 133 and 135.

Dispositions of Petitions

Docket No.: 23543.

Petitioner: Arnautical, Inc.

Sections of the FAR Affected: 14 CFR 61.55(b)(2); 61.56(c)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(c)(2) and (d)(2) and (3); 61.65(c), (e)(2), (e)(3), and (g); 61.67(d)(2); 61.157(d)(1) and (2) and (e)(1) and (2); 61.191(c); and appendix A of part 61

Description of Relief Sought/ Disposition: To permit Arnautical, Inc., to use FAA-approved simulators to meet certain flight experience requirements of part 61 of the FAR.

Grant, July 15, 1994, Exemption No. 4581D

Docket No.: 25024.

Petitioner: University of Illinois.

Sections of the FAR Affected: 14 CFR appendixes A, C, D, F, and H of part 141.

Description of Relief Sought/ Disposition: To permit the University of Illinois, Institute of Aviation to train its students to a performance standard in lieu of meeting the prescribed minimum flight time requirements.

Grant, July 18, 1994, Exemption No. 4719D

Docket No.: 25252.

Petitioner: North American Airline Training Group.

Sections of the FAR Affected: 14 CFR 61.55(b)(2); 61.56(c)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(c)(2) and (d)(2) and (3); 61.65(c), (e)(2), (e)(3), and (g); 61.67(d)(2); 61.157(d)(1) and (2) and (e)(1) and (2); 61.191(c); and appendix A of part 61

Description of Relief Sought/ Disposition: To permit the North American Airline Training Group to use FAA-approved simulators to meet certain flight experience requirements of part 61 of the FAR.

Grant, July 15, 1994, Exemption No. 4959C

Docket No.: 26178.

Petitioner: Continental Airlines, Inc.

Sections of the FAR Affected: 14 CFR 121.358.

Description of Relief Sought/ Disposition: To amend Exemption No. 5256, which extends the January 3, 1991, compliance date until December 31, 1995, for installation of required windshear equipment in Continental's, American Airlines', Eastern Airlines', and Northwest Airlines' aircraft in order to develop, certificate, and implement predictive windshear devices in lieu of installation of existing reactive windshear systems. The amendment would extend the final compliance date for installation of windshear equipment in Continental's aircraft, under the current exemption, until August 1, 1996.

Denial, July 11, 1994, Exemption No. 5256A

Docket No.: 26188.

Petitioner: Advanced Aviation Training, Inc.

Sections of the FAR Affected: 14 CFR 61.55(b)(2); 61.56(c)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(c)(2) and (d)(2) and (3); 61.65(c), (e)(2), (e)(3), and (g); 61.67(d)(2); 61.157(d)(1) and (2) and (e)(1) and (2); 61.191(c); and appendix A of part 61

Description of Relief Sought/ Disposition: to permit Advanced Aviation Training, Inc., to use FAA-approved simulators to meet certain flight experience requirements of part 61 of the FAR.

Grant, July 15, 1994, Exemption No. 5205D

Docket No.: 26609.

Petitioner: Jet-Exam/Jet-Crew.

Sections of the FAR Affected: 14 CFR 61.55(b)(2); 61.56(c)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(c)(2) and (d)(2) and (3); 61.65(c), (e)(2), (e)(3), and (g); 61.67(d)(2); 61.157(d)(1) and (2) and (e)(1) and (2); 61.191(c); and appendix A of part 61

Description of Relief Sought/ Disposition: To permit Jet-Exam/Jet-Crew to continue to use FAA-approved simulators to meet certain flight experience requirements of part 61 of the FAR.

Grant, July 15, 1994, Exemption No. 5478A

Docket No.: 26846.

Petitioner: University of North Dakota.

Sections of the FAR Affected: 14 CFR 141.65.

Description of Relief Sought/ Disposition: To extend Exemption No. 5512, which permits the University of North Dakota to recommend graduates of its approved certification course for flight instructor certificates and ratings without taking the FAA written test, in accordance with the provisions of subpart D of part 141.

Grant, July 18, 1994, Exemption No. 5512A

Docket No.: 26914.

Petitioner: Air Transport Association of America.

Sections of the FAR Affected: 14 CFR 121.583(a).

Description of Relief Sought/ Disposition: To extend Exemption No. 5562, which allows member airlines of ATA and other similarly situated part 121 certificate holders to continue to permit FAA air traffic controllers and certain technical representatives to be added to the list of persons authorized to ride in the cockpit observer's seat of all-cargo airplanes when those airplanes do not meet the passenger-carrying requirements except as described in §§ 121.583(b), 121.583(c), and 131.583(d).

Grant, July 18, 1994, Exemption No. 5562A

Docket No.: 27006.

Petitioner: Bell Helicopter Textron, Inc.

Sections of the FAR Affected: 14 CFR 21.325(b)(3).

Description of Relief Sought/ Disposition: To allow Bell Helicopter Textron, Inc., to issue export airworthiness approvals for Class II and Class III products that are U.S.-manufactured by Bell Helicopter Textron, Inc., and exported from its facilities located in other countries.

Grant, July 18, 1994, Exemption No. 5939

Docket No.: 27627.

Petitioner: Mr. Merle Akers d/b/a Akers Aviation.

Sections of the FAR Affected: 14 CFR 43.3(g).

Description of Relief Sought/ Disposition: To permit pilots employed by Akers Aviation to remove and replace the passenger seats in its aircraft operating under part 135.

Grant, July 12, 1994, Exemption No. 5937

Docket No.: 27815.

Petitioner: Polynesian Airlines.

Sections of the FAR Affected: 14 CFR 129.18

Description of Relief Sought/ Disposition: To permit Polynesian Airlines to operate a maximum of four round-trip flights per week between Apia, Western Samoa, and Pago Pago, American Samoa, utilizing a Boeing 737 (B–737) aircraft of Western Samoan registry, 5W–ILF, that is not equipped with an approved traffic alert and collision avoidance system (TCAS II), until August 15, 1994.

Grant, July 15, 1994, Exemption No. 5935

[FR Doc. 94–19122 Filed 8–4–94; 8:45 am]

BILLING CODE 4910–13–M

Research and Special Programs Administration

[Docket No. PDA–13(R)]

Application by Chemical Waste Transportation Institute for a Preemption Determination as to New York Department of Environmental Conservation Requirements on the Transfer and Storage of Hazardous Wastes Incidental to Transportation

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Public Notice Reopening Comment Period.

SUMMARY: RSPA is reopening the comment period on the application by the Chemical Waste Transportation Institute for a determination that the Hazardous Materials Transportation Act preempts certain New York State Department of Environmental Conservation requirements on the transfer and storage of hazardous wastes incidental to transportation. RSPA will afford interested parties the opportunity to submit additional comments and to respond to additional comments submitted during the reopened initial comment period.

DATES: Further comments received on or before August 31, 1994, and rebuttal comments received on or before September 23, 1994, will be considered before an administrative ruling is issued by RSPA's Associate Administrator for Hazardous Materials Safety. Rebuttal comments may discuss only those issues raised during the reopened initial comment period and may not discuss new issues.

ADDRESSES: The application and any comments received may be reviewed in the Dockets Unit, Research and Special Programs Administration, Room 8421, Nassif Building, 400 Seventh Street, SW, Washington, DC 20590–0001 (Tel. No. 202–366–4453). Comments and rebuttal comments on the application may be submitted to the Dockets Unit at the above address, and should include the Docket Number (PDA–13(R)). Three copies of each should be submitted. In addition, a copy of each comment and each rebuttal comment must also be sent to (1) Mr. Charles Dickhut, Chairman, Chemical Waste Transportation Institute, 4301 Connecticut Avenue, NW, Suite 300, Washington, DC 20008, and (2) Mr. Thomas C. Jorling, Commissioner, New York Department of Environmental Conservation, 50 Wolf Road, Albany, NY 12233. A certification that a copy has been sent to these persons must also be included with the comment. (The following format is suggested: "I hereby certify that copies of this comment have been sent to Messrs. Hansen and Jorling at the addresses specified in the Federal Register.")

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001 (Tel. No. 202–366–4400).

SUPPLEMENTARY INFORMATION:

I. Background

In September 1993, Chemical Waste Transportation Institute (CWTI) applied for a determination that the Hazardous Materials Transportation Act (HMTA) preempts certain requirements of the New York State Department of Environmental Conservation (NYDEC). These requirements, in Title 6 of the New York Codes, Rules and Regulations (NYCRR), apply to the transfer and storage of hazardous wastes incidental to transportation (hereinafter "transfer and storage requirements"). The text of CWTI's application was published in the Federal Register on October 15, 1993, and interested parties were invited to submit comments. 58 FR 53614.

RSPA has previously extended the period for public comments in this matter. One extension was in response to the requests of four States for additional time to submit comments, including the statement by NYDEC that it was preparing revisions to its regulations that would eliminate many of the specific requirements challenged by CWTI. 58 FR 65226 (Dec. 13, 1993). A second extension allowed additional time for NYDEC to publish proposed revisions to its transfer and storage requirements (which NYDEC then provided to all parties that had previously submitted comments on CWTI's application), for NYDEC to submit further comments that considered these proposed revisions, and for other parties to address these proposed revisions and NYDEC's further comments. 59 FR 4312 (Jan. 31, 1994). The rebuttal comment period, as extended, closed April 14, 1994.

RSPA's Acting Administrator recently received a written request from the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) for a meeting to discuss the effect of RSPA's preemption "activities upon States' ability to appropriately regulate transporters of hazardous waste under [the Resource Conservation and Recovery Act] RCRA." ASTSWMO indicated that it would like to discuss, among other issues, the "commingling and mixing of hazardous waste by transporters while in transit," and the "off loading and storage of hazardous waste at non-RCRA regulated sites." These issues are involved in the NYDEC transfer and storage requirements challenged in CWTI's application. RSPA views this request broadly as a desire by ASTSWMO to make additional comments beyond its January 13, 1994 letter already submitted on CWTI's application.

ASTSWMO's letter and RSPA's response, denying ASTSWMO's request for a meeting, have been placed in the public docket. In view of the concerns expressed in ASTSWMO's letter and possible developments in connection with NYDEC's proposed revisions to its transfer and storage requirements, RSPA considers it appropriate to reopen the comment period on CWTI's application to allow:

(1) ASTSWMO and others to comment on "the effect of RSPA [preemption] activities upon States' ability to appropriately regulate transporters of hazardous waste under RCRA";

(2) NYDEC to advise RSPA of the current status of the proposed revisions to the NYDEC transfer and storage requirements, including the proposed repeal of many of the requirements challenged by CWTI;

(3) All interested parties to provide further information on whether requirements proposed to be repealed by NYDEC have been or are being applied and enforced at this time; and

(4) NYDEC and other parties to comment further on the meaning of the phrases "store incidental to transport" and "transfer incidental to transport" contained in 6 NYCRR 372.3(a)(6) and (7), respectively, and whether the definitions set forth in 6 NYCRR 364.1(c)(12) and (14) apply to these phrases.

On July 5, 1994, President Clinton signed Public Law 103–272 which extensively revised, codified and enacted without substantive change numerous laws related to transportation. The former Hazardous Materials Transportation Act, 49 App. U.S.C. 1801 *et seq.*, has been repealed and replaced by 49 U.S.C. Chapter 51, "Transportation of Hazardous Material," except as to "proceedings that were begun before" July 5, 1994. Accordingly, the preemption provisions in former 49 App. U.S.C. 1804 and 1811 remain applicable to CWTI's application. At the same time, since Congress made no substantive change in passing 49 U.S.C. Chapter 51, RSPA's determination in this matter will cite to the preemption criteria as set forth in 49 U.S.C. 5125.

II. Reopening of Comment Period

For the reasons set forth above, the period for public comments on CWTI's application is being reopened. Comments may be submitted through August 31, 1994, and may discuss all issues relating to CWTI's application including those contained in comments previously submitted. Rebuttal comments may be submitted through September 23, 1994, and may discuss only those issues raised in comments submitted during the reopened comment period; rebuttal comments may not raise new issues.

As previously stated in the October 15, 1993, December 13, 1993, and January 31, 1994 notices, all comments should be limited to the issue of whether the NYDEC transfer and storage requirements are preempted by the HMTA, and all comments should: specifically address (a) the preemption criteria ("substantively the same," "dual compliance," and "obstacle") described in Part I of the October 15, 1993 Public Notice, and (b) whether the NYDEC transfer and storage requirements are "otherwise authorized by Federal law." Persons intending to comment should review the standards and procedures governing RSPA's consideration of applications for preemption determinations, set forth at 49 CFR 107.201–107.211.

Issued in Washington, D.C. on July 29, 1994.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 94–19123 Filed 8–4–94; 8:45 am]

BILLING CODE 4910–60–P

Sunshine Act Meetings

Federal Register
Vol. 59 No. 150
Friday, August 5, 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).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:00 a.m., Wednesday, August 10, 1994, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: August 3, 1994.
Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 94–19243 Filed 8–3–94; 11:23 am]
BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, August 10, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Publication for comment of a proposal to modify the calculation of imputed income on clearing balances for priced services.
2. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office; Board of Governors of the Federal Reserve System; Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: August 3, 1994.
Jennifer J. Johnson,
Deputy Secretary of the Board.
[FR Doc. 94-19244 Filed 08-03-94; 11:23 am]
BILLING CODE 6210-01-P

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [59 FR 38666, July 29, 1994].

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: July 29, 1994.

CHANGE IN THE MEETING: Change of Time.

The time for the closed meeting, scheduled for Wednesday, August 3, 1994, at 10:00 a.m. was changed to Wednesday, August 3, 1994, at 9:30 a.m.

Commissioner Beese, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: John Walsh at (202) 942–0100.

Dated: August 3, 1994.
Margaret McFarland,
Deputy Secretary.
[FR Doc. 94–19312 Filed 8–3–94; 3:57 pm]
BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 59, No. 150
Friday, August 5, 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 Institute of Standards and Technology

[Docket No. 940675-4175]
RIN 0693-AB33

Proposed Revision of Federal Information Processing Standard (FIPS) 180, Secure Hash Standard

Correction

In notice document 94-16666 beginning on page 35317 in the issue of Monday, July 11, 1994, make the following corrections:

1. On page 35318, in the third column, the last line of the paragraph should read "MIT when designing the MD4 message digest algorithm[1], and is closely modeled after that algorithm."

2. On page 35319, in the first column, the following text was omitted:

Approving Authority: Secretary of Commerce.

Maintenance Agency: U.S. Department of Commerce, National Institute of Standards and Technology, Computer Systems Laboratory.

Applicability: This standard is applicable to all Federal departments and agencies for the protection of unclassified information that is not subject to section 2315 of Title 10, United States Code, or section 3502(2) of Title 44, United States Code. This standard is required for use with the Digital Signature Algorithm (DSA) as specified in the Digital Signature Standard (DSS) and whenever a secure hash algorithm is required for Federal applications. Private and commercial organizations are encouraged to adopt and use this standard.

[1]"The MD4 Message Digest Algorithm," Advances in Cryptology - CRYPYO '90 Proceedings, Springer-Verlag, 1991, pp. 303-311.

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[TN123-1-6349a; FRL-5009-1]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Tennessee

Correction

In rule document 94-18070 beginning on page 37939 in the issue of Tuesday, July 26,1994, make the following correction:

§ 81.343 [Corrected]

On page 37944, in § 81.343, in the table, under the "Date (1)" column, "[Insert date sixty days after publication]" should read "September 26, 1994".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-920-03-4120-03]

Wyoming; Coal Exploration License

Correction

In notice document 94-16962 beginning on page 35741 in the issue of Wednesday, July 13, 1994, make the following corrections:

1. On page 35741, in the first column, in the nineth line of the land description, "Sec. 18: Lots 12 and 15;" should read "Sec. 18: Lots 8, 12 and 15".

2. On the same page, in the same column, in the **SUPPLEMENTARY INFORMATION**, in the eighth line, "sent" should read "send".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92-ANE-23; Amendment 39-8916; AD 94-10-09]

Airworthiness Directives; Pratt & Whitney JT9D Series Turbofan Engines

Correction

In rule document 93-17068 beginning on page 36047 in the issue of Friday, July 15, 1994, make the following correction:

§ 39.13 [Corrected]

On page 36049, beginning in the first column and continuing through the second column paragraphs (b) through (c)(4) were repeated and should be deleted.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviaiton Administration

14 CFR Part 71

[Airspace Docket No. 94-ANM-18]

Proposed Establishment of Class E Airspace; Leadville, CO

Correction

In proposed rule document 94-8569 beginning on page 17056 in the issue of Monday, April 11, 1994 make the following correction:

On page 17057, in the second column, in the third line, "long. 106° 58′00″W" should read "long. 105° 58′00″W".

BILLING CODE 1505-01-D

federal register

Friday
August 5, 1994

Part II

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 10

Standards for Adult and Juvenile Detention, Community Residential, and Holding Facilities and Programs; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 10

RIN 1076–AC80

Standards for Adult and Juvenile Detention, Community Residential, and Holding Facilities and Programs

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs is proposing to establish standards for governing Indian adult and juvenile detention, holding and community residential facilities and programs. The current detention regulations are over 20 years old and extremely limited. The proposed changes will cover all pertinent issues governing detention, holding and community residential services. The standards will increase the Bureau of Indian Affair's capability to provide Indian tribes the direction to administer constitutionally sound detention, holding and community residential programs. It will also provide the Bureau of Indian Affairs the key to prevent and combat potential lawsuits.

DATES: Comments must be received on or before November 3, 1994.

ADDRESSES: Written comments should be directed to the Chief, Division of Law Enforcement, Bureau of Indian Affairs, 1849 C Street, N.W., Mail Stop 1308, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Warren LeBeau, Bureau of Indian Affairs, Telephone: 202–208–5786.

SUPPLEMENTARY INFORMATION:

Background

Detention standards published in 25 CFR 11.305 have not been modified for sixteen years, do not address current detention problems, and are inconsistent with current acceptable detention practices and other regulations. They fail to address code compliance and related physical plant issues, and lack options to allow for alternative types of detention programs. The need for more detailed and contemporary standards has been intensified by the provision of funding for detention programs under Pub. L. 99–570.

Earlier attempts to develop standards based on those of the American Correctional Association failed to address the specific issues and concerns of BIA and tribal detention programs. They were not tailored to meet the needs of a Native American population and did not reflect the environment in which BIA and tribal detention programs operate. As a result, these standards were not promulgated.

Development of Regulations

It is the policy of the Bureau to provide opportunities for input from those who will be affected by these regulations. A multi-agency task force was assembled to develop the first draft of these standards. The agencies represented included representatives from Division of Law Enforcement Central Office, Area Office Supervisory Criminal Investigators, Unit Criminal Investigators, detention staff, and Indian Health Service programs; the task force also included a member with prior experience in tribal detention programs. Additional internal reviews were conducted at the Area and Agency level. Interested parties are asked to submit written comments, suggestions and objections to these proposed rules.

Supplementary Information

The policy of the Department of the Interior is, whenever practical, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding the proposed rule to the locations identified in the Addresses section of this document. The Department has certified to the Office of Management and Budget that these proposed regulations meet the applicable standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778. The Department of the Interior has determined that this document is not a significant regulatory action under Executive Order 12866. This rule will not require the approval of the Office of Management and Budget. This rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). In accordance with E.O. 12630, the Department has determined that this rule does not have significant takings implications. The Department has determined that this rule does not have significant federalism effects. The Department of the Interior has determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969. There are no information collection requirement(s) contained in this rule which require the approval of the Office of Management and Budget under 44 U.S.C. 3501 et. seq. The primary author of this document is Warren LeBeau, Detention Specialist, BIA Law Enforcement.

List of Subjects in 25 CFR Part 10

Buildings, Indians, Law enforcement, Prisoners, Youth.

For the reasons set out in the preamble, Part 10 is proposed to be added to Chapter I of Title 25 of the Code of Federal Regulations as set forth below:

PART 10—STANDARDS FOR ADULT AND JUVENILE DETENTION, COMMUNITY RESIDENTIAL, AND HOLDING FACILITIES AND PROGRAMS

Subpart A—General Information

Sec.

10.1 Background information.
10.2 Definitions.
10.3 Applicability.
10.4 Compliance.
10.5 Facilities operated by contractors.

Subpart B—Adult Detention Facilities

10.11 Administration and management.
10.12 Physical plant.
10.13 Institutional operations.
10.14 Inmate programs and services.

Subpart C—Juvenile Detention Facilities

10.21 Administration and management.
10.22 Physical plant.
10.23 Institutional operations.
10.24 Juvenile programs and services.

Subpart D—Adult Community Residential Facilities

10.31 Administration and management.
10.32 Physical plant.
10.33 Institutional operations.
10.34 Resident programs and services.

Subpart E—Juvenile Community Residential Facilities

10.41 Administration and management.
10.42 Physical plant.
10.43 Institutional operations.
10.44 Juvenile programs and services.

Subpart F—Adult Holding Facilities

10.51 Administration and management.
10.52 Physical plant.
10.53 Institutional operations.
10.54 Inmate programs and services.

Authority: 5 U.S.C. 301; 25 U.S.C. 2, 9, 13, 2417, 2453, and 2802.

Subpart A—General Information

§ 10.1 Background Information.

(a) *Purpose.* These standards provide criteria for the construction and operation of various types of adult and juvenile law enforcement facilities and programs operated on Indian land. Through the implementation of these standards, Indian detention programs can address current problems, reduce liability, plan for improvements, and

maintain sound and professional operations.

(b) *Types of standards.* The standards have been divided into five sets, based on facility type, to make their use clearer. There are standards for adult detention facilities, juvenile detention facilities, adult community residential facilities, juvenile community residential facilities, and adult holding facilities. Standards for juvenile holding facilities are not necessary at this time.

(c) *Using more than one set of standards.* Users may determine which type program they wish to operate and select the set of standards which apply to that type. Users may elect to operate more than one program type on a single site or within a single structure, provided that the requirements for programs located on the same site are met. This approach provides maximum flexibility to each locality in determining the type of detention program(s) it wishes to operate.

§ 10.2 Definitions.

Addition means new construction which is physically attached or connected to an existing building structure.

Administrative segregation means a special management classification which separates a detainee from the general population because he or she presents a serious threat to life, property, self, staff or other detainees, or to the secure and orderly running of the facility.

Administrator means the official who has the ultimate responsibility for managing and operating the detention facility, such as the Captain of Police or the Chief of Police.

Adult community residential program means a program for sentenced adults which is housed in a structure without security fences, security hardware or other major restraining construction typically associated with detention facilities. The major focus of these programs is to provide a structured environment conducive to positive behavior in the community.

Adult detention facility means a local confinement facility for which the custodial authority is 48 hours or more.

Assessment means an evaluation of an arrestee or a detainee by a health, mental health or substance abuse professional to determine treatment and/or management needs.

Booking means both a law enforcement and a detention facility procedure. As a police administrative action, it is an official recording of an arrest and the identification of the person, place, time, arresting authority, and reason for the arrest. In a detention facility, it is a procedure for the admission of a person charged with or convicted of an offense, and includes searching, fingerprinting, photographing, health screening, collecting personal history data and completing an inventory of the individual's personal property.

Building code means federal, state or local regulations that dictate the criteria for construction of a facility.

Chemical agent means an active substance, such as tear gas, used to deter activities which might cause personal injury or property damage.

Child abuse register means a central listing of persons reported for child abuse and neglect as required in the Indian Child Welfare Act.

Classification means a process for determining the needs and requirements of those for whom confinement has been ordered and for assigning them to living areas and programs according to their needs and existing resources.

Community resources means those social and welfare agencies, service clubs, citizen interest groups, self-help groups, and citizen volunteers who have the potential to assist juveniles/inmates in meeting defined needs.

Contact visiting means a program inside and/or outside the facility that permits detainees to visit with designated person(s). The area is free of obstacles or barriers that prohibit physical contact.

Contractor means a person, agency, or organization which agrees to furnish materials or perform services for the facility at a specified price or service. Contractors operating in the facility are subject to all applicable rules and regulations of the facility.

Cooling off period means a brief period of time, typically under 60 minutes, during which juveniles are confined in their rooms to allow them to gain control over their behavior.

Custody record means information concerning the individual's personal, criminal and brief medical history, behavior and activities while in custody.

Daily report means a written record, compiled each day, which indicates the names of detainees in custody, the names of detainees booked and released, the legal status of each detainee, and the number of days each detainee has been in custody.

Dayroom means space for activities that is situated immediately adjacent to the detainee sleeping areas and separated from them by a wall.

Delinquent act means an act that if committed by an adult would be a crime.

Delinquent juvenile means a juvenile who has been adjudicated for conduct which, under the law of the jurisdiction in which the offense was committed, would be a crime if committed by an adult.

Dependent child means the local tribal definition. However, in the absence of a local definition, it means a child who is adjudicated to be:

(1) In need of proper and effective parental care and control and who has no parent or guardian: or

(2) Destitute or who is not provided with the necessities of life, or who is not provided with a home or suitable place of abode, or whose home is unfit for him by reason of abuse, neglect, cruelty or depravity by either of his parents, his guardian, or other person having his custody or care.

Disciplinary hearing means a nonjudicial administrative procedure to determine if substantial evidence exists to find a detainee guilty of a rule violation.

Disciplinary report means a written report, prepared by a person with appropriate authority, describing an alleged violation of a facility's rules or regulations.

Disciplinary segregation means a special management classification which separates a detainee from the general population because he or she has committed a serious violation of facility rules or regulations, after a finding of a rule violation at an impartial hearing and when there is no adequate alternative disposition to regulate the detainee's behavior.

Diversion means the official halting or suspension, at any legally prescribed processing point after a recorded justice system entry, of formal justice proceedings against an alleged offender. The suspension of proceedings may be in conjunction with a referral to a treatment or care program administered by a non-judicial or private agency, or there may be no referral.

Education release means a custody status under which detainees may leave the detention facility to attend school or paid employment in the community, returning to custody after work or school hours.

Emergency means any serious incident, such as riot, strike, escape, fire or natural disaster which results in significant disruption of the facility's normal policies, procedures, or activities.

Emergency care means care for an acute illness or unexpected health care need that cannot be deferred until the next scheduled sick call and which is provided to the resident population by representatives of the health authority,

local ambulance services, and/or other hospital emergency rooms.

Emergency generator and equipment means a generator, battery pack or alternative, independent power source which allows a facility to maintain essential lights, power and communication equipment.

Emergency shelter facility means any non-secure public or private facility designated to provide either temporary or shelter placement for alleged or adjudicated status offenders prior to the issuance of a disposition order or longer-term care under a juvenile court disposition order.

Existing construction means building structures which were constructed prior to the date these standards became effective.

Facility means a place, institution, building (or part thereof), set of buildings, or area that is used for the lawful custody and/or treatment of individuals, which may be owned and/or operated by public or private agencies, and which includes the staff and services as well as the buildings and grounds.

Force, use of means physical force used in instances of justifiable self-defense, protection of others, protection of property, or prevention of escapes. Physical force is used only as a last resort and in accordance with appropriate statutory authority.

Good-time means a system established by law or the applicable court which allows the facility to subtract a set amount of time from an inmate's sentence for specified periods that are served in an acceptable manner.

Grievance means a written complaint filed by a detainee with the facility administration.

Guardian means a person who has been appointed by a court to be the custodian of a child's rights in place of a parent.

Handbook, inmate means a collection of the facility's rules of conduct and sanctions for violations, defined in writing.

Handicapped person means any person who has a physical, mental or sensory impairment which substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

Health appraisal means a thorough examination of a person's current physical condition and medical histories, which is conducted by, or under the supervision, of a licensed professional within a specified time period following admission.

Health authority means the Indian Health Service or its contracted designee.

Health care staff means individuals whose primary duties are to provide health services to detainees in keeping with their respective levels of health care training experience.

Health examination means a physical examination of detainees who have been in custody more than thirty days, which includes dental and mental health evaluation.

Health screening means a system of structured inquiry and observation, by health care staff or by a health-trained detention officer at the time of admission, designed to prevent newly-arrived detainees who pose a health or safety threat to themselves or others from being admitted to the general population.

Health-trained staff means detention staff who are trained and appropriately supervised to carry out certain specific duties with regard to the administration of health care.

Housing unit means a group or cluster of single and/or multiple occupancy cells or detention rooms that houses inmates and is immediately adjacent and directly accessible to a day or activity room.

Identification and location record means a written record that shows the actual physical location of each detainee in custody.

Immediate release (from locked areas) means the capability of immediate staff response to release of all detainees from a locked area to a safe area within four minutes.

Incident means a situation in which injury serious enough to warrant medical attention occurs involving a resident, employee, or visitor on the grounds of the institution, or a situation containing an imminent threat to the security of the institution and/or the safety of residents, employees, or visitors on the grounds of the institution.

Indian means any person:

(1) Who is a member of an Indian tribe, as defined below, irrespective of whether he or she lives on or near a reservation, is a member of a tribe, band, or other organized group of Indians, including those tribes, bands, or groups terminated since 1940 and those recognized now or in the future by the State in which they reside, or who is a descendant, in the first or second degree, of any such member; or

(2) Who is an Eskimo or Aleut or other Alaska Native; or

(3) Who is considered by the Secretary of the Interior to be an Indian for any purpose; or

(4) Who is determined to be an Indian under regulations promulgated by the Secretary.

Indian tribe means any tribe, band, nation or other organized group or community, including any Alaska Native village or group or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 et seq.), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Indian youth means a person under the age of eighteen years, who claims to be a descendant of a member of a Federally recognized tribe.

Informed consent means the agreement by a patient to a treatment, examination or procedure after the patient receives the material facts regarding the nature, consequences, risks and alternatives concerning the proposed treatment, examination and procedure.

Inmate means any person considered an adult within that jurisdiction, whether pretrial, unsentenced, or sentenced, who is confined in a detention or holding facility.

Inmate fund account means any money which is held in trust for specific inmates, including funds in their possession at the time of booking, funds brought for the use of specific inmates during the period of custody, and funds, such as commissary or canteen funds, which are developed as a result of sales or fees to inmates.

Juvenile means a person who has not attained his or her eighteenth birthday or, for purposes of juvenile court proceeding, a child less than twenty-one years of age who became the subject of a juvenile court proceeding before the child's eighteenth birthday.

Juvenile community residential program means a program to provide positive role models and an environment conducive to positive behavior in the community for adjudicated juveniles which is housed in a structure that does not have security fences, security hardware or other major restraining construction typically associated with detention facilities.

Juvenile community residential worker means a community residential staff person whose sole responsibility is the supervision of juveniles in a community residential facility.

Juvenile detention means the temporary care of a youth alleged to be delinquent, who requires secure custody in a physically restricting facility.

Juvenile detention facility means a local confinement facility for the temporary care of juvenile offenders and juveniles alleged to be delinquent who require secure custody in a physically restricting facility for more than 24 hours.

Juvenile intake means the process of determining whether the interests of the public or the juvenile require the filing of a petition with the juvenile court. It includes receiving, reviewing, and processing complaints, recommending detention or release, and providing services for juveniles and their families, including diversion and referral to other community agencies.

Library service means a service that provides and circulates reading materials; reading materials include books and periodicals as well as education and recreational audiovisual materials.

Light, natural means light available from a source within 20 feet of the room or cell with an opening or window that has a view to the outside.

Mail inspection means the examination of incoming and outgoing mail for contraband, cash, checks and money orders.

Major infraction means a rule infraction involving a grievous loss and requiring imposition of disciplinary procedures. Major infractions include:

(1) Violations that may result in disciplinary detention or administrative segregation;

(2) Violations that may result in a forfeiture, such as a loss of good time; and

(3) Violations that may be referred for criminal prosecution.

Medical/mental health restraints means either chemical restraints, such as sedatives, or physical agents, such as straight jackets, utilized only for medical or psychiatric purposes.

Medical/mental health segregation means a form of separation from the general population for detainees who are seriously ill or injured or whose presence in the general population would be likely to spread contagious disease.

Memorandum of agreement (MOA) means a written memorandum between two or more agencies which identifies the roles and responsibilities of each regarding a specific item.

Mentally retarded means an individual who functions at a subaverage general intellectual level and is deficient in adaptive behavior.

Minor infraction means a violation of the facility's rules of conduct that does not require due process and can be resolved without the imposition of serious penalties. Minor infractions do not violate any federal or tribal statutes and may be resolved informally by reporting staff.

Multiple occupancy cell or room means an area, room or cell housing more than two and less than fifty persons.

New construction means any new construction over 2000 square feet in gross square foot area.

N.F.P.A. means the National Fire Protection Association.

Non-contact visiting means a type of visiting that restricts inmates from having physical contact with visitors. Physical barriers usually separate the offender from the visitors with screens and/or glass. Voice communication between the parties is typically accomplished with phones or speakers. Offenders that present a serious escape threat, are a threat to others or require protection are often designated for non-contact visits.

Orientation means the period immediately following booking which includes interviews, testing and other booking-related activities, including distribution of information about programs, services, rules and regulations.

Perimeter security means a system that controls ingress and egress to the interior of a facility or institution. The system may include electronic devices, walls, fences, patrols and/or towers.

Planning of new institutions (PONI) program means the BIA process for the development of law enforcement facilities. The process includes application, validation, pre-architectural programming, design, transition and construction.

Post means a duty station related to either place or function which is necessary for the operation of the facility.

Pretrial release means a procedure whereby an accused individual who had been taken into custody is allowed to be released before and during his or her trial.

Privileged information means information about detainees or residents which is not considered public information under the provisions of the Freedom of Information Act of 1973 as amended (5 U.S.C. 552). It typically includes information protected as a medical record, classification interviews, and the results of internal disciplinary hearings.

Protective holding cell means a specialized cell or room that is utilized to detain or isolate an incapacitated or combative individual(s) for a short period of time. It may be equipped with specialized security and/or medical equipment to control and manage individuals detained in these areas in a safe, secure, and humane environment.

Qualified health and safety inspector means a full-time safety officer at either the BIA Area or Agency level.

Qualified health staff means licensed, registered or certified physicians and dentists as well as other professional and technical workers who, by law, engage in activities that support, complement or supplement the functions of physicians and/or dentists.

Rated capacity means the actual number of beds available for regular use, based on compliance with square footage requirements for each occupancy type. Rated capacity does not include spaces, such as protective holding cells, used only on a temporary basis.

Releasing authority means the decision-making body and/or individual that has the responsibility to grant, deny and revoke release from a juvenile institution or program of supervision.

Renovation means construction within an existing facility which modifies its structure and in which more than 20% of the cost of the proposed building modification results from standards compliance.

Reservation means any Federally recognized Indian Tribe's reservation, pueblo or colony, including former reservations in Oklahoma, Alaska Native regions established pursuant to the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*), and Indian allotments if considered reservation land by the Bureau of Indian Affairs.

Safety equipment includes fire fighting equipment, i.e. chemical extinguishers, hoses, nozzles, water supplies, alarm systems, sprinkler systems, portable breathing devices, gas masks, fans, first aid kits, stretchers, and emergency alarms.

Safety management review means a review of all construction by the Division of Safety Management to ensure that the facility complies with applicable codes, standards, regulations and guidelines regarding Health and Safety matters.

Sallyport means an enclosure to handle either pedestrian or vehicular traffic and is located either in the security perimeter wall or fence of the facility, which has gates or doors at both ends, only one of which opens at a time. This method of entry and exit ensures there will be no breach in the security of the facility.

Secure institution means any facility that is designed and operated to ensure that all entrances and exits are under the exclusive control of the facility's staff, thereby preventing an inmate from

leaving the facility unsupervised or without permission.

Security devices means locks, gates, doors, bars, fences, screens, ceilings, floors, walls, and barriers used to confine and control juveniles/inmates and electronic monitoring equipment, security alarm systems, security light units, auxiliary power supply, and other equipment used to safeguard the facility.

Security or custody means the degree of restriction of inmate or juvenile movement within a detention facility, usually divided into maximum, medium and minimum risk levels.

Security perimeter means the outer portions of a facility that provide for secure confinement of facility inmates or juveniles.

Shift activity log means a system of bound records which record the significant activities of a shift, including emergency and non-emergency activities.

Shift relief factor means a mathematic ratio between the number of hours that staff are actually available to work and the number of hours that staffing must be provided.

Special management means the confinement of a detainee in an individual cell that is separated from the remainder of the population for the purpose of disciplinary, administrative segregation, protective custody, or medical segregation.

Status offender means a youth who has been charged with or adjudicated for an act that under the law of the jurisdiction in which the offense was committed would not be a crime under any circumstances if committed by an adult.

Suicide screening means the systematic inquiry and observation of adults and juveniles at the time of booking to attempt to identify individuals who are at risk of suicide.

Summer and winter comfort zones means suggested temperature ranges for indoor living and work areas during the summer months are sixty-six to eighty-six degrees Fahrenheit and sixtyone to seventy-three degrees Fahrenheit during the winter months.

Supervision means guidance or management of detainees, typically without a barrier between detention staff and detainees.

Temporary release means a period of time during which a detainee is allowed to leave the facility and go into the community unsupervised by detention personnel for various purposes consistent with the public interest.

Trained staff means detention or community residential staff who have completed the orientation training required in these standards.

Work release means an arrangement sanctioned by law or the appropriate court that enables a detainee to be released into the community to maintain approved employment and/or other approved activity.

§ 10.3 Applicability.

These standards shall apply to any facilities constructed and/or operated on Reservations as defined in § 10.2. Non-Indian facilities with which the BIA contracts shall comply with the detention standards of the state in which they are located, applicable federal and state laws, and applicable safety and health codes.

§ 10.4 Compliance.

(a) *Incremental compliance.* The compliance process is incremental and, in many areas, offers options and choices to each facility.

(b) *Types of standards.* There are two types of standards, mandatory and nonmandatory. Each set of standards includes standards for operations and standards for physical plants; if appropriate, physical plant standards are divided into two categories, new construction, renovation and expansion and standards for existing facilities. The following table shows the number of mandatory and non-mandatory standards by facility type and new and existing construction. Each sections i.e., § 10.11(a)(1), § 10.11.(a)(2), etc., comprises one standard.

TABLE 4.1.—MANDATORY AND NON-MANDATORY STANDARDS BY FACILITY TYPE

Subpart	Type of facility	Total standards	Mandatory	Non-mandatory
B	Adult Detention	245	48	197
	Adult Detention (existing)	249	48	201
C	Juvenile Detention	262	47	215
	Juvenile Detention (existing)	266	47	219
D	Adult Community Residential	223	45	178
E	Juvenile Community Residential..	228	45	183
F	Adult Holding Facilities	207	47	160
	Adult Holding Facilities (existing)..	208	47	161

(1) *Mandatory vs. non-mandatory standards.* Mandatory standards deal with areas in which there is potential danger to the life, health, and safety of inmates, staff, and/or the community and those areas in which there are other statutes, regulations, or directives which mandate compliance. Without exception, facilities must comply with all mandatory standards. Non-Mandatory Standards deal with all other areas of administration, program operation and facilities. Based on a system of progressive compliance, all facilities must comply with a percentage non-mandatory standards that increases over time. The following table lists the mandatory standards in each Subpart of the rule.

TABLE 4.2.—MANDATORY STANDARDS

Standard title	Detention		Community residential		Holding
	Part B adult	Part C juvenile	Part D adult	Part E juvenile	Part F adult
Separation of Adults and Juveniles.	B10.11(a)(14)	N/A	N/A	N/A	F10.51.(a)(8)
Prohibited Uses of Detention ...	N/A	C10.21(a)(14)	N/A	N/A	N/A
Budgetary Compliance	B10.11(b)(1)	C10.21(b)(1)	D10.31(b)(1)	E10.41(b)(1)	F10.51.(b)(1)

TABLE 4.2.—MANDATORY STANDARDS—Continued

Standard title	Detention		Community residential		Holding
	Part B adult	Part C juvenile	Part D adult	Part E juvenile	Part F adult
Accounting Compliance	B10.11(b)(2)	C10.21(b)(2)	D10.31(b)(2)	E10.41(b)(2)	F10.51.(b)(2)
Personnel Policy	B10.11(c)(1)	C10.21(c)(1)	D10.31(c)(1)	E10.41(c)(1)	F10.51.(c)(1)
Training Curriculum Approval	B10.11(d)(2)	C10.21(d)(2)	D10.31(d)(2)	E10.41(d)(2)	F10.51.(d)(2)
Detention Officer Orientation Training.	B10.11(d)(6)	C10.21(d)(6)	D10.31(d)(6)	E10.41(d)(6)	F10.51.(d)(5)
Records Compliance	B10.11(e)(1)	C10.21(e)(1)	D10.31(e)(1)	E10.41(e)(1)	F10.51.(e)(1)
Building and Safety Code Compliance.	B10.12(a)(1)	C10.22(a)(1)	D10.32(a)(1)	E10.42(a)(1)	F10.52.(a)(1)
Accessibility	B10.12(a)(3)	C10.22(a)(3)	D10.32(a)(3)	E10.42(a)(3)	F10.52.(a)(3)
OSHA Compliance	B10.12(a)(4)	C10.22(a)(4)	D10.32(a)(4)	E10.42(a)(4)	F10.52.(a)(4)
Health and Safety Inspection	B10.12(a)(5)	C10.22(a)(5)	D10.32(a)(5)	E10.42(a)(5)	F10.52.(a)(5)
Furnishings and Equipment Code Compliance.	B10.12(a)(6)	C10.22(a)(6)	D10.32(a)(6)	E10.42(a)(6)	F10.52.(a)(6)
Separation of Adults and Juveniles.	B10.12(b)(2)	N/A	N/A	N/A	F10.52.(b)(1)
Emergency Exits	B10.12(d)(4)	C10.22(d)(4)	D10.32(d)(1)	E10.42(d)(1)	F10.52.(d)(4)
New Facility Planning Requirement.	B10.12(e)(1)	C10.22(e)(1)	D10.32(e)(1)	E10.42(e)(1)	F10.52.(e)(1)
Safety Management Review	B10.12(e)(2)	C10.22(e)(2)	D10.32(e)(2)	E10.42(e)(2)	F10.52.(e)(2)
Full Coverage of Posts	B10.13(a)(3)	C10.23(a)(4)	D10.33(a)(1)	E10.43(a)(1)	F10.53.(a)(3)
Male and Female Staff Requirement.	B10.13(a)(6)	C10.23(a)(7)	D10.33(a)(3)	E10.43(a)(3)	F10.53.(a)(6)
Weekly Inspection	B10.13(a)(14)	C10.23(a)(15)	D10.33(a)(10)	E10.43(a)(10)	F10.53.(a)(14)
Monthly Inspection	B10.13(a)(15)	C10.23(a)(16)	D10.33(a)(11)	E10.43(a)(11)	F10.53.(a)(15)
Fire Safety Inspection	B10.13(a)(16)	C10.23(a)(17)	D10.33(a)(12)	E10.43(a)(12)	F10.53.(a)(16)
Use of Force and Firearms	B10.13(a)(22)	C10.23(a)(23)	D10.33(a)(17)	E10.43(a)(17)	F10.53.(a)(22)
Fire Prevention	B10.13(b)(1)	C10.23(b)(1)	D10.33(b)(1)	E10.43(b)(1)	F10.53.(b)(1)
Evacuation Plan	B10.13(b)(4)	C10.23(b)(4)	D10.33(b)(3)	E10.43(b)(3)	F10.53.(b)(4)
Emergency Plans	B10.13(b)(5)	C10.23(b)(5)	D10.33(b)(4)	E10.43(b)(4)	F10.53.(b)(5)
Medical Treatment (Incident)	B10.13(b)(7)	C10.23(b)(7)	D10.33(b)(7)	E10.43(b)(6)	F10.53.(b)(7)
Suicide Screening	B10.13(f)(4)	C10.23(g)(3)	D10.33(f)(2)	E10.43(f)(6)	F10.53.(f)(3)
Dietary Allowances	B10.13(h)(2)	C10.23(i)(2)	D10.33(h)(2)	E10.43(h)(2)	F10.53.(h)(2)
Medical Special Diets	B10.13(h)(4)	C10.23(i)(4)	D10.33(h)(4)	E10.43(h)(4)	F10.53.(h)(4)
Health Protection	B10.13(h)(7)	C10.23(i)(7)	D10.33(h)(7)	E10.43(h)(7)	F10.53.(h)(7)
Inspection of Food Service Area.	B10.13(h)(9)	C10.23(i)(9)	D10.33(h)(9)	E10.43(h)(9)	F10.53.(h)(9)
Water Supply	B10.13(i)(1)	C10.23(j)(1)	D10.33(i)(1)	E10.43(i)(1)	F10.53.(i)(1)
Sewage System	B10.13(i)(2)	C10.23(j)(2)	D10.33(i)(2)	E10.43(i)(2)	F10.53.(i)(2)
Sanitation Plan	B10.13(i)(3)	C10.23(j)(3)	D10.33(i)(3)	E10.43(i)(3)	F10.53.(i)(3)
Written Health Care Plan	B10.13(j)(1)	C10.23(k)(1)	D10.33(j)(1)	E10.43(j)(1)	F10.53.(j)(1)
Medical/Mental Health Judgment.	B10.13(j)(4)	C10.23(k)(4)	D10.33(j)(4)	E10.43(j)(4)	F10.53.(j)(4)
Meetings with Provider	B10.13(j)(6)	C10.23(k)(6)	D10.33(j)(6)	E10.43(j)(6)	F10.53.(j)(6)
Review of Health Care Policies	B10.13(j)(7)	C10.23(k)(7)	D10.33(j)(7)	E10.43(j)(7)	F10.53.(j)(7)
Health Training Program	B10.13(j)(8)	C10.23(k)(8)	D10.33(j)(8)	E10.43(j)(8)	F10.53.(j)(8)
24-hour Emergency Care	B10.13(j)(10)	C10.23(k)(10)	D10.33(j)(10)	E10.43(j)(10)	F10.53.(j)(10)
Health Care Treatment	B10.13(j)(11)	C10.23(k)(11)	D10.33(j)(11)	E10.43(j)(11)	F10.53.(j)(11)
Licensure Requirements	B10.13(j)(13)	C10.23(k)(13)	D10.33(j)(12)	E10.43(j)(12)	F10.53.(j)(13)
Management of Medications	B10.13(j)(16)	C10.23(k)(16)	D10.33(j)(15)	E10.43(j)(15)	F10.53.(j)(16)
Preliminary Health Screening	B10.13(j)(18)	C10.23(k)(18)	D10.33(j)(17)	E10.43(j)(17)	F10.53.(j)(18)
Serious and Infectious Disease	B10.13(j)(23)	C10.23(k)(23)	N/A	N/A	F10.53.(j)(20)
Participation in Research	B10.13(j)(27)	C10.23(k)(27)	D10.33(j)(25)	E10.43(j)(25)	F10.53.(j)(23)
Confidentiality of Health Records.	B10.13(j)(28)	C10.23(k)(28)	D10.33(j)(26)	E10.43(j)(26)	F10.53.(j)(24)
Regulation of Work Programs	B10.14(b)(2)	C10.24(b)(3)	D10.34(c)(2)	E10.44(c)(3)	N/A

(2) *Physical plant standards.* There are two categories of standards which deal with facilities: standards for existing construction and standards for new construction, additions and renovations. If there are no existing facilities of the type, standards for existing construction are omitted.

(c) *Accreditation process.* The accreditation process is incremental. It does not require that detention facilities comply with all standards when they are published. The following requirements are established for compliance:

(1) *First year following publication.* By the end of the first year following publication, all detention facilities must have identified deficiencies and developed an action plan that identifies the actions and resources necessary to correct deficiencies and a schedule for these remedies.

(2) *Second year following publication.* By the end of the second year following publication and thereafter, all detention facilities must be one hundred percent compliant with the mandatory standards. For example, an existing adult detention facility would have to comply with the 48 mandatory

standards of the 249 total standards applicable to this facility type.

(3) *Fourth year following publication.* By the end of the fourth year following publication and thereafter, all detention facilities must be 50 percent compliant with the non-mandatory standards. For example, an existing adult detention facility would have to remain compliant with the 48 mandatory standards and also comply with 101 (50%) of the 201 non-mandatory standards for this facility type.

(4) *Fifth year following publication.* By the end of the fifth year following publication and thereafter, all detention facilities must be 60 percent compliant with the non-mandatory standards. For example, an existing adult detention facility would have to remain compliant with the 48 mandatory standards and also comply with 121 (60%) of the non-mandatory standards for this facility type.

(5) *Sixth year following publication.* By the end of the sixth year following publication and thereafter, all detention facilities must be 70 percent compliant with the non-mandatory standards.

(6) *Seventh year following publication.* By the end of the seventh year following publication and thereafter, all detention facilities must be 80 percent compliant with the non-mandatory standards.

(7) *Eighth year following publication.* By the end of the eighth year following publication and thereafter, all detention facilities must be 90 percent compliant with the non-mandatory standards.

(8) *Available assistance.* The BIA, Division of Law Enforcement shall provide a format for self-accreditation of programs with provision for program audits.

§ 10.5 Facilities operated by contractors.

(a) *Form of organization.* The entity operating the facility shall be a legal entity or part of a legal entity.

(b) *Program continuity.* The operator of the facility shall document that necessary legal measures have been taken to provide continuity of service in the event of incapacitation, retirement or death.

(c) *Annual meeting.* The governing authority of the facility shall meet at least annually with the contracting officer to facilitate communication, establish policy, explore problems, ensure conformity to legal and fiscal requirements, and implement programs.

(d) *Minimum criteria for private agencies.* At a minimum, the bylaws for the governing authority of the incorporated agency shall include membership qualifications, community representation, size of the governing body, method of selection, terms of office, duties and responsibilities of officers, times the board will meet, committee structure, quorums, parliamentary procedure, recording of minutes, method of amending the bylaws, conflict of interest items, and the relationship of the chief executive officer to the governing body.

Subpart B—Adult Detention Facilities

§ 10.11 Administration and management.

(a) *General administration*—(1) *Mission and goals.* A written statement, which shall be updated as necessary, shall describe the philosophy, goals and policies of the facility.

(2) *Administration of facility.* An administrator, whose responsibility and authority shall be documented, shall oversee each facility. The appointment shall be based on written qualifications.

(3) *Organization chart.* An organization chart shall describe the facility's organization and chain of command. The chart shall be updated as needed.

(4) *Service provider roles.* A Memorandum of Agreement (MOA), which shall be updated as needed and reviewed at least annually, shall define the role and function of employees of public or private agencies providing a service to the facility. The MOA shall specify the relation of service providers to the authority and responsibility of the administrator.

(5) *Interagency meetings.* The administrator shall conduct regular meetings between the staff of criminal justice, social service, health care and detention agencies to develop and maintain effective interagency coordination.

(6) *Policy and procedure manual.* All employees of the facility shall have access to a policy and procedure manual and its supporting documents. The Chief, Division of Law Enforcement, shall approve the manual and its supporting documents, which shall provide for the implementation of these standards and shall direct documentation of compliance. The administrator shall update the manual as needed and review it annually.

(7) *Dissemination of policy and procedure.* The administrator shall disseminate approved, new, or revised policies and procedures to designated staff, volunteers, and, where appropriate, inmates prior to implementation. Staff shall review and indicate in writing that they understand the content of policies and procedures prior to their implementation.

(8) *Channels of communication.* The administrator or designee shall regularly disseminate information to staff prior to the beginning of their shift.

(9) *Monitoring and assessment.* The Agency Superintendent or designee shall review and inspect operations and programs at least annually.

(10) *Annual report.* The administrator shall submit a written annual report to the Chief, Division of Law Enforcement, through the Area Director and Agency Superintendent, and shall forward a copy to the appropriate court and health care authority. The report shall address goals, objectives, population data, programs and services provided, budget, space and equipment needs and major developments.

(11) *Public information program.* The administrator or designee shall provide for a public information program.

(12) *Legal counsel.* Legal counsel shall be available to the administrator and other staff as needed in the performance of their duties.

(13) *Separation of adults and juveniles.* The administrator shall prohibit the confinement of juveniles under the age of eighteen within the facility unless in compliance with 42 U.S.C. 223(a)(13)(14) (the Juvenile Justice and Delinquency Prevention Act of 1974) as amended and 28 CFR Part 31.

(b) *Fiscal management*—(1) *Budgetary compliance.* If operated by the BIA, the facility shall comply with the directives of the Agency regarding budget preparation, submission, and administration. If operated by a tribe, the facility shall comply with the directives of the tribe regarding budget preparation, submission, and administration.

(2) *Accounting compliance.* If operated by the BIA, the facility shall comply with the Agency accounting directives. If operated by a Tribe, the facility shall comply with Tribal accounting directives.

(3) *Basis of budget.* The administrator shall document a direct relationship between the budget and planned operational, staffing and program needs.

(4) *Property management compliance.* If operated by the BIA, the facility shall comply with Agency property management directives. If operated by a Tribe, the facility shall comply with Tribal property management directives.

(5) *Federal acquisition regulation compliance.* If operated by the BIA, the facility shall comply with Agency directives for facility services, equipment and supply purchases. If operated by a tribe, the facility shall comply with tribal directives for facility services, equipment and supply purchases.

(6) *Space and equipment needs and deficiencies.* The administrator shall report space and equipment needs and deficiencies annually to the Area Director through the Agency Superintendent.

(7) *Program needs and deficiencies.* The administrator shall report program needs and deficiencies, i.e., staffing, supplies, training and contract services, annually to the Chief, Division of Law Enforcement, through the Area Director and Agency Superintendent.

(8) *Cost of inmate board.* The facility shall charge all contract users at the same rate.

(9) *Fund accounts.* The administrator shall arrange for an independent audit of inmate fund accounts, including canteen or commissary, following standard accounting practices. The administrator shall use any profit or interest which accrues for the benefit of the inmates.

(c) *Personnel*—(1) *Personnel policy.* If operated by the BIA, the facility shall comply with Agency personnel management directives. If operated by a Tribe, the facility shall comply with Tribal personnel management directives.

(2) *Personnel manual.* The administrator shall make a copy of the applicable personnel manuals and regulations available to every employee.

(3) *Staffing requirements.* The administrator shall review employee workload annually to ensure that the legitimate safety and security needs of staff and inmates are addressed. The administrator shall develop and update the facility's shift relief factor annually.

(4) *Criminal record check.* The administrator or designee shall conduct a criminal record check of all new employees prior to employment to determine if there are criminal convictions that have a specific relationship to job performance.

(5) *Physical examination.* All employees who have direct contact with inmates shall have a pre-employment physical examination. There shall be provisions for re-examination.

(6) *Physical fitness.* Detention officers shall meet BIA or comparable tribal standards for physical fitness.

(7) *Code of ethics.* The facility shall have a written Code of Ethics that outlines the professional standards expected of all employees and recognizes that detention personnel may be held to a higher behavioral standard because of the nature of their duties.

(8) *Confidentiality.* Consultants, contract personnel, employees of other public and private agencies and volunteers who work with inmates shall agree to comply with the facility's policies on confidentiality of information.

(d) *Training and staff development*—(1) *Management of training programs.* A qualified employee, who has received training in training delivery methods, shall plan, coordinate and supervise employee and volunteer training programs. The administrator shall identify, evaluate and update job-related training needs annually.

(2) *Training curriculum approval.* The Chief, Division of Law Enforcement, in conjunction with the Indian Police Academy, shall approve training programs and curriculum required by these standards.

(3) *Outside resources.* The facility shall support the integration of IHS-approved and other training with the approval of the administrator.

(4) *Education and training.* The administrator shall encourage employees to continue their education and training.

(5) *Cultural awareness.* Orientation training shall include a component on cultural issues relative to the local tribe(s).

(6) *Detention officer orientation training.* All new full or part-time detention officers shall receive the number of hours of orientation training recommended by the Chief, Division of Law Enforcement, during their first year of employment. Employees shall complete forty of these hours prior to being independently assigned to work in the facility.

(7) *Detention officer in-service training.* All full or part-time detention officers shall receive an additional forty hours of job-relevant training each subsequent year of employment.

(8) *Clerical and support staff orientation training.* All new clerical and support staff who have minimal inmate contact shall receive the number of hours of orientation and training recommended by the Chief, Division of Law Enforcement within their first year of employment.

(9) *Clerical and support staff in-service training.* All clerical and support staff shall receive an additional sixteen hours of job-relevant training each subsequent year of employment.

(10) *Administrative and managerial staff orientation training.* New administrative and managerial staff shall receive at least the number of hours of training recommended by the Chief, Division of Law Enforcement, within their first year of employment in this position.

(11) *Administrative and managerial staff in-service training.* Administrative and managerial staff shall receive at least twenty-four hours of job-relevant training each subsequent year of employment.

(12) *Specialized training.* At least one detention officer per shift shall receive specialized training in the management of inmates with health and behavioral problems, including substance abuse and suicide. At least one detention officer per shift shall be certified as an emergency medical technician. All detention staff who have contact with inmates shall receive training in advanced first aid and CPR. The health authority shall identify health-related training needs.

(e) *Facility records*—(1) *Records compliance.* The facility shall comply with 5 U.S.C. 552 (the Freedom of Information Act), 5 U.S.C. 552(a) (the Privacy Act of 1974) as amended, 43 CFR 2.79(a), or comparable tribal regulations.

(2) *Records management.* The facility shall have a system for the management, dissemination, retrieval, storage, archiving and (when appropriate) destruction of information and detention records.

(3) *Law enforcement sensitive information.* Law enforcement sensitive records and information shall be marked privileged. The administrator or designee shall keep these records in a locked cabinet or file room.

(4) *Release of information and consent.* Inmates shall sign a Release of Information Consent Form in compliance with 5 U.S.C. 552(a) (the Privacy Act of 1974) as amended prior to the release of privileged information. The administrator or designee shall keep a copy of the signed release in the inmate's record.

(5) *Separation of record contents.* The administrator or designee shall identify and separate contents of inmate records according to an established format which, at a minimum, shall separate privileged from public information.

(6) *Access to information.* The administrator shall define clearly personnel who have access to inmate records.

(7) *Daily report.* The administrator or designee shall maintain a daily report and provide a copy of it to the appropriate court(s). The daily report shall identify:

(i) the names of inmates in custody, including inmates on temporary release or in other locations;

(ii) names of inmates admitted and released;

(iii) the legal status of each inmate; and

(iv) the number of days each inmate has been in custody.

(8) *Identification and location record.* The facility shall maintain a system that

identifies all inmates in custody and their actual physical location.

(9) *Custody record.* The facility shall maintain custody records of all inmates held at the facility. The record shall include, but not be limited to:

(i) initial booking form;

(ii) documented legal authority to detain the inmate;

(iii) health and suicide screening forms;

(iv) dates of court appearances;

(v) signed release of information forms;

(vi) an on-going record of cash and valuables;

(vii) dates and times of temporary releases;

(viii) names of visitors and dates of visits;

(ix) facility rules and disciplinary policy signed by the inmate;

(x) classification interview and subsequent classification actions;

(xi) reports of major disciplinary actions, significant incidents or crimes committed while in custody;

(xii) records of program participation including work release or inmate work programs;

(xiii) good time accumulated (if applicable); and

(xiv) final release or transfer report.

(10) *Booking information.* The administrator or designee shall record booking information for every person admitted to the facility. The record shall include at least the following data:

(i) booking number;

(ii) name and known aliases;

(iii) current or last known address;

(iv) date and time of confinement;

(v) a copy of the court order or other legal basis for detention;

(vi) name, title, agency and signature of arresting officer;

(vii) charge or charges;

(viii) date and place of birth;

(ix) ethnic origin or tribal affiliation;

(x) present or last place of employment;

(xi) emergency contact name, relationship, address and phone number;

(xii) record of telephone calls made by arrestee at time of admission;

(xiii) driver's license and social security number;

(xiv) identifying information, including height, weight, gender and identifying marks, such as birthmarks, scars or tattoos;

(xv) photograph and fingerprints (optional);

(xvi) notation of cash and all property;

(xvii) initial classification and special needs;

(xviii) an indication that the health and suicide screening was completed;

(xix) name of legal representative if any; and

(xx) name of booking officer.

(11) *Conducting research.* All research conducted shall comply with federal and tribal regulations pertaining to conducting and disseminating research findings as well as professional and scientific ethics. The administrator, the Agency Superintendent and the Area Director shall approve all research prior to implementation. The administrator shall regulate voluntary inmate participation in research.

(f) *Citizen involvement and volunteers*—(1) *Volunteer coordinator.* The administrator shall encourage citizen participation in volunteer programs by designating a staff member as volunteer coordinator.

(2) *Volunteer plan.* The volunteer coordinator shall develop and implement a written plan for volunteer services. The volunteer coordinator and administrator shall update the plan as necessary and review it at least annually. The plan shall include:

(i) lines of authority;

(ii) responsibility and accountability for volunteer services;

(iii) procedures for the screening and selection of volunteers;

(iv) a volunteer orientation or training program, which is appropriate to the nature of the assignments;

(v) a requirement that volunteers shall agree in writing to abide by all facility rules, policies, procedures and practices, particularly those related to security and confidentiality of information; and

(vi) a statement that the administrator may discontinue a volunteer activity at any time by written notice.

§ 10.12 Physical plant.

(a) *Code compliance*—(1) *Building and safety code compliance.* If owned by the Bureau, the facility shall comply with 29 CFR Part 1910, Subparts D, E, G and L. If owned by a tribe, the facility shall comply with the National Fire Protection Association (NFPA) Life Safety Code 101 Chapters 2, 4 through 7, and 14 (if new detention occupancy) or 15 (if existing detention occupancy), or comparable tribal regulations.

(2) *Zoning.* The facility shall comply with applicable zoning and land use requirements.

(3) *Accessibility.* The facility shall comply with 25 U.S.C. 794 (the Rehabilitation Act of 1973) as amended, 41 CFR 101–19.6 (Uniform Federal Accessibility Standards), and 43 CFR Part 17.

(4) *OSHA compliance.* The facility shall comply with 29 CFR Part 1910, Subparts C through E, G, K, L and S (Occupational Health and Safety Standards) or comparable tribal regulations. If other activities governed by sections of 29 CFR Part 1910 not identified in this standard are carried out in the facility, the section(s) of 29 CFR Part 1910 governing that activity or comparable tribal regulations apply.

(5) *Health and safety inspection.* In compliance with 29 CFR Part 1960, Subparts B through D, the facility shall receive at least one inspection each year by a qualified safety and health inspector and Environmental Health Specialist and/or Sanitarian. Any request for inspection shall be directed to the Area Safety Manager or Officer through the Agency Superintendent.

(6) *Furnishings and equipment code compliance.* The administrator shall maintain documentation by an independent, qualified source that the interior furnishing materials in inmate living areas, exit areas and places of public assembly shall be in accordance with NFPA Life Safety Code Section 6–5 or comparable tribal regulations.

(b) *Facility organization*—(1) *Design for supervision.* Physical plant design shall facilitate continuous personal contact and interaction between staff and inmates.

(2) *Separation of adults and juveniles.* If the adult facility temporarily holds juveniles for periods of less than twenty-four hours, it shall comply with 42 U.S.C. 223(a)(ii) (the Juvenile Justice and Delinquency Prevention Act of 1974) as amended and 28 CFR Part 31.

(3) *Separation of classifications.* The facility shall be designed and constructed so that inmates can be separated according to the requirements identified in these standards and the facility's classification plan.

(4) *Separation of males and females.* The facility shall provide for sight and sound separation of male and female inmates in their housing areas.

(5) *Supervision.* All general population and special management living areas shall be constructed to facilitate continuous staff observation, excluding electronic surveillance, of cell or room fronts and activity areas, such as dayrooms and recreation spaces.

(6) *Continuously observable housing.* The facility shall provide a minimum of two single occupancy cells that can be continuously observed by staff and which allow inmates to communicate with staff.

(7) *Rated capacity.* The number of inmates shall not exceed the facility's rated capacity with the exception of mass arrests.

(8) *Location.* The facility shall be located conveniently for criminal justice agencies, the health authority,

community agencies and inmates' legal representatives, families and friends.

(c) *Environmental conditions*—(1) *Artificial light levels.* Lighting levels in inmate cells or rooms shall be at least twenty footcandles at the desk and in the personal grooming areas. Lighting levels throughout the facility shall be appropriate to the tasks and activities carried out in its spaces. An independent, qualified source shall document lighting levels.

(2) *Noise levels.* Noise levels shall not exceed seventy decibels in the daytime and forty-five decibels at night. An independent, qualified source shall document noise levels.

(3) *Indoor air quality.* Air circulation shall be at least ten cubic feet of outside or recirculated filtered air per minute per occupant. An independent, qualified source shall document air circulation.

(4) *Use of tobacco.* The administrator shall regulate the use of tobacco in the facility by staff, inmates and the public.

(5) *Heating and cooling.* Temperatures shall be appropriate to the summer and winter comfort zones.

(d) *Security*—(1) *Control center.* The facility shall maintain a secure control center, which has a system for immediate communication with the inmate living areas. The control center shall monitor and coordinate the facility's security, life safety and communications systems.

(2) *Perimeter security.* The perimeter shall be secured in a way that inmates remain in the perimeter and that access by the general public is denied without proper authorization. There shall be security doors between inmate areas and areas to which the public has access.

(3) *Security equipment storage.* The facility shall provide space for the secure storage of chemical agents, restraining devices and related security equipment. The equipment shall be located outside inmate living and activity areas in a place that is readily accessible to authorized persons only. The facility shall store firearms in a secure area or cabinet outside the security perimeter of the facility in a place that is accessible only to authorized persons.

(4) *Emergency exits.* In compliance with 29 CFR 1910.37, designated exits in the facility shall permit prompt evacuation of inmates and staff members in an emergency. Facility exits shall be properly positioned, clear and distinctly and permanently marked.

(5) *Protective Holding Cells.* Other than as indicated in the mass arrest policy, single and multiple occupancy protective holding cells shall hold no more than eight persons and shall be used only for the temporary holding of persons during the booking process for periods of up to eight hours. Each room or cell shall have, at a minimum:

(i) sixty square feet of floor space;

(ii) toilet facilities that are located above floor level, provide some degree of privacy and are available for use without staff assistance twenty-four hours a day;

(iii) hot and cold running water; and

(iv) a bed or fixed bench at or above floor level.

(6) *Emergency equipment.* The facility shall have the equipment necessary to maintain essential lights, power, ventilation, power-operated doors or locks and communication in an emergency.

(7) *Visual surveillance equipment.* When visual electronic surveillance is used, it shall be located primarily in hallways, elevators, corridors, or at points on the security perimeter such as entrances and exits.

(e) *New facility planning process*—(1) *New facility planning requirement.* All new construction, renovation and expansion projects shall follow the Planning of New Institutions (PONI) process as required by 25 CFR Part 296.

(2) *Safety management review.* The design and specifications for all new construction, renovation and expansion projects shall be reviewed by the Bureau of Indian Affairs in compliance with 29 CFR 1960, Subparts B through D.

(f) *New construction, renovation and expansion*—(1) *Single occupancy requirements (general population).* Only one inmate shall occupy each cell or detention room designed for single occupancy. All general population single rooms or cells shall have at least sixty square feet of floor space, provided inmates spend no more than ten hours per day locked in. When confinement exceeds ten hours per day, there shall be at least seventy square feet of floor space. In general population, each room or cell shall have, at a minimum:

(i) natural light;

(ii) toilet facilities with some degree of privacy that are located above floor level and are available for use without staff assistance twenty-four hours a day;

(iii) a wash basin with hot and cold running water;

(iv) access to showers; and

(v) a bed above floor level, a desk or writing surface, safety-type hooks or closet space, and a chair or stool.

(2) *Single occupancy requirements (special management).* Only one inmate shall occupy each cell or detention room designed for single occupancy. The facility shall provide single cell occupancy for special management classifications and other classifications as defined and justified in the PONI program. At least one special management cell shall be vented directly to the exterior. In special management, segregation rooms shall provide living conditions that approximate those of the general inmate population. All exceptions shall be clearly documented. Each special management room or cell shall have, at a minimum:

(i) natural light;

(ii) a minimum of seventy square feet of floor space;

(iii) toilet facilities with some degree of privacy that are located above floor level and that are available for use without staff assistance twenty-four hours a day;

(iv) access to showers;

(v) hot and cold running water; and

(vi) a bed at or above floor level, a desk or writing surface, and a stool.

(3) *Multiple occupancy requirements.* Where used, multiple occupancy rooms or cells shall house inmates, who have been screened for suitability to group living and classified accordingly. The rooms shall provide:

(i) continuous observation by staff;

(ii) a minimum of fifty square feet of floor space per occupant in the sleeping area and a clear floor-to-ceiling height of not less than eight feet;

(iii) natural light;

(iv) a toilet(s) with some degree of privacy;

(v) an operable wash basin(s) with hot and cold running water;

(vi) access to showers; and

(vii) beds above floor level and a locker or container for each occupant's belongings.

(4) *Space, furnishings and conditions for dayrooms.* The facility shall provide separate dayroom space for each cellblock or detention room cluster. The dayroom shall provide:

(i) natural light;

(ii) a minimum of thirty-five square feet of space per inmate exclusive of lavatories;

(iii) showers and toilets with some degree of privacy; and

(iv) seating and writing surfaces, appropriate to the classification which uses this space, sufficient for the number of inmates who use the dayroom at one time.

(5) *Toilets.* The facility shall provide operable toilets at a minimum ratio of one for every twelve inmates in male facilities and one for every eight inmates in female facilities. Urinals may be substituted for up to one-half of the toilets in male facilities. All housing units with three or more inmates shall have two toilets.

(6) *Wash basins.* Inmates shall have access to operable wash basins with hot

and cold running water in the housing units at a minimum ratio of one basin for every twelve occupants.

(7) *Showers.* Inmates shall have access to operable showers with temperature-controlled hot and cold running water at a minimum of one shower for every eight inmates. Water for showers shall be thermostatically controlled to temperatures ranging from one hundred degrees to one hundred-twenty degrees Fahrenheit.

(8) *Housing for the disabled.* Disabled inmates shall be housed in a manner that provides for their safety in compliance with 25 U.S.C. 794 (the Rehabilitation Act of 1973) as amended, 41 CFR 101–19.6 (Uniform Federal Accessibility Standards), and 43 CFR Part 17, yet prevents their being discriminated against in their use of the facility.

(9) *Work or education release housing.* Inmates who participate in work or education release programs shall be housed separately from inmates in the general population.

(10) *Exercise and recreation areas.* The facility shall provide secure outdoor, covered or enclosed exercise areas. Outdoor exercise areas shall be a minimum of one thousand five hundred square feet of unencumbered space; covered and enclosed exercise areas shall provide a minimum of one thousand square feet of unencumbered space. Exercise areas shall be adequate in size and type to ensure that each inmate shall be offered at least one hour of access daily regardless of climatic conditions.

(11) *Multi-purpose and interview rooms.* The facility shall provide a minimum of one accessible multi-purpose room and one accessible interview room.

(12) *Program area toilets.* The facility shall provide toilets with some degree of privacy and wash basins, which are accessible to inmates, in or adjacent to activity areas.

(13) *Visiting spaces.* The facility shall provide a secure visiting room and, when appropriate, space in which contact visiting can occur. The space shall facilitate staff observation of visiting. The facility shall provide secure space outside the security perimeter for the storage of visitors' personal items.

(14) *Food service spaces.* When the facility provides for food preparation, it shall have adequate space for food processing, storage, refrigeration and sanitation. Toilet and wash basin facilities shall be available to food service personnel and inmates in the vicinity of the food preparation area. The square footage of the kitchen shall be appropriate to the needs of the facility. If dining occurs outside the dayroom, the facility shall provide a minimum of fifteen square feet per occupant.

(15) *Storage space.* The facility shall provide the following storage spaces:

(i) a secure, well-ventilated janitor closet, which includes sink and adequate space for the storage of cleaning implements and supplies;

(ii) secure storage, located outside the secure area, for flammable, toxic and caustic items; and

(iii) storage for inmate clothing, bedding, mattresses, personal hygiene items and facility supplies.

(16) *Laundry.* The facility shall provide access to laundry services or laundry space and equipment.

(17) *Booking.* The facility shall provide an intake/booking and release area which shall be located inside the security perimeter, but outside inmate living quarters. The booking area shall include:

(i) an intake/booking work area;

(ii) sallyport;

(iii) access to operable toilets, with some degree of privacy, wash basins, drinking water and showers;

(iv) space for alcohol and drug testing equipment;

(v) space for inmate identification equipment;

(vi) a secure, well-ventilated storage room for inmates' personal property;

(vii) telephone(s), which can be used by inmates;

(viii) private interview spaces;

(ix) temporary holding rooms or waiting spaces with sufficient fixed seating for all inmates at their rated capacities; and

(x) access to continuously observable protective holding cells for the safe holding of intoxicated individuals.

(18) *Medical examination room.* The facility shall provide a space in which private medical examinations of inmates can occur. The space shall provide for private examination of patients, hand washing, storage of equipment used in the examination room and a work surface for health care personnel.

(19) *Staff toilets.* The facility shall provide staff toilets that shall not be used by inmates inside the secure area of the facility.

(20) *Public spaces.* The facility shall provide public restroom(s) and a public lobby with an adequate number of seats to accommodate anticipated visitors outside the secure perimeter.

(21) *Administration.* The facility shall provide adequate space for its administrative functions. This space shall include an office for the administrator, work space for clerical staff, space for duplicating equipment, supply and equipment storage, space for storage of facility records and space for meetings.

(22) *Staff.* The facility shall provide adequate space for staff assigned to work in the facility. These spaces shall include an area in which they can store personal property, change clothes and shower and an area in which training, meetings, briefings and breaks can occur.

(23) *Mechanical.* The facility shall provide separate and adequate space for mechanical systems and equipment.

(g) *Existing construction*—(1) *Occupancy by one inmate.* Only one inmate shall occupy each cell or detention room designed for single occupancy.

(2) *Single occupancy space requirements.* All single rooms or cells shall have at least sixty square feet of floor space, provided inmates spend no more than ten hours per day locked in. When confinement exceeds ten hours per day, there shall be at least seventy square feet of floor space.

(3) *Multiple occupancy space requirements.* Where used, multiple occupancy rooms or cells shall house inmates, who have been screened for suitability to and classified for group living. The rooms shall provide:

(i) continuous observation by staff;

(ii) a minimum of fifty square feet of floor space per occupant in the sleeping area and a clear floor-to-ceiling height of not less than eight feet;

(iii) natural light;

(iv) a toilet(s) with some degree of privacy;

(v) an operable wash basin(s) with hot and cold running water;

(vi) access to showers; and

(vii) beds above floor level and a locker or container for each occupant's belongings.

(4) *Single occupancy furnishings and conditions (general population).* Each room or cell shall have, at a minimum:

(i) natural light;

(ii) toilet facilities with some degree of privacy that are located above floor level and that are available for use without staff assistance twenty-four hours a day;

(iii) a wash basin with hot and cold running water;

(iv) access to showers; and

(v) a bed above floor level, a desk or writing surface, safety-type hooks or closet space, and a chair or stool.

(5) *Single occupancy furnishings and conditions (special management).* Segregation rooms shall provide living conditions that approximate those of the general inmate population; all exceptions shall be clearly documented.

Each room or cell shall have, at a minimum:

(i) natural light;

(ii) a minimum of seventy square feet of floor space;

(iii) toilet facilities with some degree of privacy that are located above floor level and are available for use without staff assistance twenty-four hours a day;

(iv) access to showers;

(v) hot and cold running water; and

(vi) a bed at or above floor level, a desk or writing surface, and a stool.

(6) *Space, furnishings and conditions for dayrooms.* The facility shall provide separate dayroom space. The dayroom shall provide:

(i) a minimum of thirty-five square feet of space per inmate exclusive of lavatories;

(ii) showers and toilets with some degree of privacy; and

(iii) seating and writing surfaces, appropriate to the classification which uses this space, sufficient for the number of inmates who use the dayroom at one time.

(7) *Toilets.* The facility shall provide operable toilets at a minimum ratio of one for every twelve inmates in male facilities and one for every eight inmates in female facilities. Urinals may be substituted for up to one-half of the toilets in male facilities. All housing units with three or more inmates shall have two toilets.

(8) *Wash basins.* Inmates shall have access to operable wash basins with hot and cold running water in the housing units at a minimum ratio of one basin for every twelve occupants.

(9) *Showers.* Inmates shall have access to operable showers with temperature-controlled hot and cold running water at a minimum of one shower for every eight inmates. Water for showers shall be controlled thermostatically to temperatures ranging from one hundred degrees to one hundred-twenty degrees Fahrenheit.

(10) *Housing for the disabled.* Disabled inmates shall be housed in a manner that provides for their safety in compliance with 25 U.S.C. 794 (the Rehabilitation Act of 1973) as amended, 41 CFR 101–19.6 (Uniform Federal Accessibility Standards), and 43 CFR Part 17, yet prevents their being discriminated against in their use of the facility.

(11) *Work or education release housing.* Inmates who participate in work or education release programs shall be housed separately from inmates in the general population.

(12) *Exercise and recreation.* The facility shall provide secure outdoor, covered or enclosed exercise areas. Exercise areas shall be adequate in size and type to ensure that each inmate shall be offered at least one hour of access daily regardless of climatic conditions.

(13) *Program Spaces.* The facility shall provide a minimum of one accessible multi-purpose room.

(14) *Visiting Spaces.* The facility shall provide a visiting room, which allows staff to observe visiting.

(15) *Dining.* If dining occurs outside the dayroom, the facility shall provide a minimum of fifteen square feet per occupant.

(16) *Food Service Spaces.* When the facility provides for food preparation, it shall have adequate space for food processing, storage, refrigeration and sanitation. Toilet and wash basin facilities shall be available to food service personnel and inmates in the vicinity of the food preparation area. The square footage of the kitchen shall be appropriate to the needs of the facility.

(17) *Janitor closet.* The facility shall provide a secure, well-ventilated janitor closet, which includes sink and adequate space for the storage of cleaning implements and supplies.

(18) *Storage of toxic, flammable and caustic items.* The facility shall provide secure storage, outside the secure area, for flammable, toxic and caustic items.

(19) *Clothing and supply storage.* The facility shall provide storage space for inmate clothing, bedding, mattresses, personal hygiene items and facility supplies.

(20) *Laundry.* The facility shall provide access to laundry services or laundry space and equipment.

(21) *Booking.* The facility shall provide an intake/booking and release area which shall be located inside the security perimeter, but outside inmate living quarters. The booking area shall include:

(i) an intake/booking work area;

(ii) sallyport;

(iii) access to operable toilets, wash basins, drinking water and showers;

(iv) space for alcohol and drug testing equipment;

(v) space for inmate identification equipment;

(vi) a secure, well-ventilated storage room for inmates' personal property;

(vii) telephone(s), which can be used by inmates;

(viii) private interview spaces;

(ix) temporary holding rooms or waiting spaces with sufficient fixed seating for all inmates at their rated capacities; and

(x) access to continuously observable protective holding cells for the safe holding of intoxicated individuals.

(22) *Medical examination room.* The facility shall provide a space in which private medical examinations of inmates can occur. The space shall provide for private examination of patients, hand washing, storage of equipment used in the examination room and a work surface for health care personnel.

(23) *Staff toilets.* The facility shall provide staff toilets inside the secure area of the facility that inmates shall not use.

(24) *Public spaces.* The facility shall provide public restroom(s) and a public lobby with an adequate number of seats to accommodate anticipated visitors outside the secure perimeter.

(25) *Administration.* The facility shall provide adequate space for its administrative functions.

(26) *Staff.* The facility shall provide adequate space for staff assigned to work in the facility.

(27) *Mechanical.* The facility shall provide separate and adequate space for mechanical systems and equipment.

§ 10.13 Institutional operations.

(a) *Security and control.*—(1) *Perimeter access.* All security perimeter entrances and control center doors shall be kept locked, except when used for supervised entry or exit of employees, inmates, or visitors and in emergencies.

(2) *Location of detention officer posts.* Detention officer posts shall be located in or immediately adjacent to inmate living areas to permit officers to hear and respond promptly to emergency situations.

(3) *Full coverage of detention officer posts.* Staff shall be provided for full, around-the clock coverage of designated security posts, full surveillance of inmates and performance of other detention functions.

(4) *Supervision of high security areas.* A staff member shall enter a high security area only when another staff member is immediately available to provide assistance.

(5) *Supervision of coed activities.* Facility staff shall supervise male and female inmates in coed activities and spaces continuously and directly.

(6) *Male and female staff requirement.* When both males and females are housed in the facility, at least one male and female staff member shall be on duty at all times.

(7) *Prohibited supervision.* No inmate or group of inmates shall be given control or authority over other inmates.

(8) *Cell checks.* A detention officer personally shall observe high and medium security inmates at least every thirty minutes, but on an irregular schedule. The administrator shall require observation every fifteen minutes for inmates who are mentally disordered or who demonstrate unusual

or bizarre behavior and continuous observation of suicidal inmates.

(9) *Counts.* The facility shall have a system to physically count inmates that includes strict accountability for inmates assigned to work and education release and other approved temporary releases.

(10) *Movement.* Detention staff shall regulate inmate movement.

(11) *Transportation of inmates.* The administrator shall govern the safe and secure transportation of inmates outside the facility.

(12) *Use of vehicles.* The administrator shall govern the use of departmental and personal vehicles for official purposes and shall prohibit the use of personal vehicles for transportation of inmates.

(13) *Shift activity log.* The facility shall maintain a written record of the following:

(i) personnel on duty;

(ii) inmate population at the beginning and end of each shift;

(iii) record of counts taken;

(iv) shift activities;

(v) entry and exit of professional and other visitors;

(vi) unusual occurrences or incidents;

(vii) hours of programs provided; and

(viii) clothing and linen exchange.

(14) *Weekly inspection.* The administrator or designee shall inspect all facility spaces and devices at least weekly to determine the status of all security items and the sanitary condition of the facility. The administrator or designee shall document the inspection and shall initiate corrective action if needed.

(15) *Monthly inspection.* The administrator shall inspect all areas of the facility at least monthly to inventory security equipment to determine numbers, usefulness and expiration dates, to determine the status of all security and safety items, and to determine the sanitary condition of the facility. The administrator shall document the inspection and shall initiate corrective action if needed.

(16) *Fire safety inspection.* A qualified fire protection specialist shall inspect the facility to test the fire suppression and detection system, equipment and facility training in compliance with 29 CFR 1910.36(d), 1910.37(m), 1910.37(n), 1910.38, and 29 CFR 1960, Subpart D.

(17) *Use of restraints.* Staff shall use instruments of restraint only as a precaution against escape during transfer, for medical reasons at the direction of the health authority, and as a prevention against inmate self-injury, injury to others or property damage. Staff shall apply restraints only with the approval of the administrator or designee and only for the amount of time that is absolutely necessary.

(18) *Security equipment issue.* The administrator shall maintain a written record of routine and emergency distributions of security equipment.

(19) *Contraband control.* The administrator shall provide for searches of facilities and inmates to control contraband and to provide for its disposition. When a new crime is suspected, the administrator shall be notified. The administrator shall maintain and make available to the appropriate authorities all evidence.

(20) *Body cavity and visual inspections.* Manual or instrument inspection of inmate body cavities shall be conducted only by health care staff, when there is reason to do so, and when authorized by the administrator or designee. Trained staff shall conduct visual inspections of unclothed inmates only when there is a reasonable belief that the inmate is carrying contraband or other prohibited material. Medical personnel shall conduct all manual or instrument inspections in private. Trained staff of the same sex as the inmate shall conduct all visual inspections in private.

(21) *Key and tool control.* The administrator shall govern the control, issuance, use and storage of keys, tools and culinary and medical equipment.

(22) *Use of force and firearms.* The facility shall comply with 25 CFR 11.304 with regard to the use of force, firearms, chemical agents, or any other weapon.

(b) *Safety and emergency procedures*—(1) *Fire prevention.* The administrator shall govern the storage and use of all flammable, toxic and caustic materials, the use of non-combustible receptacles for smoking materials, the amount of personal items, including reading materials, which inmates may keep in their living units and the amount and location of items stored in the facility.

(2) *Preventive maintenance.* The administrator or designee shall develop a written plan for preventive maintenance of the facility. The administrator shall review the plan annually and shall update it as needed. If tribally operated, the plan shall be supported by a Memorandum of Agreement between the tribe and the Agency.

(3) *Emergency system testing.* In compliance with 29 CFR 1910.38, emergency power generators shall be inspected weekly and tested under load at intervals of not more than thirty days.

(4) *Evacuation plan.* The administrator shall develop a written evacuation plan prepared in case of fire or major emergency. The plan shall comply with 29 CFR 1910.38 or comparable tribal code. The applicable Safety Officer or designee shall review and approve the plan initially and annually. The administrator shall update and reissue the plan if necessary. The plan shall include:

(i) means of immediate release of inmates from locked areas;

(ii) location of floor plans;

(iii) use of exit signs and directional arrows for traffic flow;

(iv) location of a publicly posted plan;

(v) at least quarterly drills in all facility locations; and

(vi) coordination with the fire department which services the facility.

(5) *Emergency plans.* The administrator or designee shall develop written plans that specify procedures to be followed in emergency situations. The administrator shall make these plans available to applicable personnel and shall review and update them at least annually. All facility personnel shall be trained in the implementation of these plans. Emergency situations shall include, but not be limited to:

(i) riots and disturbances;

(ii) hunger strikes;

(iii) hostage situations;

(iv) work stoppages;

(v) unattended deaths, including successful suicides;

(vi) attempted suicides;

(vii) escapes and unauthorized absences; and

(viii) other threats to the security of the facility.

(6) *Incident reporting.* The administrator shall require the immediate reporting of all incidents that result in physical harm to any person, threaten the safety of any person, result in the need for emergency care, result in damage to the facility or facility property, threaten the security of the facility, or involve the commission of a criminal offense. The administrator shall forward the reports to the Agency Superintendent through the appropriate chain of command.

(7) *Medical treatment (incident).* The administrator or designee shall ensure that all persons injured in an incident receive an immediate medical examination and treatment.

(8) *Notification of family.* The administrator shall provide for the notification of persons designated by the inmate in the event of serious illness, injury or death.

(c) *Rules and discipline*—(1) *Rules of conduct.* The administrator shall develop written rules of inmate conduct that specify acts prohibited within the facility and penalties that may be imposed for various degrees of

violations. The administrator or designee shall provide these rules to all inmates and shall ensure that all inmates understand them. All personnel who deal with inmates shall receive sufficient training prior to working in the facility to be thoroughly familiar with the rules of inmate conduct, the sanctions available and the rationale for the rules. The administrator shall review the written rules of inmate conduct annually and update them, if necessary, to ensure that they are consistent with constitutional and legal principles and BIA and tribal standards and codes.

(2) *Minor infractions.* The administrator shall provide guidelines for the informal resolution of minor inmate misbehavior.

(3) *Grievance procedure.* The administrator or designee shall make a written grievance procedure available to all inmates. The procedure shall include at least one level of appeal.

(4) *Criminal violations.* In instances in which an inmate is alleged to have committed a crime, the administrator or designee shall refer the case to the appropriate law enforcement officials for possible prosecution.

(5) *Disciplinary reports.* When rule violations require formal resolution, staff members shall prepare a disciplinary report and forward it to the administrator or designee. The disciplinary report shall include, but not be limited to:

(i) specific rules violated;

(ii) a formal statement of the charge(s);

(iii) an explanation of the event, which shall include who was involved, what transpired and the time and location of the occurrence;

(iv) unusual inmate behavior;

(v) staff witnesses;

(vi) disposition of any physical evidence;

(vii) any immediate action taken, including the use of force;

(viii) reporting staff member's signature; and

(ix) date and time the report is made.

(6) *Disciplinary process.* Inmates shall receive notification of the rules violated, a formal statement of the charge, a description of the incident and notice of the date and time of hearing. The administrator or designee shall advise inmates of their rights to be present at the hearing, to call witnesses on their behalf, to make a statement, to present documentary evidence, and to ask for assistance from staff in representing them at the hearing. An impartial person or panel of persons shall conduct the hearing.

(7) *Pre-hearing detention.* The administrator shall provide for the pre-hearing segregation of inmates who are charged with a rule violation if the safety of the inmate, other inmates, staff or the security of the facility is at stake.

(8) *Disciplinary detention.* The administrator or designee shall place inmates in disciplinary detention for a rule violation only after a hearing.

(9) *Record of disciplinary hearing.* The persons conducting the disciplinary hearing shall make a written copy of the decision and its disposition and shall provide copies to the inmate and administrator for review. Inmates shall have the right to appeal the decision to the administrator or the next level of authority. The disciplinary report shall be removed from all files of inmates found not guilty of an alleged rule violation.

(d) *Special management and segregation*—(1) *Types.* When special management units exist, the administrator shall govern the supervision of inmates in the following categories: administrative segregation, disciplinary segregation, protective custody and medical segregation.

(2) *Immediate segregation.* The administrator or designee may order immediate segregation when it is necessary to protect the inmate or others. This action shall be reviewed within three working days by the classification, disciplinary or appropriate authority, depending on the type of segregation ordered.

(3) *Administrative segregation and protective custody.* The administrator or designee shall classify inmates to special management for administrative segregation or protective custody only when there is documentation that this action is warranted and that no reasonable alternatives are available.

(4) *Medical/mental health segregation.* The administrator shall classify inmates to special management for medical reasons only at the direction of the health authority.

(5) *Review of special management status and inmates.* The administrator or designee shall review the status of special management inmates every five working days. A supervisor shall visit inmates in special management daily; program staff shall visit on request.

(6) *Release from special management.* A review process shall be used to release an inmate from special management.

(7) *Supervision.* A detention officer shall personally observe all special management inmates at least every fifteen minutes on an irregular schedule. A detention officer shall personally observe inmates who are violent, mentally disordered, have medical conditions requiring a higher degree of supervision, or who demonstrate unusual or bizarre behavior, more frequently. A detention officer shall continuously observe suicidal inmates. The facility shall maintain a permanent log of significant events and activities in the special management unit.

(8) *Special management operations.* The administrator or designee shall give all inmates in special management the opportunity to shave and shower at least three times a week and to write and receive correspondence on the same basis as inmates in general population. The administrator or designee shall grant inmates in special management access to legal and reading materials, telephone access to their legal representative and to family members in emergencies as defined by the administrator or designee. Inmates in special management shall receive the same meals as inmates in general population and shall retain the right to practice their religion, subject only to the limitations necessary to maintain institutional order and security.

(9) *Privileges (all special management inmates).* Unless there are substantial, documented reasons for withholding these privileges, the administrator or designee shall provide to all inmates in special management linen, clothing, bedding, barbering and hair care services on the same basis as inmates in general population. Inmates in special management shall be allowed opportunities for visiting, shall receive a minimum of one hour of exercise a day, outside their cells, five days a week, and shall be granted access to their legal representative.

(10) *Privileges (non-disciplinary detention).* Unless there are substantial, documented reasons for withholding these privileges, all inmates in special management except for those in disciplinary detention shall have telephone privileges approved by the administrator and shall have access to the same type of programs and services as are available to inmates in general population.

(11) *Deprivation of activity or item.* Whenever an inmate in special management is deprived of any usually authorized item or activity, the supervisor shall complete a report of the action and forward it to the administrator within one working day.

(e) *Inmate rights*—(1) *Access to courts, counsel and legal materials.* Inmates shall have the right to have access to attorneys, legal representatives, the courts and legal materials and to address uncensored communications to governmental authorities.

(2) *Freedom from discrimination.* Inmates shall have the right to be free from discrimination based on race, religion, national origin, tribal affiliation, sex, disability, political beliefs, favoritism or nepotism. Inmates shall have the right to equal access to programs and work assignments as provided in the classification program.

(3) *Equal access for women.* Male and female inmates shall have the right to equal access to programs and services.

(4) *Right to communicate.* Inmates shall have the right to receive visits and to communicate or correspond with persons or organizations, subject only to the limitations necessary to maintain order and security.

(5) *Protection from harm.* Inmates shall have the right to protection from personal abuse, corporal punishment, personal injury, disease, property damage and harassment, by either staff or inmates.

(6) *Freedom of personal grooming.* Inmates shall have the right to determine the length and style of scalp or facial hair, unless health and safety reasons exist.

(7) *Treatment.* Inmates shall have the right to medical, dental, mental health and substance abuse treatment and rehabilitative services as directed by the health authority.

(f) *Booking*—(1) *Booking process.* Written procedures for booking new inmates shall include, at a minimum:

(i) verification of court commitment papers or other legal documentation for detention;

(ii) complete search of the individual and possessions;

(iii) inventory and storage of clothing and personal property;

(iv) health screening, including tests for infectious diseases as required by the health authority;

(v) emergency health assessment, as required by law, regulations or policies of the health authority;

(vi) opportunity to make at least three local or collect long-distance telephone calls;

(vii) shower, hair care and treatment for ectoparasites if necessary;

(viii) issue of clean clothing and personal hygiene items;

(ix) completion of a booking form as required by these standards;

(x) suicide screening;

(xi) orientation, classification and assignment to a housing unit; and

(xii) optional photographing and/or fingerprinting.

(2) *Mass arrests.* Written plans shall govern temporary space arrangements and procedures to be followed in the event of a mass arrest that exceeds the maximum capacity of the facility. The administrator or designee shall update the plans as needed and review them at least annually.

(3) *Suicide screening.* The administrator shall ensure that all inmates shall be screened for risk of suicide at the time of booking. When a risk is identified, detention staff shall make an emergency referral to the health authority for evaluation by a health care professional and shall monitor the inmate until the assessment has been completed.

(4) *Orientation.* All newly admitted inmates shall receive written or oral information in the language they understand. The admitting officer shall document completion of orientation by a statement that shall be signed and dated by the inmates. The facility shall separate newly admitted inmates until completion of the orientation process. The orientation shall include, but is not limited to:

(i) inmate rules of conduct and potential disciplinary actions that may be taken;

(ii) programs and services available in the facility;

(iii) procedures for accessing health care services; and

(iv) inmate rights and privileges.

(5) *Personal property inventory.* The admitting officer shall complete a written, itemized inventory of all personal property of newly admitted inmates and shall store securely all inmate property, including money and other valuables. The admitting officer shall give the inmate a receipt for all property held until release.

(6) *Regulation of inmate property.* The administrator or designee shall identify personal property that inmates may receive or keep in their possession while in the facility, the sources from which these items may be obtained and how these items are received and inspected.

(g) *Classification*—(1) *Classification policy.* The administrator or designee shall provide for inmate classification in terms of the custody level, housing assignment and program participation. The administrator shall review these policies and procedures annually and update them as necessary.

(2) *Classification plan.* The administrator or designee shall develop a written classification plan, which includes, at a minimum:

(i) criteria and procedures for determining and changing the status of an inmate relative to custody, transfer and major changes in program participation;

(ii) an appeals process for classification decisions; and

(iii) the separate management of the following categories of inmates: male and female, criminal and witnesses/civil, education and work release, special needs inmates (substance abusers, disabled, etc.), juveniles (if detained if held in this facility in accordance with standards) and special management (disciplinary segregation, administrative segregation, protective custody and medical segregation).

(3) *Prohibited segregations.* The administrator shall prohibit the segregation of inmates by race, color, creed, tribal affiliation, national origin, political beliefs, nepotism, favoritism or other prohibited criteria.

(h) *Food service*—(1) *Food service records.* At a minimum, the facility shall maintain records of the number of meals served to the inmate population, the expenditures for food supplies and menus (planned and as served).

(2) *Dietary allowances.* The facility shall document that a registered dietician reviews dietary allowances at least annually to ensure compliance with nationally recommended food allowances. A diet manual, approved by a registered dietician, shall guide dietary allowances, including special diets.

(3) *Menu planning.* The administrator or designee shall plan, date and make all menus available for review at least one week in advance. The administrator or designee shall make notations of any substitutions, which shall be of equal nutritional value, in the meals actually served. The administrator or designee shall consider Native American food preferences in menu planning. The administrator or designee shall direct that menu evaluations shall be conducted at least quarterly to verify adherence to the nationally recommended basic daily servings.

(4) *Medical special diets.* The administrator or designee shall provide for special diets that are prescribed by appropriate medical or dental personnel.

(5) *Religious preference special diets.* The administrator or designee shall provide for special diets for inmates whose beliefs require adherence to religious dietary laws.

(6) *Food and discipline.* The administrator shall prohibit the use of food as a disciplinary measure.

(7) *Health protection.* Food service facilities and equipment shall meet health and safety standards. Food service personnel and inmates working in the food service area shall comply with applicable health regulations. The administrator or designee shall document compliance with health and safety regulations, including but not

limited to, a pre-assignment medical examination.

(8) *Inspections of food products.* The appropriate government agency shall inspect and approve food products that are grown or produced within the system. The administrator or designee shall implement a distribution system that ensures prompt delivery of foodstuffs.

(9) *Inspection of food service area.* The administrator or designee shall conduct a weekly inspection of all food service areas and equipment to ensure that they are sanitary, that all food storage areas are temperature controlled, and that food service personnel have made daily checks of refrigerator and water temperatures.

(10) *Meal service.* The facility shall serve meals under the direct supervision of staff. The facility shall provide at least three meals, of which two shall be hot, served at regular meal times during each twenty-four hour period, with no more than fourteen hours between the evening meal and breakfast. Provided that basic nutritional goals are met, variations may be allowed based on weekend and holiday food service demands.

(i) *Sanitation and hygiene*—(1) *Water supply.* The administrator shall maintain documentation that the entity which provides the facility's water source, supply, storage and distribution system meets the requirements of 42 U.S.C. 300g–6 (the Safe Drinking Water Act).

(2) *Sewage system.* The administrator shall maintain documentation that entity which provides the facility's sewage system complies with 33 U.S.C. 1251 *et seq.* (the Clean Water Act of 1977.

(3) *Sanitation plan.* The administrator or designee, in cooperation with the BIA or tribal maintenance program, shall develop a written housekeeping plan for all areas of the physical plant. The administrator or designee shall update the plan as needed and review it at least annually. The plan shall provide for daily housekeeping and regular maintenance by assigning specific duties to staff, inmates and BIA or tribal Facility Maintenance. The plan shall require that:

(i) facility floors be kept clean, dry and free of hazardous substances;

(ii) a qualified person conduct monthly inspections to control vermin and pests;

(iii) solid and liquid wastes be disposed of properly;

(iv) clean, suitable and presentable clothing, bedding, linens and towels be issued to new inmates and exchanged on at least a weekly basis;

(v) necessary cleaning and storage of inmate personal clothing be provided;

(vi) articles needed for personal hygiene be furnished; and

(vii) sufficient facilities in the housing areas to permit inmates to shower or bathe on admission to the facility and daily thereafter.

(4) *Special clothing issue.* The facility shall provide for the issue of special, and where appropriate, protective clothing and equipment to inmates participating in special work assignments. Such clothing shall be available in quantities that permit exchange as frequently as the work assignment requires.

(5) *Hair care.* The administrator or designee shall allow inmates to arrange for hair cutting services.

(j) *Health care*—(1) *Written health care plan.* A written plan shall provide for the delivery of health care services, including medical, dental, mental health and substance abuse treatment, under the control of a designated health authority. The plan shall include the participation of the Indian Health Service (IHS), social services and tribal health care providers. A Memorandum of Agreement between the administrator and the Director of the appropriate Indian IHS Service Unit or IHS contract health care provider shall document the health care plan. When this authority is other than a physician, final medical judgment shall rest with a single responsible physician, designated by the appropriate health authority, who shall meet the applicable licensure requirements.

(2) *Health program coordinator.* In facilities without full-time, qualified health personnel, a health-trained staff member shall coordinate the health care delivery system in the facility under the joint supervision of the responsible health authority and the administrator.

(3) *Annual review.* The administrator and the health authority shall update the plan as needed, review it annually to determine program needs including staffing, equipment and supplies and document its review by signature and date.

(4) *Medical/mental health judgment.* Medical, dental and mental health matters involving clinical judgements shall be the sole province of the responsible physician, dentist and/or psychiatrist or qualified psychologist.

(5) *Security regulations.* Security regulations applicable to facility personnel shall apply to health personnel.

(6) *Meetings with provider .* The health authority shall meet with the administrator or designee at least quarterly to review and evaluate the health care delivery system. The health authority shall provide an annual statistical report which documents the level and amount of health care services provided.

(7) *Review of health care policies.* The health authority and the administrator shall review and approve all policies and procedures relative to the health care plan prior to submission of these policies to the Chief, Division of Law Enforcement. Policies and procedures shall be reviewed at least annually and documented by signature and date.

(8) *Health training program.* The responsible health authority, in cooperation with the administrator, shall establish a health training program. The program shall provide instruction in the following areas:

(i) appropriate procedures to prevent the spread of communicable diseases;

(ii) the ability to respond to health-related situations within four minutes;

(iii) recognition of signs, symptoms and actions required in potential emergency situations;

(iv) recognition of chronic illness;

(v) administration of first aid and cardiopulmonary resuscitation (CPR);

(vi) methods of obtaining assistance from the health care provider;

(vii) recognition of signs and symptoms of and management of inmates with mental illness, retardation, emotional disturbance, chemical dependency and suicidal behavior; and

(viii) procedures for patient transfers to appropriate medical facilities or health care providers.

(9) *Sick call.* The administrator or designee shall provide for the collection and referral of inmate requests for health care.The facility shall have a system of sick call in-house or at the health care facility. The system shall provide for referral of inmates by staff for medical or other behavioral health evaluation, i.e, mental health, substance abuse, suicide. Sick call shall be held no less than once per week.

(10) *Twenty-four-hour emergency care.* The administrator and health authority shall develop a written plan for the provision of twenty-four hour emergency medical, dental and mental health care. The administrator and the health authority shall update the plan as needed and review it at least annually. At a minimum, the plan shall include:

(i) emergency evacuation of the inmate from the facility;

(ii) emergency evaluation of the inmate for medical or mental health problems;

(iii) use of an emergency medical vehicle;

(iv) use of one or more designated hospital, clinic, emergency on-call

physician, dentist, psychiatrist, qualified psychologist or otherwise qualified clinician; and

(v) security procedures that provide for the immediate transfer of inmates when appropriate.

(11) *Health care treatment.* Health care staff or health-trained detention staff shall perform treatment pursuant to written direct orders by personnel authorized by law to give such orders.

(12) *Medical/mental health management of inmates.* Qualified health care personnel, in conjunction with detention staff, shall develop a written plan for the management of inmates with medical, mental health and substance abuse problems, including suicide risks.

(13) *Licensure requirements.* The health authority shall comply with all applicable federal law, licensure requirements, rules, regulations and medical protocols in the delivery of health care services to the inmate population.

(14) *Traditional practitioners.* The facility shall allow inmates to participate in or receive traditional healing ceremonies and to use traditional healing methods, limited only to the degree necessary to preserve institutional security and order.

(15) *Prohibited use of detainees.* Inmates shall not perform direct patient services, schedule health care appointments, determine access of other inmates to health care services, access first aid kits, handle or have access to surgical instruments, syringes, needles, medications, or health records, or operate equipment for which they are not trained.

(16) *Management of medications.* The administrator and health authority shall provide for the proper management of individual doses of medications kept in the facility. The administrator and health authority shall review the policy annually and update it as needed.

(17) *Administration of medications.* The administrator or designee shall ensure that persons administering medications have received training appropriate to their assignment. Employees shall administer medications according to direct or physician orders and shall record the administration of medications in a manner and on a form approved by the responsible physician.

(18) *Preliminary health care screening.* Health-trained staff shall perform medical screening of all inmates on arrival at the facility and record findings on a printed screening form approved by the health authority. The screening process shall include:

(i) inquiry into:

(A) current and chronic illness and health problems, including dental problems and suicidal thoughts;

(B) sexually transmitted diseases and other infectious diseases;

(C) medication taken and special health requirements;

(D) use of alcohol and other drugs, which includes types of drugs used, mode of use, amount used, frequency used, date or time of last use and history of problems that may have occurred after ceasing use (e.g., convulsions);

(E) past or present treatment or hospitalization for mental disturbance or suicide;

(F) other health problems designated by the responsible physician; and

(G) mental illness;

(ii) observation of:

(A) behavior, including state of consciousness, mental status, appearance, conduct, tremor or sweating; and

(B) body deformities, trauma markings, bruises, lesions, jaundice and ease of movements; and

(iii) disposition to:

(A) housing in general population;

(B) housing in general population and referral to appropriate heath care service or substance abuse treatment provider; and/or

(C) referral to appropriate health care service on an emergency basis.

(19) *Health appraisal.* The health authority shall provide a health appraisal for each inmate within seven days of admission. A health-trained professional or otherwise qualified personnel shall collect health history and vital signs. Only qualified health care personnel shall collect other data. The health appraisal shall include:

(i) review of the intake health screening and emergency medical assessment if performed;

(ii) screening for diet counselling for medical reasons;

(iii) collection of additional data to complete the medical, dental, psychiatric and immunization histories, with attention to elements that may indicate the presence of chronic disease, such as diabetes;

(iv) recording of height, weight, pulse, blood pressure and temperature;

(v) administration of laboratory and other tests and examinations as appropriate;

(vi) notation of additional comments as needed; and

(vii) initiation of therapy as appropriate.

(20) *Health examination.* Qualified health care personnel shall complete a health examination for each inmate within thirty days of admission. The examination shall include:

(i) a "hands-on" examination by an appropriately licensed health care professional;

(ii) dental screening, hygiene and treatment when the health of the inmate would be adversely affected;

(iii) mental health appraisal; and

(iv) additional health care services as indicated by qualified health care personnel.

(21) *First aid kits.* The administrator shall ensure that first aid kits are available in designated areas of the facility as determined by the Safety Officer during the annual inspection. The health care provider shall determine the appropriate content of first aid kits.

(22) *Special medical/mental health programs.* The health authority shall provide specialized health education and treatment programs, including, but not limited to, personal hygiene, diet and exercise, family planning, communicable diseases, including sexually transmitted diseases and substance abuse education, prevention, intervention and treatment.

(23) *Serious and infectious disease.* The administrator and health authority shall develop a written plan for the management of inmates with serious and infectious disease. The administrator and health authority shall update the plan as needed and review it at least annually. The plan shall include, at a minimum:

(i) precautions taken to prevent the spread of disease;

(ii) special needs or requirements of the inmate;

(iii) procedures for treatment, limiting activities, if appropriate, legally mandated reporting and medical pass-on as directed by the health authority; and

(iv) housing location.

(24) *Detoxification.* The administrator and health authority shall develop a written plan to guide the clinical management of chemically dependent inmates. The plan shall specify the process for involving the health authority and the substance abuse program on both a continuing and crisis-intervention basis. The plan shall include:

(i) assessment as warranted;

(ii) detoxification under clinically supervised conditions;

(iii) diagnosis of chemical dependency;

(iv) determination as to whether an individual requires non-pharmacologically or pharmacologically supported care; and

(v) referrals to specified community resources for the development of individual treatment plans by a multi-disciplinary team.

(25) *Substance abuse programming.* The administrator and health authority shall develop a written plan to provide substance abuse education, intervention, assessment and treatment to inmates who are diagnosed as substance abusers. The administrator, health authority and substance abuse program provider shall update the plan as needed and review it at least annually. The plan shall link existing community programs and services to the facility program. The plan shall include, at a minimum:

(i) assessment and evaluation;

(ii) referral for treatment, if requested or court-ordered; and

(iii) availability of appropriate self-help groups.

(26) *Informed consent.* The health authority shall observe informed consent standards of the community for all inmate care, examinations, treatments and procedures affected by informed consent. In the case of minors, the informed consent of a parent, guardian or legal custodian shall apply when required by law. Health care shall be rendered against an inmate's will only in accordance with law.

(27) *Participation in research.* The health authority shall prohibit the use of inmates for medical, pharmaceutical, or cosmetic experiments. This standard shall not preclude individual treatment of an inmate based on need for a specific medical procedure that is not generally available.

(28) *Confidentiality of health records.* In compliance with 5 U.S.C. 552(a) (the Privacy Act of 1974) as amended and 42 CFR Part 2 (Regulations on Confidentiality of Alcohol and Drug Abuse Patient Records), the health authority shall keep the health record confidential. The health authority shall require that, at a minimum:

(i) the active health record shall be maintained separately from the confinement record;

(ii) access to the health record shall be controlled by the health authority; and

(iii) the health authority shall share with the administrator or designee information regarding an inmate's medical management, security and the ability to participate in programs.

(29) *Medical record contents.* The health authority shall approve the method of recording entries in the record and the form and format of the record. An inmate's medical/mental health record shall contain:

(i) copies of the completed intake screening form;

(ii) the health appraisal data collection form;

(iii) prescribed medications and their administration;

(iv) laboratory, x-ray and diagnostic studies;

(v) the signature and title of each documenter;

(vi) consent and refusal forms;

(vii) release of information forms;

(viii) place, date and time of health encounters;

(ix) discharge summary of hospitalization (if applicable); and

(x) health service reports (e.g., dental, psychiatric and other consultations).

(30) *Transfer of health information and records.* Summaries or copies of the health record shall be sent routinely to the health authority of any facility to which the inmate is transferred. The inmate shall authorize, in writing, the transfer of health records and information, unless otherwise provided by law or administrative regulation having the force and effect of law.

(k) *Release*—(1) *Court programs.* The facility shall cooperate with and assist in coordinating court intervention and diversion programs, pretrial release and probation services.

(2) *Temporary release.* Temporary release programs shall include:

(i) provision for release for funerals and ritual or ceremonial purposes;

(ii) sanction by the appropriate court;

(iii) operating, screening and selection procedures;

(iv) written rules of inmate conduct;

(v) a requirement for supervision of inmates while on release;

(vi) a record-keeping system that documents dates, times and authorization for release;

(vii) a system to evaluate program effectiveness; and

(viii) efforts to obtain community cooperation and support.

(3) *Work or education release.* The administrator or designee shall allow inmates in this classification to participate in work or education release programs. The appropriate court shall sanction education and work release.

(4) *Final release.* Written procedures for final release of inmates shall include, but shall not be limited to:

(i) verification of identity and release authority;

(ii) completion of release arrangements, including person or agency to whom the inmate is to be released, if applicable;

(iii) verification that all inmate property leaves with the inmate and that no facility property leaves the facility;

(iv) completion of any pending action, such as grievances or claims for damages or lost possessions;

(v) transfer of health information if appropriate; and

(vi) transportation arrangements, if required.

(5) *Sentence reduction.* Where tribal code permits, the administrator or designee shall allow sentence reduction based on evidence of good behavior.

(6) *Detainers.* The presence of a detainer shall not automatically prevent the release of an inmate from the detention facility.

§ 10.14 Inmate programs and services.

(a) *Program coordination*—(1) *Availability of programs.* The facility shall make available inmate programs and services. These programs shall include, but not be limited to, social services, religious services, including traditional religious practices and ceremonies, recreation and leisure time activities, counseling, including crisis intervention, library services, education programs and substance abuse programming. The administrator or designee shall link facility programs and services to existing community resources.

(2) *Program participation and refusal.* Inmates shall have the option to refuse to participate in facility programs, except housekeeping assignments and court-ordered programs. The administrator or designee shall document program participation and refusal in writing.

(3) *Program coordinator.* A facility staff member or trained volunteer shall coordinate inmate programs and services.

(b) *Work programs*—(1) *Work assignments.* The administrator or designee shall develop a written inmate work plan that provides for work assignments for inmates including the disabled. Work may include facility maintenance duties and community service projects. The administrator shall prohibit discrimination in inmate work assignments based on race, creed, gender, age, marital status, disability or tribal affiliation. The administrator shall not require pretrial and unsentenced detainees to work except to perform personal housekeeping. Any inmate may volunteer for work assignments or institutional programs.

(2) *Regulation of work programs.* Facility inmate work programs shall comply with applicable federal regulations.

(c) *Recreation, library and religious programming*—(1) *Comprehensive recreation program.* The administrator or designee shall permit inmates to have at least one hour a day of leisure time activity outside the cell or room and access to active recreation activities and equipment, including one hour daily of physical exercise, outside the living unit.

(2) *Library.* The administrator or designee shall develop a written plan to provide reading materials to inmates. The plan shall include the location where reading materials are kept, the process by which inmates obtain and return these materials and designation of the staff member or trained volunteer who is responsible for library services. The administrator shall update the plan as needed and review it annually.

(3) *Religious programs.* Inmates shall have the right to practice their religion, subject only to the limitations necessary to maintain institutional order and security.

(d) *Correspondence and telephone*—(1) *Regulation of correspondence.* The administrator shall regulate inmate correspondence and shall make this policy available to all staff and inmates. The administrator shall review this policy annually and update it as needed.

(2) *Limitations on inmate correspondence.* The administrator shall not limit the volume of lawful correspondence (e.g., letters, packages and publications) an inmate may send or receive and shall not restrict the length, language, content or source of the correspondence, except where there is clear and convincing evidence to justify the limitations for reasons of public safety, facility order, or security.

(3) *Indigents' correspondence.* The administrator or designee shall provide indigent inmates with a system that enables them to send a minimum of two letters per week.

(4) *Inspection of letters and packages.* The administrator or designee may open inmate letters and packages, both in-coming and out-going, to inspect them for contraband. The administrator or designee shall not read or reject letters or packages except where there is reliable information that there is a threat to order and security or that they are being used to further illegal activities. The administrator or designee shall notify inmates when in-coming or out-going letters are rejected. The administrator or designee shall deposit any cash, checks, or money orders in the inmate's account and shall issue a receipt to both the inmate and the sender. The administrator or designee shall forward any contraband found to the appropriate law enforcement authority. The supervisor shall forward all mail within twenty-four hours of receipt except for Saturdays, Sundays and holidays. Inmates shall be prohibited from carrying money.

(5) *Privileged correspondence.* The administrator shall permit inmates to send sealed letters to specified groups of persons and organizations including, but not limited to, courts, including probation staff, counsel, officials of the confining authority, administrators of grievance systems and the media. Mail to inmates from this specified class of persons and organizations shall be opened only to inspect for contraband and only in the presence of the inmate.

(6) *Holding and forwarding mail.* The administrator or designee shall forward or return first-class letters and packages for inmates after their transfer or release.

(7) *Telephone.* The administrator or designee shall provide for inmate access to telephones.

(e) *Visiting*—(1) *Visiting rules.* The administrator shall establish rules for inmate visiting.

(2) *Number of visitors.* The administrator or designee shall limit the number of visitors an inmate may receive and the length of the visits only to the degree necessary in terms of facility schedules, space and personnel constraints except where there are substantial reasons to justify such limitations.

(3) *Sobriety statement.* Facility visitors and volunteers shall sign a sobriety statement. The statement shall stipulate that:

(i) they are not under the influence of alcohol or illegal mood-altering substances;

(ii) they are not carrying such substances on their person or in their belongings; and

(iii) they consent to a breath test or non-invasive search as a condition of entry, if there is probable cause.

(4) *Searches (visiting).* The administrator or designee shall provide clear instructions to staff and inmates concerning inmate and visitor search procedures and the approval required for visual observations of unclothed inmates.

(5) *Special visits.* The administrator or designee shall provide for special visits from persons who have travelled long distances, to hospitalized inmates and to inmates in disciplinary status.

(6) *Visitor personal property.* Visitors shall not bring personal property into the secure area of the facility.

(7) *Visitor registration.* The administrator or designee shall provide for visitor registration and identification on entry into the facility.

Subpart C—Juvenile Detention Facilities

§ 10.21 Administration and management.

(a) *General administration*—(1) *Mission and goals.* A written statement, which shall be updated as necessary, shall describe the philosophy, goals and policies of the facility and its relationship to the juvenile justice system.

(2) *Administration of facility.* An administrator, whose responsibility and authority shall be documented, shall oversee each facility. The appointment shall be based on written qualifications.

(3) *Organization chart.* An organization chart shall describe the facility's organization and chain of command. The chart shall be updated as needed.

(4) *Service provider roles.* A Memorandum of Agreement (MOA), which shall be updated as needed and reviewed at least annually, shall define the role and function of employees of public or private agencies providing a service to the facility. The MOA shall specify the relation of service providers to the authority and responsibility of the administrator.

(5) *Interagency meetings.* The administrator shall conduct regular meetings between the staff of juvenile justice, youth services, education, health care, emergency shelter and detention agencies to develop and maintain effective interagency coordination.

(6) *Policy and procedure manual.* All employees of the facility shall have access to a policy and procedure manual and its supporting documents. The Chief, Division of Law Enforcement, shall approve the manual and its supporting documents, which shall provide for the implementation of these standards and shall direct documentation of compliance. The administrator shall update the manual as needed and review it annually.

(7) *Dissemination of policy and procedure.* The administrator shall disseminate approved, new, or revised policies and procedures to designated staff, volunteers and, where appropriate, juveniles prior to implementation. Staff shall review and indicate in writing that they understand the content of policies and procedures prior to their implementation.

(8) *Channels of communication.* The administrator or designee shall regularly disseminate information to staff prior to the beginning of their shift.

(9) *Monitoring and assessment.* The Agency Superintendent or designee shall review and inspect operations and programs at least annually.

(10) *Annual report.* The administrator shall submit a written annual report to the Chief, Division of Law Enforcement, through the Area Director and Agency Superintendent, and shall forward a copy to the appropriate court and health care authority. The report shall address goals, objectives, population data, programs and services provided, budget,

space and equipment needs and major developments.

(11) *Public information program.* The administrator or designee shall provide for a public information program, which protects the juveniles' right to privacy.

(12) *Legal counsel.* Legal counsel shall be available to the administrator and other staff as needed in the performance of their duties.

(13) *Separation of adults and juveniles.* If services for adult and juvenile offenders are provided by the same agency, statements of philosophy, policy, program and procedure shall distinguish between criminal codes and the statutes that establish and give direction to programs for juveniles.

(14) *Prohibited uses of detention.* The facility shall not detain abused, dependent or neglected children, juveniles charged with offenses that would not be crimes if committed by adults and juveniles charged with delinquencies unless it is clearly shown that secure placement is essential.

(15) *Jurisdictional agreements.* The administrator shall cooperate with the proper authority in the placement and/or return of juveniles to the requesting jurisdiction, pursuant to the provisions of any jurisdictional agreements.

(b) *Fiscal management*—(1) *Budgetary compliance.* If operated by the BIA, the facility shall comply with the directives of the Agency regarding budget preparation, submission, and administration. If operated by a tribe, the facility shall comply with the directives of the tribe regarding budget preparation, submission, and administration.

(2) *Accounting compliance.* If operated by the BIA, the facility shall comply with the Agency accounting directives. If operated by a Tribe, the facility shall comply with Tribal accounting directives.

(3) *Basis of budget.* The administrator shall document a direct relationship between the budget and planned operational, staffing and program needs.

(4) *Property management compliance.* If operated by the BIA, the facility shall comply with Agency property management directives. If operated by a Tribe, the facility shall comply with Tribal property management directives.

(5) *Federal acquisition regulation compliance.* If operated by the BIA, the facility shall comply with Agency directives for facility services, equipment and supply purchases. If operated by a tribe, the facility shall comply with tribal directives for facility services, equipment and supply purchases.

(6) *Space and equipment needs and deficiencies.* The administrator shall report space and equipment needs and deficiencies annually to the Area Director through the Agency Superintendent.

(7) *Program needs and deficiencies.* The administrator shall report program needs and deficiencies, i.e., staffing, supplies, training and contract services, annually to the Chief, Division of Law Enforcement, through the Area Director and Agency Superintendent.

(8) *Cost of juvenile board.* The facility shall charge all contract users at the same rate.

(9) *Fund accounts.* The administrator shall arrange for an independent audit of juvenile fund accounts, including canteen or commissary, following standard accounting practices. The administrator shall use any profit or interest which accrues for the benefit of the juveniles.

(c) *Personnel*—(1) *Personnel policy.* If operated by the BIA, the facility shall comply with Agency personnel management directives. If operated by a Tribe, the facility shall comply with Tribal personnel management directives.

(2) *Personnel manual.* The administrator shall make a copy of the applicable personnel manuals and regulations available to every employee.

(3) *Staffing requirements.* The administrator shall review employee workload annually to ensure that juveniles have access to staff, programs and services. The administrator shall develop and update the facility's shift relief factor annually.

(4) *Criminal record check.* The administrator or designee shall conduct a criminal record check of all new employees, in accordance with the Indian Child Protection and Family Violence Prevention Act of 1990 (25 U.S.C. 3201), prior to employment to determine if there are criminal convictions that have a specific relationship to job performance.

(5) *Physical examination.* All employees who have direct contact with juveniles shall have a pre-employment physical examination. There shall be provisions for re-examination.

(6) *Physical fitness.* Juvenile detention workers shall meet BIA or comparable tribal standards for physical fitness.

(7) *Code of ethics.* The facility shall have a written Code of Ethics that outlines the professional standards expected of all employees and recognizes that detention personnel may be held to a higher behavioral standard because of the nature of their duties.

(8) *Confidentiality.* Consultants, contract personnel, employees of other public and private agencies and volunteers who work with juveniles shall agree to comply with the facility's policies on confidentiality of information.

(d) *Training and staff development*—(1) *Management of training programs.* A qualified employee, who has received training in training delivery methods, shall plan, coordinate and supervise employee and volunteer training programs. The administrator shall identify, evaluate and update job-related training needs annually.

(2) *Training curriculum approval.* The Chief, Division of Law Enforcement, in conjunction with the Indian Police Academy, shall approve training programs and curriculum required by these standards.

(3) *Outside resources.* The facility shall support the integration of IHS-approved and other training with the approval of the administrator.

(4) *Education and training.* The administrator shall encourage employees to continue their education and training.

(5) *Cultural awareness.* Orientation training shall include a component on cultural issues relative to the local tribe(s).

(6) *Juvenile detention worker orientation training.* All new full or part-time juvenile detention workers shall receive the number of hours of orientation training recommended by the Chief, Division of Law Enforcement, during their first year of employment. Employees shall complete forty of these hours prior to being independently assigned to work in the facility.

(7) *Juvenile detention worker in-service training.* All full or part-time juvenile detention workers shall receive an additional forty hours of job-relevant training each subsequent year of employment.

(8) *Clerical and support staff orientation training.* All new clerical and support staff who have minimal juvenile contact shall receive the number of hours of orientation and training recommended by the Chief, Division of Law Enforcement, within their first year of employment.

(9) *Clerical and support staff in-service training.* All clerical and support staff shall receive an additional sixteen hours of job-relevant training each subsequent year of employment.

(10) *Administrative and managerial staff orientation training.* New administrative and managerial staff shall receive at least the number of hours of training recommended by the Chief, Division of Law Enforcement, within their first year of employment in this position.

(11) *Administrative and managerial staff in-service training.* Administrative

and managerial staff shall receive at least twenty-four hours of job-relevant training each subsequent year of employment.

(12) *Specialized training.* At least one juvenile detention worker per shift shall receive specialized training in the management of juveniles with health and behavioral problems, including substance abuse and suicide. At least one juvenile detention worker per shift shall be certified as an emergency medical technician. All detention staff who have contact with juveniles shall receive training in advanced first aid and CPR. The health authority shall identify health-related training needs.

(e) *Facility records*—(1) *Compliance.* The facility shall comply with 5 U.S.C. 552 (the Freedom of Information Act), 5 U.S.C. 552(a) (the Privacy Act of 1974), as amended, 43 CFR 2.79(a), or comparable tribal regulations.

(2) *Records management.* The facility shall have a system for the management, dis semination, retrieval, storage, archiving and (when appropriate) destruction of information and detention records.

(3) *Law enforcement sensitive information.* Law enforcement sensitive records and information shall be marked privileged. The administrator or designee shall keep these records in a locked cabi net or file room.

(4) *Release of information and consent.* Juveniles shall sign a Release of Information Consent Form in compliance with 5 U.S.C. 552(a) (the Privacy Act of 1974) as amended prior to the release of privileged information. The administrator or designee shall keep a copy of the signed release in the juvenile's record.

(5) *Separation of record contents.* The administrator or designee shall identify and separate contents of juvenile records according to an established format which, at a minimum, shall separate privileged from public information and juvenile records from those of adult offenders.

(6) *Access to information.* The administrator shall define clearly personnel who have access to juvenile records.

(7) *Daily report.* The administrator or designee shall maintain a daily report and provide a copy of it to the appropriate court(s). The daily report shall identify:

(i) the names of juveniles in custody, including juveniles on temporary release or in other locations;

(ii) names of juveniles admitted and released;

(iii) the legal status of each juvenile; and

(iv) the number of days each juvenile has been in custody.

(8) *Identification and location record.* The facility shall maintain a system that identifies all juveniles in custody and their actual physical location.

(9) *Custody record.* The facility shall maintain custody records of all juveniles held at the facility. The record shall include only relevant and necessary information and shall be limited to:

(i) initial admission form;

(ii) documented legal authority to detain the juvenile;

(iii) health and suicide screening forms;

(iv) dates of court appearances;

(v) signed release of information forms;

(vi) an on-going record of cash and valuables;

(vii) dates and times of temporary releases;

(viii) names of visitors and dates of visits;

(ix) facility rules and disciplinary policy signed by the juvenile;

(x) classification interview and subsequent classification actions;

(xi) reports of major disciplinary actions, significant incidents or crimes committed while in custody;

(xii) records of program participation, including temporary release programs; and

(xiii) final release or transfer report.

(10) *Admission information.* The administrator or designee shall record intake admission information for every juvenile admitted to the facility. The record shall include at least the following data:

(i) booking number;

(ii) name and known aliases;

(iii) current or last known address;

(iv) date and time of confinement;

(v) a copy of the court order or other legal basis for detention;

(vi) name, title, agency and signature of arresting officer;

(vii) name of parent, guardian or legal custodian;

(viii) charge or charges;

(ix) date and place of birth;

(x) ethnic origin or tribal affiliation;

(xi) present or last place of employment;

(xii) emergency contact name, relationship, address and phone number;

(xiii) record of telephone calls made by juvenile at time of admission;

(xiv) driver's license and social security number;

(xv) identifying information, including height, weight, gender and identifying marks such as birthmarks, scars or tattoos;

(xvi) notation of cash and all property;

(xvii) initial classification and special needs;

(xviii) an indication that the health and suicide screening was completed;

(xix) name of legal representative if any; and

(xx) name of admitting officer.

(11) *Conducting research.* All research conducted shall comply with federal and tribal regulations pertaining to conducting and disseminating research findings as well as professional and scientific ethics. The administrator, the Agency Superintendent and the Area Director shall approve all research prior to implementation. The administrator shall regulate voluntary juvenile participation in research.

(f) *Citizen involvement and volunteers*—(1) *Volunteer coordinator.* The administrator shall encourage citizen participation in volunteer programs by designating a staff member as volunteer coordinator.

(2) *Volunteer plan.* The volunteer coordinator shall develop and implement a written plan for volunteer services. The volunteer coordinator and administrator shall update the plan as necessary and review it at least annually. The plan shall include:

(i) lines of authority;

(ii) responsibility and accountability for volunteer services;

(iii) procedures for the screening and selection of volunteers;

(iv) a volunteer orientation or training program, which is appropriate to the nature of the assignments;

(v) a requirement that volunteers shall agree in writing to abide by all facility rules, policies, procedures and practices, particularly those related to security and confidentiality of information; and

(vi) a statement that the administrator may discontinue a volunteer activity at any time by written notice.

§ 10.22 Physical plant.

(a) *Code compliance*—(1) *Building and safety code compliance.* If owned by the Bureau, the facility shall comply with 29 CFR Part 1910, Subparts D, E, G and L. If owned by a tribe, the facility shall comply with the National Fire Protection Association (NFPA) Life Safety Code 101 Chapters 2, 4 through 7, and 14 (if new detention occupancy) or 15 (if existing detention occupancy), or comparable tribal regulations.

(2) *Zoning.* The facility shall comply with applicable zoning and land use requirements.

(3) *Accessibility.* The facility shall comply with 25 U.S.C. 794 (the Rehabilitation Act of 1973) as amended, 41 CFR 101–19.6 (Uniform Federal

Accessibility Standards), and 43 CFR Part 17.

(4) *OSHA compliance.* The facility shall comply with 29 CFR Part 1910, Subparts C through E, G, K, L and S (Occupational Health and Safety Standards) or comparable tribal regulations. If other activities governed by sections of 29 CFR Part 1910 not identified in this standard are carried out in the facility, the section(s) of 29 CFR Part 1910 governing that activity or comparable tribal regulations apply.

(5) *Health and safety inspection.* In compliance with 29 CFR Part 1960, Subparts B through D, the facility shall receive at least one inspection each year by a qualified safety and health inspector and Environmental Health Specialist and/or Sanitarian. Any request for inspection shall be directed to the Area Safety Manager or Officer through the Agency Superintendent.

(6) *Furnishings and equipment code compliance.* The administrator shall maintain documentation by an independent, qualified source that the interior furnishing materials in inmate living areas, exit areas and places of public assembly shall be in accordance with NFPA Life Safety Code Section 6–5 or comparable tribal regulations.

(b) *Facility organization*—(1) *Design for supervision.* Physical plant design shall facilitate continuous personal contact and interaction between staff and juveniles.

(2) *Unit size.* The detention facility shall operate with living units of no more than twenty-five juveniles each.

(3) *Co-located adult and juvenile facility.* If the juvenile facility is on the grounds of any other type of detention facility, it shall be a separate, self-contained unit. The facility shall comply with the separation criteria of 49 CFR Parts 2054 through 2055, which require:

(i) separation between spatial areas so that there could be no accidental contact between juveniles and adults in their respective facilities;

(ii) total separation in all juvenile and adult program activities within facilities, including recreation, education, counseling, health care, dining, sleeping and general living activities;

(iii) separate juvenile and adult staff, including management, security and direct care staff, such as recreation, education and counseling. Specialized services staff, such as cooks, bookkeepers and medical professionals who are not normally in contact with detainees or whose infrequent contacts occur under conditions of separation of juvenile and adults, can serve both.

(iv) compliance with BIA standards and BIA accreditation.

(4) *Separation of classifications.* The facility shall be designed and constructed so that juveniles can be separated according to the requirements identified in these standards and the facility's classification plan.

(5) *Separation of males and females.* Male and female juveniles shall not share the same sleeping room.

(6) *Supervision.* All living areas shall be constructed to facilitate continuous staff observation, excluding electronic surveillance, of living and activity areas, such as dayrooms and recreation spaces.

(7) *Continuously observable housing.* The facility shall provide a minimum of two single occupancy cells that can be continuously observed by staff and which allow juveniles to communicate with staff.

(8) *Rated capacity.* The number of juveniles shall not exceed the facility's rated capacity with the exception of mass arrests.

(9) *Location.* The facility shall be located conveniently for juvenile justice agencies, the health authority, community agencies and juveniles' legal representatives, families and friends.

(c) *Environmental conditions*—(1) *Artificial light levels.* Lighting levels in juvenile cells or rooms shall be at least twenty footcandles at the desk and in the personal grooming areas. Lighting levels throughout the facility shall be appropriate to the tasks and activities carried out in its spaces. An independent, qualified source shall document lighting levels.

(2) *Noise levels.* Noise levels shall not exceed seventy decibels in the daytime and forty five decibels at night. An independent, qualified source shall document noise levels.

(3) *Indoor air quality.* Air circulation shall be at least ten cubic feet of outside or recirculated filtered air per minute per occupant. An independent, qualified source shall document air circulation.

(4) *Use of tobacco.* The administrator shall prohibit the use of tobacco in the facility by staff, juveniles and the public except in traditional ceremonies and then only in designated areas.

(5) *Heating and cooling.* Temperatures shall be appropriate to the summer and winter comfort zones.

(d) *Security*—(1) *Control center.* In secure facilities, a twenty-four hour control area shall monitor and coordinate the facility's security, safety and communications systems. The facility shall have a communication system between a continuously staffed location and the juvenile living areas.

(2) *Perimeter security.* The perimeter shall be secured in a way that juveniles remain in the perimeter and that access by the general public is denied without proper authorization. There shall be security doors between juvenile areas and areas to which the public has access.

(3) *Security equipment storage.* The facility shall provide space for the secure storage of chemical agents, restraining devices and related security equipment. The equipment shall be located outside juvenile living and activity areas in a place that is readily accessible to authorized persons only. Firearms shall not be stored in the facility other than on a temporary basis, in gunlockers located outside the security perimeter.

(4) *Emergency exits.* In compliance with 29 CFR 1910.37, designated exits in the facility shall permit prompt evacuation of juveniles and staff members in an emergency. Facility exits shall be properly positioned, clear and distinctly and permanently marked.

(5) *Protective holding cells.* Other than as indicated in the mass arrest policy, single occupancy protective holding cells shall be used only for the temporary holding of persons during the admission process for periods of up to eight hours. Each room or cell shall have, at a minimum:

(i) sixty square feet of floor space;

(ii) toilet facilities that are located above floor level, provide some degree of privacy and are available for use without staff assistance twenty-four hours a day;

(iii) hot and cold running water; and

(iv) a bed or fixed bench at or above floor level.

(6) *Emergency equipment.* The facility shall have the equipment necessary to maintain essential lights, power, ventilation, power-operated doors or locks and communication in an emergency.

(7) *Visual surveillance equipment.* When visual electronic surveillance is used, it shall be located primarily in hallways, elevators, corridors, or at points on the security perimeter such as entrances and exits.

(e) *New facility planning process*—(1) *New facility planning requirement.* All new construction, renovation and expansion projects shall follow the Planning of New Institutions (PONI) process as required by 25 CFR Part 296.

(2) *Safety management review.* The design and specifications for all new construction, renovation and expansion projects shall be reviewed by the Bureau of Indian Affairs in compliance with 29 CFR 1960, Subparts B through D.

(f) *New construction, renovation and expansion*—(1) *Single occupancy requirements (general population).* Only one juvenile shall occupy each cell or detention room designed for single occupancy. All single general population rooms or cells shall have at least sixty square feet of floor space, provided juveniles spend no more than ten hours per day locked in. When confinement exceeds ten hours per day, there shall be at least seventy square feet of floor space. In general population, each room or cell shall have, at a minimum:

(i) natural light;

(ii) toilet facilities with some degree of privacy that are located above floor level and are available for use without staff assistance twenty-four hours a day;

(iii) a wash basin with hot and cold running water;

(iv) access to showers; and

(v) a bed above floor level, a desk or writing surface, safety-type hooks or closet space, and a chair or stool.

(2) *Single occupancy requirements (special management).* Only one juvenile shall occupy each cell or detention room designed for single occupancy. The facility shall provide single cell occupancy for special management classifications and other classifications as defined and justified in the PONI program. At least one special management cell shall be vented directly to the exterior. In special management, segregation rooms shall provide living conditions that approximate those of the general juvenile population. All exceptions shall be clearly documented. Each special management room or cell shall have, at a minimum:

(i) natural light;

(ii) a minimum of seventy square feet of floor space;

(iii) toilet facilities with some degree of privacy that are located above floor level and that are available for use without staff assistance twenty-four hours a day;

(iv) access to showers;

(v) hot and cold running water; and

(vi) a bed at or above floor level, a desk or writing surface, and a stool.

(3) *Multiple occupancy requirements.* Where used, multiple occupancy rooms or cells shall house juveniles, who have been screened for suitability to group living and classified accordingly. The rooms shall provide:

(i) continuous observation by staff;

(ii) a minimum of fifty square feet of floor space per occupant in the sleeping area and a clear floor-to-ceiling height of not less than eight feet;

(iii) natural light;

(iv) a toilet(s), with some degree of privacy;

(v) an operable wash basin(s) with hot and cold running water;

(vi) access to showers; and

(vii) beds above floor level and a locker or container for each occupant's belongings.

(4) *Space, furnishings and conditions for dayrooms.* The facility shall provide separate dayroom space for each cellblock or detention room cluster. The dayroom shall provide:

(i) natural light;

(ii) a minimum of thirty-five square feet of space per juvenile exclusive of lavatories;

(iii) showers and toilets with some degree of privacy; and

(iv) seating and writing surfaces, appropriate to the classification which uses this space, sufficient for the number of juveniles who use the dayroom at one time.

(5) *Toilets.* The facility shall provide operable toilets at a minimum ratio of one for every twelve juveniles in male facilities and one for every eight juveniles in female facilities. Urinals may be substituted for up to one-half of the toilets in male facilities. All housing units with three or more juveniles shall have two toilets.

(6) *Wash basins.* Juveniles shall have access to operable wash basins with hot and cold running water in the housing units at a minimum ratio of one basin for every twelve occupants.

(7) *Showers.* Juveniles shall have access to operable showers with temperature-controlled hot and cold running water at a minimum of one shower for every eight juveniles. Water for showers shall be thermostatically controlled to temperatures ranging from one hundred degrees to one hundred-twenty degrees Fahrenheit.

(8) *Housing for the disabled.* Disabled juveniles shall be housed in a manner that provides for their safety in compliance with 25 U.S.C. 794 (the Rehabilitation Act of 1973) as amended, 41 CFR 101–19.6 (Uniform Federal Accessibility Standards), and 43 CFR Part 17, yet prevents their being discriminated against in their use of the facility.

(9) *Work or education release housing.* Juveniles who participate in work or education release programs shall be housed separately from juveniles in the general population.

(10) *Program space requirements.* The total indoor activity area, which includes all activity areas outside of the living unit, shall provide space equivalent to a minimum of one hundred square feet per juvenile. If the facility houses both male and female juveniles, the facility shall provide space for coeducational activities.

(11) *Exercise and recreation areas.* The facility shall provide secure outdoor, covered or enclosed exercise areas. Outdoor exercise areas shall be a minimum of one thousand five hundred square feet of unencumbered space; covered and enclosed exercise areas shall provide a minimum of one thousand square feet of unencumbered space. Exercise areas shall be adequate in size and type to ensure that each juvenile shall be offered at least one hour of access daily regardless of climatic conditions.

(12) *Multi-purpose and interview rooms.* The facility shall provide a minimum of one accessible multi-purpose room and one accessible interview room.

(13) *Program area toilets.* The facility shall provide toilets with some degree of privacy and wash basins, which are accessible to juveniles, in or adjacent to activity areas.

(14) *Visiting spaces.* The facility shall provide space in which contact visiting can occur. The space shall facilitate staff observation of visiting. The facility shall provide secure space outside the security perimeter for the storage of visitors' personal items.

(15) *Classroom.* Classrooms shall be designed in conformity with BIA or state education requirements.

(16) *Food service spaces.* When the facility provides for food preparation, it shall have adequate space for food processing, storage, refrigeration and sanitation. Toilet and wash basin facilities shall be available to food service personnel and juveniles in the vicinity of the food preparation area. The square footage of the kitchen shall be appropriate to the needs of the facility. If dining occurs outside the dayroom, the facility shall provide a minimum of fifteen square feet per occupant. The facility shall provide space for group dining except where security or safety considerations justify otherwise.

(17) *Storage spaces.* The facility shall provide the following storage space:

(i) a secure, well-ventilated janitor closet, which includes sink and adequate space for the storage of cleaning implements and supplies;

(ii) secure storage, located outside the secure area, for flammable, toxic and caustic items; and

(iii) storage for juvenile clothing, bedding, mattresses, personal hygiene items and facility supplies.

(18) *Laundry.* The facility shall provide access to laundry services or laundry space and equipment.

(19) *Admission.* The facility shall provide an admitting and release area which shall be located inside the

security perimeter, but outside juvenile living quarters. The booking area shall include:

(i) an admitting work area;

(ii) sallyport;

(iii) access to operable toilets, with some degree of privacy, wash basins, drinking water and showers;

(iv) space for alcohol and drug testing equipment;

(v) a secure, well-ventilated storage room for juveniles' personal property;

(vi) telephone(s), which can be used by juveniles;

(vii) private interview spaces;

(viii) temporary holding rooms or waiting spaces with sufficient fixed seating for all juveniles at their rated capacities; and

(ix) access to continuously observable protective holding cells for the safe holding of intoxicated individuals.

(20) *Medical examination room.* The facility shall provide a space in which private medical examinations of juveniles can occur. The space shall provide for private examination of patients, hand washing, storage of equipment used in the examination room and a work surface for health care personnel.

(21) *Staff toilets.* The facility shall provide staff toilets inside the secure area of the facility that juveniles shall not use.

(22) *Public spaces.* The facility shall provide public restroom(s) and a public lobby with an adequate number of seats to accommodate anticipated visitors outside the secure perimeter.

(23) *Administration.* The facility shall provide adequate space for its administrative functions. This space shall include an office for the administrator, work space for clerical staff, space for duplicating equipment, supply and equipment storage, space for storage of facility records and space for meetings.

(24) *Staff.* The facility shall provide adequate space for staff assigned to work in the facility. These spaces shall include an area in which they can store personal property, change clothes and shower and an area in which training, meetings, briefings and breaks can occur.

(25) *Mechanical.* The facility shall provide separate and adequate space for mechanical systems and equipment.

(g) *Existing construction*—(1) *Occupancy by one juvenile.* Only one juvenile shall occupy each cell or detention room designed for single occupancy.

(2) *Single occupancy space requirements.* All single rooms or cells shall have at least sixty square feet of floor space, provided juveniles spend no more than ten hours per day locked in. When confinement exceeds ten hours per day, there shall be at least seventy square feet of floor space.

(3) *Multiple occupancy space requirements.* Where used, multiple occupancy rooms or cells house juveniles, who have been screened for suitability to and classified for group living. The rooms shall provide:

(i) continuous observation by staff;

(ii) a minimum of fifty square feet of floor space per occupant in the sleeping area and a clear floor-to-ceiling height of not less than eight feet;

(iii) natural light;

(iv) a toilet(s) with some degree of privacy;

(v) an operable wash basin(s) with hot and cold running water;

(vi) access to showers; and

(vii) beds above floor level and a locker or container for each occupant's belongings.

(4) *Single occupancy furnishings and conditions (general population).* Each room or cell shall have, at a minimum:

(i) natural light;

(ii) toilet facilities with some degree of privacy that are located above floor level and that are available for use without staff assistance twenty-four hours a day;

(iii) a wash basin with hot and cold running water;

(iv) access to showers; and

(v) a bed above floor level, a desk or writing surface, safety-type hooks or closet space and a chair or stool.

(5) *Single occupancy furnishings and conditions (special management).* Segregation rooms shall provide living conditions that approximate those of the general juvenile population; all exceptions shall be clearly documented. Each room or cell shall have, at a minimum:

(i) natural light;

(ii) a minimum of seventy square feet of floor space;

(iii) toilet facilities with some degree of privacy that are located above floor level and that are available for use without staff assistance twenty-four hours a day;

(iv) access to showers;

(v) hot and cold running water; and

(vi) a bed at or above floor level, a desk or writing surface and a stool.

(6) *Space, furnishings and conditions for dayrooms.* The facility shall provide separate dayroom space. The dayroom shall provide:

(i) a minimum of thirty-five square feet of space per juvenile exclusive of lavatories;

(ii) showers and toilets with some degree of privacy; and

(iii) seating and writing surfaces, appropriate to the classification which uses this space, sufficient for the number of juveniles who use the dayroom at one time.

(7) *Toilets.* The facility shall provide operable toilets at a minimum ratio of one for every twelve juveniles in male facilities and one for every eight juveniles in female facilities. Urinals may be substituted for up to one-half of the toilets in male facilities. All housing units with three or more juveniles shall have two toilets.

(8) *Wash basins.* Juveniles shall have access to operable wash basins with hot and cold running water in the housing units at a minimum ratio of one basin for every twelve occupants.

(9) Showers. Juveniles shall have access to operable showers with temperature-controlled hot and cold running water at a minimum of one shower for every eight juveniles. Water for showers shall be controlled thermostatically to temperatures ranging from one hundred degrees to one hundred-twenty degrees Fahrenheit.

(10) *Housing for the disabled.* Disabled juveniles shall be housed in a manner that provides for their safety, in compliance with 25 U.S.C. 794 (the Rehabilitation Act of 1973) as amended, 41 CFR 101–19.6 (Uniform Federal Accessibility Standards), and 43 CFR Part 17, yet prevents their being discriminated against in their use of the facility.

(11) *Work or education release housing.* Juveniles who participate in work or education release programs shall be housed separately from juveniles in the general population.

(12) *Program space requirements.* The total indoor activity area, which includes all activity areas outside of the living unit, shall provide space equivalent to a minimum of one hundred square feet per juvenile. If the facility houses both male and female juveniles, space shall be provided for coeducational activities

(13) *Exercise and recreation.* The facility shall provide secure outdoor, covered or enclosed exercise areas. Exercise areas shall be adequate in size and type to ensure that each juvenile shall be offered at least one hour of access daily regardless of climatic conditions.

(14) *Program spaces.* The facility shall provide a minimum of one accessible multi-purpose room.

(15) *Visiting spaces.* The facility shall provide a visiting room, which allows staff to observe visiting.

(16) *Classroom.* Classrooms shall be designed in conformity with BIA or state education requirements.

(17) *Dining.* If dining occurs outside the dayroom, the facility shall provide

a minimum of fifteen square feet per occupant.

(18) *Food service spaces.* When the facility provides for food preparation, it shall have adequate space for food processing, storage, refrigeration and sanitation. Toilet and wash basin facilities shall be available to food service personnel and juveniles in the vicinity of the food preparation area. The square footage of the kitchen shall be appropriate to the needs of the facility.

(19) *Janitor closet.* The facility shall provide a secure, well-ventilated janitor closet, which includes sink and adequate space for the storage of cleaning implements and supplies.

(20) *Storage of toxic, flammable and caustic items.* The facility shall provide secure storage, outside the secure area, for flammable, toxic and caustic items.

(21) *Clothing and supply storage.* The facility shall provide storage space for juvenile clothing, bedding, mattresses, personal hygiene items and facility supplies.

(22) *Laundry.* The facility shall provide access to laundry services or laundry space and equipment.

(23) *Admission.* The facility shall provide an admission and release area which shall be located inside the security perimeter, but outside juvenile living quarters. The booking area shall include:

(i) an admitting work area;

(ii) sallyport;

(iii) access to operable toilets, wash basins, drinking water and showers;

(iv) space for alcohol and drug testing equipment;

(v) a secure, well-ventilated storage room for juveniles' personal property;

(vi) telephone(s), which can be used by juveniles;

(vii) private interview spaces;

(viii) temporary holding rooms or waiting spaces with sufficient fixed seating for all juveniles at their rated capacities; and

(ix) access to continuously observable protective holding cells for the safe holding of intoxicated individuals.

(24) *Medical examination room.* The facility shall provide a space in which private medical examinations of juveniles can occur. The space shall provide for private examination of patients, hand washing, storage of equipment used in the examination room and a work surface for health care personnel.

(25) *Staff toilets.* The facility shall provide staff toilets that juveniles shall not use.

(26) *Public spaces.* The facility shall provide public restroom(s) and a public lobby with an adequate number of seats to accommodate anticipated visitors outside the secure perimeter.

(27) *Administration.* The facility shall provide adequate space for its administrative functions.

(28) *Staff.* The facility shall provide adequate space for staff assigned to work in the facility.

(29) *Mechanical.* The facility shall provide separate and adequate space for mechanical systems and equipment.

§ 10.23 Institutional operations.

(a) *Security and control—(1) Perimeter access.* All security perimeter entrances and control center doors shall be kept locked, except when used for supervised entry or exit of employees, juveniles or visitors and in emergencies.

(2) *Location of juvenile detention worker posts.* Juvenile detention worker posts shall be located in or immediately adjacent to juvenile living areas to permit workers to hear and respond promptly to emergency situations.

(3) *Supervision of service personnel.* Service personnel other than facility staff shall perform work only under direct and continuous supervision of facility staff in those areas permitting contact with juveniles.

(4) *Full coverage of posts.* Staff shall be provided for full, around-the-clock coverage of designated security posts, full supervision of juveniles and performance of other detention functions.

(5) *Supervision of high security areas.* A staff member shall enter a high security area only when another staff member is immediately available to provide assistance.

(6) *Supervision of coed activities.* Facility staff shall supervise male and female juveniles in coed activities and spaces continuously and directly.

(7) *Male and female staff requirement.* When both males and females are housed in the facility, at least one male and female staff member shall be on duty at all times.

(8) *Prohibited supervision.* No juvenile or group of juveniles shall be given control or authority over other juveniles.

(9) *Room checks.* A juvenile detention worker personally shall observe high and medium security juveniles at least every thirty minutes, but on an irregular schedule. The administrator shall require observation every fifteen minutes for juveniles who are mentally disordered or who demonstrate unusual or bizarre behavior and continuous observation of suicidal juveniles.

(10) *Counts.* The facility shall have a system to physically count juveniles that includes strict accountability for juveniles assigned to work and education release and other approved temporary releases.

(11) *Movement.* Detention staff shall regulate all juvenile movement.

(12) *Transportation of juveniles.* The administrator shall govern the safe and secure transportation of juveniles outside the facility.

(13) *Use of vehicles.* The administrator shall govern the use of departmental and personal vehicles for official purposes and shall prohibit the use of personal vehicles for transportation of juveniles.

(14) *Shift activity log.* The facility shall maintain a written record of the following:

(i) personnel on duty;

(ii) juvenile population at the beginning and end of each shift;

(iii) record of counts taken;

(iv) shift activities;

(v) entry and exit of professional and other visitors;

(vi) unusual occurrences or incidents;

(vii) hours of programs provided; and

(viii) clothing and linen exchange.

(15) *Weekly inspection.* The administrator or designee shall inspect all facility spaces and devices at least weekly to determine the status of all security items and the sanitary condition of the facility. The administrator or designee shall document the inspection and shall initiate corrective action if needed.

(16) *Monthly Inspection.* The administrator shall inspect all areas of the facility at least monthly to inventory security equipment to determine numbers, usefulness and expiration dates, to determine the status of all security and safety items and to determine the sanitary condition of the facility. The administrator shall document the inspection and shall initiate corrective action if needed.

(17) *Fire safety inspection.* A qualified fire protection specialist shall inspect the facility to test the fire suppression and detection system, equipment and facility training in compliance with 29 CFR 1910.36(d), 1910.37(m), 1910.37(n), 1910.38, and 29 CFR 1960, Subpart D.

(18) *Use of restraints.* Staff shall use instruments of restraint only as a precaution against escape during transfer, for medical reasons at the direction of the health authority and as a prevention against juvenile self-injury, injury to others or property damage. Staff shall apply restraints only with the approval of the administrator or designee and only for the amount of time that is absolutely necessary.

(19) *Security equipment issue.* The administrator shall maintain a written record of routine and emergency distributions of security equipment.

(20) *Contraband control.* The administrator shall provide for searches of facilities and juveniles to control contraband and to provide for its disposition. When a new crime is suspected, the administrator shall be notified. The administrator shall maintain and make available to the appropriate authorities all evidence.

(21) *Body cavity and visual inspections.* Manual or instrument inspection of juvenile body cavities shall be conducted only by health care staff when there is reason to do so and when authorized by the administrator or designee. Trained staff shall conduct visual inspections of unclothed juveniles only when there is a reasonable belief that the juvenile is carrying contraband or other prohibited material. Medical personnel shall conduct all manual or instrument inspections in private by medical personnel. Trained staff of the same sex as the juvenile shall conduct all visual inspections in private.

(22) *Key and tool control.* The administrator shall govern the control, issuance, use and storage of keys, tools and culinary and medical equipment.

(23) *Use of force and firearms.* The facility shall comply with 25 CFR 11.304 with regard to the use of force, firearms, chemical agents, or any other weapon.

(b) *Safety and emergency procedures*—(1) *Fire prevention.* The administrator shall govern the storage and use of all flammable, toxic and caustic materials, the use of non-combustible receptacles for smoking materials, the amount of personal items, including reading materials, which juveniles may keep in their living units and the amount and location of items stored in the facility.

(2) *Preventive maintenance.* The administrator or designee shall develop a written plan for preventive maintenance of the facility. The administrator shall review the plan annually and update it as needed. If tribally operated, the plan shall be supported by a Memorandum of Agreement between the tribe and the Agency.

(3) *Emergency generator testing.* In compliance with 29 CFR 1910.38, emergency power generators shall be inspected weekly and tested under load at intervals of not more than thirty days.

(4) *Evacuation plan.* The administrator shall develop a written evacuation plan prepared in case of fire or major emergency. The plan shall comply with 29 CFR 1910.38 or comparable tribal code. The applicable Safety Officer or designee shall review and approve the plan initially and annually. The administrator shall update and reissue the plan if necessary. The plan shall include:

(i) means of immediate release of juveniles from locked areas;

(ii) location of floor plans;

(iii) use of exit signs and directional arrows for traffic flow;

(iv) location of a publicly posted plan;

(v) at least quarterly drills in all facility locations; and

(vi) coordination with the fire department which services the facility.

(5) *Emergency plans.* The administrator or designee shall develop written plans that specify procedures to be followed in emergency situations. The administrator shall make these plans available to applicable personnel and shall review and update them at least annually. All facility personnel shall be trained in the implementation of these plans. Emergency situations shall include, but not limited to:

(i) riots and disturbances;

(ii) hunger strikes;

(iii) hostage situations;

(iv) work stoppages;

(v) unattended deaths, including successful suicides;

(vi) attempted suicides;

(vii) escapes and unauthorized absences; and

(viii) other threats to the security of the facility.

(6) *Incident reporting.* The administrator shall require the immediate reporting of all incidents that result in physical harm to any person, threaten the safety of any person, result in the need for emergency care, result in damage to the facility or facility property, threaten the security of the facility, or involve the commission of a criminal offense. The administrator shall forward the reports to the Agency Superintendent through the appropriate chain of command.

(7) *Medical treatment (incident).* The administrator or designee shall ensure that all persons injured in an incident receive an immediate medical examination and treatment.

(8) *Notification of family.* The administrator shall provide for the notification of persons designated by the juvenile in the event of serious illness, injury or death.

(c) *Rules and discipline*—(1) *System of rewards and sanctions.* The administrator shall provide for a system to reward the positive behavior of juveniles and to provide sanctions for misbehavior.

(2) *Rules of conduct.* The administrator shall develop written rules of juvenile conduct that specify acts prohibited within the facility and penalties that may be imposed for various degrees of violations. The administrator or designee shall provide these rules to all juveniles and shall ensure that all juveniles understand them. All personnel who deal with juveniles shall receive sufficient training prior to working in the facility to be thoroughly familiar with the rules of juvenile conduct, the sanctions available and the rationale for the rules. The administrator shall review the written rules of juvenile conduct annually and update them, if necessary, to ensure that they are consistent with constitutional and legal principles and BIA and tribal standards and codes.

(3) *Minor infractions.* The administrator shall provide guidelines for the informal resolution of minor juvenile misbehavior.

(4) *Grievance procedure.* The administrator or designee shall make a written grievance procedure available to all juveniles. The procedure shall include at least one level of appeal.

(5) *Criminal violations.* In instances in which a juvenile is alleged to have committed a crime, the administrator or designee shall refer the case to the appropriate law enforcement officials for possible prosecution.

(6) *Disciplinary reports.* When rule violations require formal resolution, staff members shall prepare a disciplinary report and forward it to the administrator or designee. The disciplinary report shall include, but not be limited to:

(i) specific rules violated;

(ii) a formal statement of the charge(s);

(iii) an explanation of the event, which should include who was involved, what transpired and the time and location of the occurrence;

(iv) unusual juvenile behavior;

(v) staff witnesses;

(vi) disposition of any physical evidence;

(vii) any immediate action taken, including the use of force;

(viii) reporting staff member's signature; and

(ix) date and time the report is made.

(7) *Disciplinary process.* Juveniles shall receive notification of the rules violated, a formal statement of the charge, a description of the incident and notice of the date and time of hearing. The administrator or designee shall advise juveniles of their rights to be present at the hearing, to call witnesses on their behalf, to make a statement, to present documentary evidence, and to ask for assistance from staff in representing them at the hearing. An impartial person or panel of persons shall conduct the hearing.

(8) *Pre-hearing detention.* The administrator shall provide for the pre-

hearing segregation of juveniles who are charged with a rule violation if the safety of the juvenile, other juveniles, staff or the security of the facility is at stake.

(9) *Disciplinary detention.* The administrator or designee shall place juveniles in disciplinary detention for a rule violation only after a hearing.

(10) *Record of disciplinary hearing.* The persons conducting the disciplinary hearing shall make a written copy of the decision and its disposition and shall provide copies to the juvenile and administrator for review. Juveniles shall have the right to appeal the decision to the administrator or the next level of authority. The disciplinary report shall be removed from all files of juveniles found not guilty of an alleged rule violation.

(d) *Room restriction and special management confinement*—(1) *Explanation for restriction.* Prior to room and/or privilege restriction, detention staff shall explain the reasons for the restriction to juveniles, and juveniles shall have the opportunity to explain the behavior leading to the restriction.

(2) *Room restriction.* Room restriction for minor misbehavior shall serve only a "cooling off" purpose and shall be short in duration, with the time period (fifteen—sixty minutes) specified at the time of assignment.

(3) *Special management confinement (disciplinary).* When a juvenile has been charged with a major rule violation requiring confinement for the safety of the juvenile, other juveniles, or to ensure the security of the facility, the juvenile may be confined for a period of up to twenty-four hours. The administrator or designee, who was not involved in the incident, shall review confinement for periods over twenty-four hours.

(4) *Administrative removal from program.* Only an administrator or supervisor shall direct the administrative removal of juveniles from program. The administrator or supervisor shall direct administrative removal from program only to provide for the safety of the juvenile, other juveniles, or to ensure the security of the facility. An administrator or designee shall review the status of juveniles who have been removed from program for periods over twenty-four hours, within twenty-four hours of their removal and every seventy-two hours thereafter.

(5) *Referral of juveniles removed from program.* The administrator or designee shall refer juveniles removed from program to the health authority and/or social service director within twenty-four hours.

(6) *Individualized plan for juveniles removed from program.* The administrator or designee shall develop an individual plan for the management of juveniles in special management confinement for protective care or serious behavioral problems.

(7) *Frequency of staff contact during room restriction.* During room restriction, staff shall contact juveniles at least every fifteen minutes depending on their emotional state. Juveniles shall assist in determining the end of the restriction period.

(8) *Frequency of staff contact during special management Confinement.* Staff shall visually check juveniles placed in confinement, at least every fifteen minutes. Personnel from the administrative, health care, or social work units shall visit juveniles in special management confinement at least once each day.

(9) *Special management privileges.* Juveniles placed in confinement shall be afforded living conditions and privileges approximating those available to the general juvenile population. Exceptions shall be justified by clear and substantiated evidence.

(10) *Logs.* The facility shall maintain a permanent log of significant events and activities of juveniles in special management confinement. The log shall document:

(i) the person who authorized the confinement;

(ii) the date and time of confinement;

(iii) persons visiting the juvenile;

(iv) the person authorizing the release from confinement; and

(v) the date and time of release.

(e) *Juvenile rights*—(1) *Access to courts, counsel and legal materials.* Juveniles shall have the right to have access to attorneys, legal representatives, the courts and legal materials and to address uncensored communications to governmental authorities.

(2) *Freedom from discrimination.* Juveniles shall have the right to be free from discrimination based on race, religion, national origin, tribal affiliation, sex, disability, political beliefs, favoritism or nepotism. Juveniles shall have the right to equal access to programs and work assignments as provided in the classification program.

(3) *Equal access for women.* Male and female juveniles shall have the right to equal access to programs and services.

(4) *Right to communicate.* Juveniles shall have the right to communicate or correspond with persons or organizations, subject only to the limitations necessary to maintain order and security and protect the juvenile's rights.

(5) *Protection from harm.* Juveniles shall have the right to protection from personal abuse, corporal punishment, personal injury, disease, property damage and harassment, by either staff or juveniles.

(6) *Freedom of personal grooming.* Juveniles shall have the right to determine the length and style of scalp or facial hair, unless health and safety reasons exist.

(7) *Treatment.* Juveniles shall have the right to medical, dental, mental health and substance abuse treatment and rehabilitative services as directed by the health authority.

(f) *Intake decision process*—(1) *Designated intake officer.* The administrator shall designate an intake officer on each shift. The intake officer shall be delegated the specific power to make decisions regarding juvenile intake. The intake process shall operate twenty-four hours a day.

(2) *Advisement of intake process.* The administrator or designee shall inform juveniles of the steps in the admission process when the admission process begins.

(3) *Referral for non-court services.* The administrator shall specify the authority and responsibility of the intake officer to refer juveniles named in complaints and, if indicated, their parents for noncourt services. Referrals for such services shall be voluntary, shall be agreed to by both the juvenile and parents, shall be documented in writing and can be completed within a specific period of time.

(4) *Referral for 99–570 assessment.* The intake officer shall refer juveniles who are arrested or detained for offenses involving or related to alcohol or substance abuse or who are under the influence of these substances to the health authority or designated substance abuse program according to criteria established by the health authority in the written plan for provision of emergency care.

(5) *Court referral.* The administrator or designee shall bring any juvenile placed in detention before the appropriate court within forty-eight hours of admission.

(6) *Independent review of intake decisions.* The administrator shall provide for a process of independent review of intake decisions.

(7) *Authority of the intake officer.* The administrator shall specify the authority and responsibility of the intake officer to order unconditional or conditional release of a juvenile prior to a detention hearing and to order non-secure or

secure shelter care according to criteria established by the appropriate court.

(8) *Conditional release plan.* The administrator or designee, in conjunction with the appropriate court and service providers, shall develop a written plan for the conditional release of juveniles. The plan shall specify criteria for conditional release, alternative resources and the referral process. The plan shall be updated as needed and reviewed at least annually.

(9) *Prohibition against detention of abused, dependent and neglected children*—The administrator shall prohibit the placement in detention of children who are runaways because of abuse, neglect or abandonment.

(10) *Criteria for secure detention.* The administrator shall limit the use of detention to cases involving protection of the public, prevention of self-injury, ensuring the presence of the juvenile at subsequent court hearings and transfers to other jurisdictions.

(11) *Criteria for detention of probation or valid court order violators.* Juveniles alleged to have violated conditions of their probation or valid court order shall not be placed in detention unless it is necessary to protect the public safety, prevent self-injury, facilitate transfer, or ensure the presence of the juvenile at subsequent court hearings.

(g) *Admission*—(1) *Admission process.* Written procedures for admitting new juveniles shall include, at a minimum:

(i) determination that the juvenile is legally committed;

(ii) complete search of the individual and possessions;

(iii) inventory and storage of clothing and personal property;

(iv) health screening, including tests for infectious diseases as required by the health authority;

(v) emergency health assessment, as required by law, regulations or policies of the health authority;

(vi) assistance in or arrangements for contacting families regarding admission and the procedures for mail and visiting;

(vii) opportunity to make local or collect long-distance telephone calls to family members, legal representatives, or other approved individuals during admission;

(viii) shower, hair care and treatment for ectoparasites if necessary;

(ix) issue of clean clothing and personal hygiene items;

(x) completion of an admission form as required by these standards;

(xi) suicide screening; and

(xii) orientation, classification and assignment to a housing unit.

(2) *Mass arrests.* Written plans shall govern temporary space arrangements and procedures to be followed in the event of a mass arrest that exceeds the maximum capacity of the facility. The administrator or designee shall update the plans as needed and review them at least annually.

(3) *Suicide screening.* The administrator shall ensure that all juveniles shall be screened for risk of suicide at the time of admission. When a risk is identified, detention staff shall make an emergency referral to the health authority for evaluation by a health care professional and shall monitor the juvenile until the assessment has been completed.

(4) *Orientation.* All newly admitted juveniles shall receive written or oral information in the language they understand. The admitting officer shall document completion of orientation by a statement that shall be signed and dated by the juveniles. The facility shall separate newly admitted juveniles until completion of the orientation process. The orientation shall include, but not limited to:

(i) juvenile rules of conduct and potential disciplinary actions that may be taken;

(ii) programs and services available in the facility;

(iii) procedures for accessing health care services; and

(iv) juvenile rights and privileges.

(5) *Personal property inventory.* The admitting officer shall complete a written, itemized inventory of all personal property of newly admitted juveniles and shall store securely all juvenile property, including money and other valuables. The admitting officer shall give the juvenile a receipt for all property held until release.

(6) *Regulation of juvenile property.* The administrator or designee shall identify personal property that juveniles may receive or keep in their possession while in the facility, the sources from which these items may be obtained and how these items are received and inspected.

(h) *Classification.*—(1) *Classification policy.* The administrator or designee shall provide for juvenile classification in terms of the custody level, housing assignment and program participation. The administrator shall review these policies and procedures annually and update them as necessary.

(2) *Classification plan.* The administrator or designee shall develop a written classification plan, which includes, at a minimum:

(i) criteria and procedures for determining and changing the status of a juvenile relative to custody;

(ii) transfer and major changes in program participation;

(iii) an appeals process for classification decisions; and

(iv) the separate management of the following categories of juveniles: male and female, education and work release, special needs (substance abusers, disabled, etc.) and special management (disciplinary confinement and juveniles removed from the program by administrative action).

(3) *Prohibited segregations.* The administrator shall prohibit the segregation of juveniles by race, color, creed, tribal affiliation, national origin, political beliefs, nepotism, favoritism or other prohibited criteria.

(i) *Food service.*—(1) *Food service records.* At a minimum, the facility shall maintain records of the number of meals served to the juvenile population, the expenditures for food supplies and menus (planned and as served).

(2) *Dietary allowances.* The facility shall document that a registered dietician reviews dietary allowances at least annually to ensure compliance with nationally recommended food allowances. A diet manual, approved by a registered dietician, shall guide dietary allowances, including special diets.

(3) *Menu planning.* The administrator or designee shall plan, date and make all menus available for review at least one week in advance. The administrator or designee shall make notations of any substitutions, which shall be of equal nutritional value, in the meals actually served. The administrator or designee shall consider Native American food preferences in menu planning. The administrator or designee shall direct that menu evaluations shall be conducted at least quarterly to verify adherence to the nationally recommended basic daily servings.

(4) *Medical special diets.* The administrator or designee shall provide for special diets that are prescribed by appropriate medical or dental personnel.

(5) *Religious preference special diets.* The administrator or designee shall provide for special diets for juveniles whose beliefs require adherence to religious dietary laws.

(6) *Food and discipline.* The administrator shall prohibit the use of food as a disciplinary measure.

(7) *Health protection.* Food service facilities and equipment shall meet health and safety standards. Food service personnel and juveniles assisting in the food service area shall comply with applicable health regulations. The administrator or designee shall document compliance with health and safety regulations,

including but not limited to, a pre-assignment medical examination.

(8) *Inspections of food products.* The appropriate government agency shall inspect and approve food products that are grown or produced within the system. The administrator or designee shall implement a distribution system that ensures prompt delivery of foodstuffs.

(9) *Inspection of food service area.* The administrator or designee shall conduct a weekly inspection of all food service areas, including dining and food preparation areas and equipment to ensure that they are sanitary, that all food storage areas are temperature controlled, and that food service personnel have made daily checks of refrigerator and water temperatures.

(10) *Meal service.* The facility shall serve meals under the direct supervision of staff, and staff shall supervise juveniles during meal times. The facility shall provide at least three meals, of which two shall be hot, served at regular meal times during each twenty-four hour period, with no more than fourteen hours between the evening meal and breakfast. Provided that basic nutritional goals are met, variations may be allowed based on weekend and holiday food service demands.

(j) *Sanitation and hygiene.*—(1) *Water supply.* The administrator shall maintain documentation that the entity which provides the facility's water source, supply, storage and distribution system meets the requirements of 42 U.S.C. 300g–6 (the Safe Drinking Water Act).

(2) *Sewage system.* The administrator shall maintain documentation that entity which provides the facility's sewage system complies with 33 U.S.C. 1251 *et seq.* (the Clean Water Act of 1977).

(3) *Sanitation plan.* The administrator or designee, in cooperation with the BIA or tribal maintenance program, shall develop a written housekeeping plan for all areas of the physical plant. The administrator or designee shall update the plan as needed and review it at least annually. The plan shall provide for daily housekeeping and regular maintenance by assigning specific duties to staff, juveniles and BIA or tribal Facility Maintenance. The plan shall require:

(i) facility floors be kept clean, dry and free of hazardous substances;

(ii) a qualified person conduct monthly inspections to control vermin and pests;

(iii) solid and liquid wastes be disposed of properly;

(iv) clean, suitable and presentable clothing, bedding. linens and towels be issued to new juveniles and exchanged on at least a weekly basis;

(v) necessary cleaning and storage of juvenile personal clothing be provided;

(vi) articles needed for personal hygiene be furnished; and

(vii) sufficient facilities in the housing areas to permit juveniles to shower or bathe on admission to the facility and daily thereafter.

(4) *Special clothing issue.* The facility shall provide for the issue of special and, where appropriate, protective clothing and equipment to juveniles participating in special work assignments. Such clothing shall be available in quantities that permit exchange as frequently as the work assignment requires.

(5) *Hair care.* The administrator or designee shall allow juveniles to arrange for hair cutting services.

(k) *Health care*—(1) *Written health care plan.* A written plan shall provide for the delivery of health care services, including medical, dental, mental health and substance abuse treatment, under the control of a designated health authority. The plan shall include the participation of IHS, social services and tribal health care providers. A Memorandum of Agreement between the administrator and the Director of the appropriate Indian Health Service (IHS) Service Unit or IHS contract health care provider shall document the health care plan. When this authority is other than a physician, final medical judgment shall rest with a single responsible physician, designated by the appropriate health authority, who shall meet the applicable licensure requirements.

(2) *Health program coordinator.* In facilities without full-time, qualified health personnel, a health-trained staff member shall coordinate the health care delivery system in the facility under the joint supervision of the responsible health authority and the administrator.

(3) *Annual review.* The administrator and the health authority shall update the plan as needed, review it annually to determine program needs including staffing, equipment and supplies and document its review by signature and date.

(4) *Medical/mental health judgment.* Medical, dental and mental health matters involving clinical judgments shall be the sole province of the responsible physician, dentist and/or psychiatrist or qualified psychologist.

(5) *Security regulations.* Security regulations applicable to facility personnel shall apply to health personnel.

(6) *Meetings with provider.* The health authority shall meet with the administrator or designee at least quarterly to review and evaluate the health care delivery system. The health authority shall provide an annual statistical report which documents the level and amount of health care services provided.

(7) *Review of health care policies.* The health authority and the administrator shall review and approve all policies and procedures relative to the health care plan prior to submission of these policies to the Chief, Division of Law Enforcement. Policies and procedures shall be reviewed at least annually and documented by signature and date.

(8) *Health training program.* The responsible health authority, in cooperation with the administrator, shall establish a health training program. The program shall provide instruction in the following areas:

(i) appropriate procedures to prevent the spread of communicable diseases;

(ii) the ability to respond to health-related situations within four minutes;

(iii) recognition of signs, symptoms and actions required in potential emergency situations;

(iv) recognition of chronic illness;

(v) administration of first aid and cardiopulmonary resuscitation (CPR);

(vi) methods of obtaining assistance from the health care provider;

(vii) recognition of signs and symptoms of and management of juveniles with mental illness, retardation, emotional disturbance, chemical dependency and suicidal behavior; and

(viii) procedures for patient transfers to appropriate medical facilities or health care providers.

(9) *Sick call.* The administrator or designee shall provide for the collection and referral of juvenile requests for health care. The facility shall have a system of sick call in-house or at the health care authority. The system shall provide for referral of juveniles by staff for medical or other behavioral health evaluation, i.e, mental health, substance abuse, suicide. Sick call shall be held no less than once per week.

(10) *Twenty-four-hour emergency care.* The administrator and health authority shall develop a written plan for the provision of twenty-four hour emergency medical, dental and mental health care. The administrator and the health authority shall update the plan as needed and review it at least annually. At a minimum, the plan shall include:

(i) emergency evacuation of the juvenile from the facility;

(ii) emergency evaluation of the juvenile for medical or mental health problems;

(iii) use of an emergency medical vehicle;

(iv) use of one or more designated hospital, clinic, emergency on-call physician, dentist, psychiatrist, qualified psychologist or otherwise qualified clinician; and

(v) security procedures that provide for the immediate transfer of juveniles when appropriate.

(11) *Health care treatment.* Health care staff or health-trained detention staff shall perform treatment pursuant to written direct orders by personnel authorized by law to give such orders.

(12) *Medical/mental health management of juveniles.* Qualified health care personnel, in conjunction with detention staff, shall develop a written plan for the management of juveniles with medical, mental health and substance abuse problems, including suicide risks.

(13) *Licensure requirements.* The health authority shall comply with all applicable federal law, licensure requirements, rules, regulations and medical protocols in the delivery of health care services to the juvenile population.

(14) *Traditional practitioners.* The facility shall allow juveniles to participate in or receive traditional healing ceremonies and to use traditional healing methods, limited only to the degree necessary to preserve institutional security and order.

(15) *Prohibited use of detainees.* Juveniles shall not perform duties in the health care program.

(16) *Management of medications.* The administrator and health authority shall provide for the proper management of individual doses of medications that shall be kept in the facility. The administrator and health authority shall review the policy annually and update it as needed.

(17) *Administration of medications.* The administrator or designee shall ensure that persons administering medications have received training appropriate to their assignment. Employees shall administer medications according to direct or physician orders and shall record the administration of medications in a manner and on a form approved by the responsible physician.

(18) *Preliminary health care screening.* Health-trained staff shall perform medical screening of all juveniles on arrival at the facility and record findings on a printed screening form approved by the health authority. The screening process shall include:

(i) inquiry into:

(A) current and chronic illness and health problems, including dental problems and suicidal thoughts;

(B) sexually transmitted diseases and other infectious diseases;

(C) medication taken and special health requirements;

(D) use of alcohol and other drugs, which includes types of drugs used, mode of use, amount used, frequency used, date or time of last use and history of problems that may have occurred after ceasing use (e.g., convulsions);

(E) past or present treatment or hospitalization for mental disturbance or suicide;

(F) other health problems designated by the responsible physician; and

(G) mental illness;

(ii) observation of:

(A) behavior, including state of consciousness, mental status, appear ance, conduct, tremor or sweating; and

(B) body deformities, trauma markings, bruises, lesions, jaundice and ease of movements; and

(iii) disposition to:

(A) housing in general population;

(B) housing in general population and referral to appropriate heath care service or substance abuse treatment provider; and/or

(C) referral to appropriate health care service on an emergency basis.

(19) *Health appraisal.* The health authority shall provide a health appraisal for each juvenile within seven days of admission. A health-trained professional or otherwise qualified personnel shall collect health history and vital signs. Only qualified health care personnel shall collect other data. The health appraisal shall include:

(i) review of the intake health screening and emergency medical assessment if performed;

(ii) screening for diet counselling for medical reasons;

(iii) collection of additional data to complete the medical, dental, psychiatric and immunization histories, with attention to elements that may indicate the presence of chronic disease, such as diabetes;

(iv) recording of height, weight, pulse, blood pressure and temperature;

(v) administration of laboratory and other tests and examinations as appropriate;

(vi) notation of additional comments as needed; and

(vii) initiation of therapy as appropriate.

(20) *Health examination.* Qualified health care personnel shall complete a health examina tion for each juvenile within thirty days of admission. The examination shall include:

(i) a "hands-on" examination by an appropriately licensed health care professional;

(ii) dental screening, hygiene and treatment when the health of the juvenile would be adversely affected;

(iii) mental health appraisal; and

(iv) additional health care services as indicated by qualified health care personnel.

(21) *First aid kits.* The administrator shall ensure that first aid kits are available in designated areas of the facility as determined by the Safety Officer during the annual inspection. The health care provider shall determine the appropriate content of first aid kits.

(22) *Special medical/mental health programs.* The health authority shall provide specialized health education and treatment programs, including, but not limited to, personal hygiene, diet and exercise, family planning, communicable diseases, including sexually transmitted diseases and substance abuse education, prevention, intervention and treatment.

(23) *Serious and infectious disease.* The administrator and health authority shall develop a written plan for the management of juveniles with serious and infectious disease. The administrator and health authority shall update the plan as needed and review it at least annually. The plan shall include, at a minimum precautions taken to prevent the spread of disease;

(24) special needs or requirements of the juvenile; and

(i) procedures for treatment, limiting activities, if appropriate, legally mandated reporting and medical pass-on as directed by the health authority; and

(ii) housing location.

(25) *Detoxification.* The administrator and health authority shall develop a written plan to guide the clinical management of chemically dependent juveniles. The plan shall specify the process for involving the health authority and the substance abuse program on both a continuing and crisis-intervention basis. The plan shall include:

(i) assessment as required by Public Law 99–570 or warranted by additional indications;

(ii) detoxification under clinically supervised conditions;

(iii) diagnosis of chemical dependency;

(iv) determination as to whether an individual requires non-pharmacologically or pharmacologically supported care; and

(v) referrals to specified community resources for the development of individual treatment plans by a multi-disciplinary team.

(26) *Substance abuse programming.* The administrator and health authority shall develop a written plan to provide substance abuse education, intervention, assessment and treatment to juveniles who are diagnosed as substance abusers. The administrator, health authority and substance abuse program provider shall update the plan as needed and review it at least annually. The plan shall link existing community programs and services to the facility program. The plan shall include, at a minimum:

(i) assessment and evaluation;

(ii) referral for treatment, if requested or court-ordered; and

(iii) availability of appropriate self-help groups.

(27) *Informed consent.* The health authority shall observe informed consent standards of the community for all juvenile care, examinations, treatments and procedures affected by informed consent. The informed consent of a parent, guardian or legal custodian shall apply when required by law. Health care shall be rendered against an juvenile's will only in accordance with law.

(28) *Participation in research.* The health authority shall prohibit the use of juveniles for medical, pharmaceutical, or cosmetic experiments. This standard shall not preclude individual treatment of a juvenile based on need for a specific medical procedure that is not generally available.

(29) *Confidentiality of health records.* In compliance with 5 U.S.C. 552(a) (the Privacy Act of 1974) as amended and 42 CFR Part 2 (Regulations on Confidentiality of Alcohol and Drug Abuse Patient Records), the health authority shall keep the health record confidential. The health authority shall require that, at a minimum:

(i) the active health record shall be maintained separately from the confinement record;

(ii) access to the health record shall be controlled by the health authority; and

(iii) the health authority shall share with the administrator or designee information regarding a juvenile's medical management, security and the ability to participate in programs.

(30) *Medical record contents.* The health authority shall approve the method of recording entries in the record and the form and format of the record. A juvenile's medical/mental health record shall contain:

(i) copies of the completed intake screening form;

(ii) the health appraisal data collection form;

(iii) prescribed medications and their administration;

(iv) laboratory, x-ray and diagnostic studies;

(v) the signature and title of each documenter;

(vi) consent and refusal forms;

(vii) release of information forms;

(viii) place, date and time of health encounters;

(ix) discharge summary of hospitalization (if applicable); and

(x) health service reports (e.g., dental, psychiatric and other consultations).

(31) *Transfer of health information and records.* Summaries or copies of the health record shall be sent routinely to the health authority of any facility to which the juvenile is transferred. The juvenile shall authorize, in writing, the transfer of health records and information, unless otherwise provided by law or administrative regulation having the force and effect of law.

(l) *Release*—(1) *Court programs.* The facility shall cooperate with and assist in coordinating court intervention and diversion programs, pretrial release and probation services.

(2) *Temporary release.* Temporary release programs shall include:

(i) provision for release for funerals and ritual or ceremonial purposes;

(ii) sanction by the appropriate court;

(iii) operating, screening and selection procedures;

(iv) written rules of juvenile conduct;

(v) a requirement for supervision of juveniles while on release;

(vi) a record-keeping system that documents dates, times and authorization for release;

(vii) a system to evaluate program effectiveness; and

(viii) efforts to obtain community cooperation and support.

(3) *Work or education release.* The administrator or designee shall allow juveniles in this classification to participate in work or education release programs. The appropriate court shall sanction education and work release.

(4) *Final release.* Written procedures for final release of juveniles shall include, but not be limited to:

(i) verification of identity and release authority;

(ii) completion of release arrangements, including person or agency to whom the juvenile is to be released;

(iii) verification that all juvenile property leaves with the juvenile that no facility property leaves the facility:

(iv) completion of any pending action, such as grievances or claims for damages or lost possessions;

(v) transfer of health information if appropriate; and

(vi) transportation arrangements, if required.

(5) *Detainers.* The presence of a detainer shall not automatically prevent the release of a juvenile from the detention facility.

§ 10.24 Juvenile programs and services.

(a) *Program coordination*—(1) *Availability of programs.* The facility shall make available juvenile programs and services, appropriate to the needs of the juvenile population. These programs and services shall include, but not limited to social services, religious services, including traditional religious practices and ceremonies, recreation and leisure time activities, counseling, including crisis intervention, library services, education programs and substance abuse programming. The administrator or designee shall link facility programs and services to existing community resources.

(2) *Program participation and refusal.* Juveniles shall have the option to refuse to participate in uncompensated work assignments, unless the work is related to housekeeping, maintenance of the facility or grounds, personal hygienic needs, or part of an approved training or community service program. Program participation and refusal shall be documented in writing.

(3) *Program coordinator.* A facility of fifty or more juveniles shall have a full-time, qualified staff person to plan, coordinate and, if applicable, supervise all juvenile programs. Smaller facilities shall designate a qualified staff person to plan, coordinate and, if applicable, supervise juvenile programs.

(b) *Education and work programs*—(1) *Education program.* In conjunction with the applicable education authority, the administrator or designee shall develop a written plan for the comprehensive education of juveniles. The administrator and applicable education authority shall update the plan as needed, review it annually, and support it with a Memorandum of Agreement. At a minimum, the plan shall include:

(i) the roles and responsibilities of the facility and the school district, compliant with the provisions of Title 94;

(ii) education release and in-facility education services:

(iii) education materials and equipment;

(iv) developmental, remedial, special and cultural education; and

(v) tutorial services as needed.

(2) *Work programs.* The administrator or designee shall develop a written juvenile work plan that provides for work for juveniles including the disabled. Work may include facility maintenance duties and community service projects. The administrator shall

prohibit discrimination in juvenile work assignments based on race, creed, gender, age, marital status, disability or tribal affiliation.

(3) *Regulation of work programs.* Facility juvenile work programs shall comply with applicable federal regulations. Juveniles shall not be permitted to perform any work prohibited by federal or tribal regulations and/or statutes pertaining to child labor.

(c) *Recreation, library and religious programming*—(1) *Comprehensive recreation program.* The administrator or designee shall develop a written recreation and leisure time plan that includes at a minimum one hour per day of large muscle activity and one hour of structured leisure time activities. Juveniles shall have access to a variety of fixed and movable equipment for indoor and outdoor recreation.

(2) *Library.* The administrator or designee shall develop a written plan to provide reading materials to juveniles. The plan shall include the criteria for the selection and maintenance of library materials, the location where reading materials are kept, the process by which juveniles obtain and return these materials and designation of the staff member or trained volunteer who is responsible for library services. The administrator shall update the plan as needed and review it at least annually.

(3) *Religious programs.* Juveniles shall have the right to practice their religion, subject only to the limitations necessary to maintain institutional order and security.

(d) *Correspondence and telephone*—(1) *Regulation of correspondence.* The administrator shall regulate juvenile correspondence and shall make this policy available to all staff and juveniles. The administrator shall review this policy annually and update it as needed.

(2) *Limitations on juvenile correspondence.* When the juvenile bears the mailing cost, the administrator shall not limit the volume of letters the juvenile can send or receive.

(3) *Indigents' correspondence.* The administrator or designee shall provide indigent juveniles with a system that enables them to send a minimum of two letters per week.

(4) *Inspection of letters and packages.* The administrator or designee may open juvenile letters and packages, both in-coming and out-going, to inspect them for contraband. The administrator or designee shall not read, censor, or reject letters or packages except where there is reliable information that there is a threat to order and security or that they are being used to further illegal activities. The administrator or designee shall notify juveniles when in-coming or out-going letters are rejected. The administrator or designee shall deposit any cash, checks, or money orders in the juvenile's account and shall issue a receipt to both the juvenile and the sender. The administrator or designee shall forward any contraband found to the appropriate law enforcement authority. The supervisor shall forward all mail within twenty-four hours of receipt except for Saturdays, Sundays and holidays. Juveniles shall be prohibited from carrying money.

(5) *Privileged correspondence.* The administrator shall permit juveniles to send sealed letters to specified groups of persons and organizations including, but not limited to, courts, including probation staff, counsel, officials of the confining authority, administrators of grievance systems and members of the releasing authority. Mail to juveniles from this specified class of persons and organizations shall be opened only to inspect for contraband and only in the presence of the juvenile.

(6) *Holding and forwarding mail.* The administrator or designee shall forward or return first-class letters and packages for juveniles after transfer or release.

(7) *Telephone.* The administrator or designee shall provide for juvenile access to telephones.

(e) *Visiting*—(1) *Visiting rules.* The administrator shall establish rules for visiting, which shall provide for informal communication, including the opportunity for physical contact.

(2) *Number of visitors.* The administrator or designee shall limit the number of visitors a juvenile may receive and the length of the visits only to the degree necessary in terms of facility schedules, space and personnel constraints except where there are substantial reasons to justify such limitations.

(3) *Sobriety statement.* Facility visitors and volunteers shall sign a sobriety statement. The statement shall stipulate that:

(i) they are not under the influence of alcohol or illegal mood-altering substances;

(ii) they are not carrying such substances on their person or in their belongings; and

(iii) they consent to a breath test or non-invasive search as a condition of entry, if there is probable cause.

(4) *Searches (visiting).* The administrator or designee shall provide clear instructions to staff and juveniles concerning juvenile and visitor search procedures and the approval required for visual observations of unclothed juveniles.

(5) *Special visits.* The administrator or designee shall provide for special visits from persons who have travelled long distances, to hospitalized juveniles and to juveniles in disciplinary status.

(6) *Visitor personal property.* Visitors shall not bring personal property into the secure area of the facility.

(7) *Visitor registration.* The administrator or designee shall provide for visitor registration and identification on entry into the facility.

Subpart D—Adult Community Residential Facilities

§ 10.31 Administration and management.

(a) *General administration*—(1) *Mission and goals.* A written statement, which shall be updated as necessary, shall describe the philosophy, goals and policies of the facility.

(2) *Administration of facility.* An administrator, whose responsibility and authority shall be documented, shall oversee each facility. The appointment shall be based on written qualifications.

(3) *Organization chart.* An organization chart shall describe the facility's organization and chain of command. The chart shall be updated as needed.

(4) *Service provider roles.* A Memorandum of Agreement (MOA), which shall be updated as needed and reviewed at least annually, shall define the role and function of employees of public or private agencies providing a service to the facility. The MOA shall specify the relation of service providers to the authority and responsibility of the administrator.

(5) *Interagency meetings.* The administrator shall conduct regular meetings between the staff of criminal justice, detention, social service, health care and community residential agencies to develop and maintain effective interagency coordination.

(6) *Policy and procedure manual.* All employees of the facility shall have access to a policy and procedure manual and its supporting documents. The Chief, Division of Law Enforcement, shall approve the manual and its supporting documents, which shall provide for the implementation of these standards and shall direct documentation of compliance. The administrator shall update the manual as needed and review it annually.

(7) *Dissemination of policy and procedure.* The administrator shall disseminate approved, new or revised policies and procedures to designated staff, volunteers and, where appropriate, residents prior to implementation. Staff

shall review and indicate in writing that they understand the content of policies and procedures prior to their implementation.

(8) *Channels of communication.* The administrator or designee shall regularly disseminate information to staff prior to the beginning of their shift.

(9) *Monitoring and assessment.* The Agency Superintendent or designee shall review and inspect operations and programs at least annually.

(10) *Annual report.* The administrator shall submit a written annual report to the Chief, Division of Law Enforcement, through the Area Director and Agency Superintendent, and shall forward a copy to the appropriate court and health care authority. The report shall address goals, objectives, population data, programs and services provided, budget, space and equipment needs and major developments.

(11) *Public information program.* The administrator or designee shall provide for a public information program.

(12) *Governing board.* The facility shall have a local governing board or advisory committee which shall be representative of the community and shall meet at least semi-annually.

(13) *Meeting with governing board.* The governing board shall maintain a permanent record of all meetings.

(14) *Legal counsel.* Legal counsel shall be available to the administrator and other staff as needed in the performance of their duties.

(15) *Separation of adults and juveniles.* The administrator shall prohibit the confinement of juveniles under the age of eighteen within the facility.

(b) *Fiscal management*—(1) *Budgetary compliance.* If operated by the BIA, the facility shall comply with the directives of the Agency regarding budget preparation, submission, and administration. If operated by a tribe, the facility shall comply with the directives of the tribe regarding budget preparation, submission, and administration.

(2) *Accounting compliance.* If operated by the BIA, the facility shall comply with the Agency accounting directives. If operated by a Tribe, the facility shall comply with Tribal accounting directives.

(3) *Basis of budget.* The administrator shall document a direct relationship between the budget and planned operational, staffing and program needs.

(4) *Property management compliance.* If operated by the BIA, the facility shall comply with Agency property management directives. If operated by a Tribe, the facility shall comply with Tribal property management directives.

(5) *Federal acquisition regulation compliance.* If operated by the BIA, the facility shall comply with Agency directives for facility services, equipment and supply purchases. If operated by a tribe, the facility shall comply with tribal directives for facility services, equipment and supply purchases.

(6) *Space and equipment needs and deficiencies.* The administrator shall report space and equipment needs and deficiencies annually to the Area Director through the Agency Superintendent.

(7) *Program needs and deficiencies.* The administrator shall report program needs and deficiencies, i.e., staffing, supplies, training and contract services, annually to the Chief, Division of Law Enforcement through the Area Director and Agency Superintendent.

(8) *Cost of resident board.* The facility shall charge all contract users at the same rate.

(9) *Fund accounts.* The administrator shall arrange for an independent audit of resident fund accounts, including canteen or commissary, following standard accounting practices. The administrator shall use any profit or interest which accrues for the benefit of the residents.

(c) *Personnel*—(1) *Personnel policy.* If operated by the BIA, the facility shall comply with Agency personnel management directives. If operated by a Tribe, the facility shall comply with Tribal personnel management directives.

(2) *Personnel manual.* The administrator shall make a copy of the applicable personnel manuals and regulations available to every employee.

(3) *Staffing requirements.* The administrator shall review employee workload annually to ensure that the legitimate safety and security needs of staff and residents are addressed. The administrator shall develop and update the facility's shift relief factor annually.

(4) *Criminal record check.* The administrator or designee shall conduct a criminal record check of all new employees prior to employment to determine if there are criminal convictions that have a specific relationship to job performance.

(5) *Physical examination.* All employees who have direct contact with residents shall have a pre-employment physical examination. There shall be provisions for re-examination.

(6) *Physical fitness.* Community residential workers shall meet BIA or comparable tribal standards for physical fitness.

(7) *Code of ethics.* The facility shall have a written Code of Ethics that outlines the professional standards expected of all employees and recognizes that community residential personnel may be held to a higher behavioral standard because of the nature of their duties.

(8) *Confidentiality.* Consultants, contract personnel, employees of other public and private agencies and volunteers who work with residents shall agree to comply with the facility's policies on confidentiality of information.

(d) *Training and staff development*—(1) *Management of training programs.* A qualified employee, who has received training in training delivery methods, shall plan, coordinate and supervise employee and volunteer training programs. The administrator shall identify, evaluate and update job-related training needs annually.

(2) *Training curriculum approval.* The Chief, Division of Law Enforcement, in conjunction with the Indian Police Academy, shall approve training programs and curriculum required by these standards.

(3) *Outside resources.* The facility shall support the integration of IHS-approved and other training with the approval of the administrator.

(4) *Education and training.* The administrator shall encourage employees to continue their education and training.

(5) *Cultural awareness.* Orientation training shall include a component on cultural issues relative to the local tribe(s).

(6) *Community residential worker orientation training.* All new full or part-time community residential workers shall receive the number of hours of orientation training recommended by the Chief, Division of Law Enforcement, during their first year of employment. Employees shall complete forty of these hours prior to being independently assigned to work in the facility.

(7) *Community residential worker in-service training.* All full or part-time community residential workers shall receive an additional forty hours of job-relevant training each subsequent year of employment.

(8) *Clerical and support staff orientation training.* All new clerical and support staff who have minimal contact with residents shall receive the number of hours of orientation and training recommended by the Chief, Division of Law Enforcement, within their first year of employment.

(9) *Clerical and support staff in-service training.* All clerical and support staff shall receive an additional sixteen

hours of job-relevant training each subsequent year of employment.

(10) *Administrative and managerial staff orientation training.* New administrative and managerial staff shall receive at least the number of hours of orientation training recommended by the Chief, Division of Law Enforcement, within their first year of employment in this position.

(11) *Administrative and managerial staff in-service training.* Administrative and managerial staff shall receive at least twenty-four hours of job-relevant training each subsequent year of employment.

(12) *Specialized training.* At least one community resident worker per shift shall be certified as an emergency medical technician. All community residential staff who have contact with residents receive training in advanced first aid and CPR.

(e) *Facility Records*—(1) *Compliance.* The facility shall comply with 5 U.S.C. 552 (the Freedom of Information Act), 5 U.S.C. 552(a) (the Privacy Act of 1974), as amended, 43 CFR 2.79(a), or comparable tribal regulations.

(2) *Records management.* The facility shall have a system for the management, dissemination, retrieval, storage, archiving and (when appropriate) destruction of information and community residential records.

(3) *Law enforcement sensitive information.* Law enforcement sensitive records and information shall be marked privileged. The administrator or designee shall keep these records in a locked cabinet or file room.

(4) *Release of information and consent.* Residents shall sign a Release of Information Consent Form in compliance with 5 U.S.C. 552(a) (the Privacy Act of 1974) as amended prior to the release of privileged information. The administrator or designee shall keep a copy of the signed release in the resident's record.

(5) *Separation of record contents.* The administrator or designee shall identify and separate contents of resident records according to an established format which, at a minimum, shall separate privileged from public information.

(6) *Access to information.* The administrator shall define clearly personnel who have access to resident records.

(7) *Daily report.* The administrator or designee shall maintain a daily report which shall identify:

(i) the names of residents in custody, including residents on temporary release or in other locations;

(ii) names of residents admitted and released; and

(iii) the number of days each resident has been in the facility.

(8) *Identification and location record.* The facility shall maintain a system that identifies all residents and their actual physical location.

(9) *Resident record.* The facility shall maintain resident records of all residents held at the facility. The record shall include, but not be limited to:

(i) initial intake form;

(ii) a copy of the initial detention booking record which resulted in this placement;

(iii) case information from referral source, if available;

(iv) case history or social history;

(v) medical record;

(vi) individual plan or program;

(vii) signed release of information forms;

(viii) current employment or education data;

(ix) signed acknowledgement of receipt of program rules and disciplinary policy; documented legal authority to accept resident;

(x) grievance and disciplinary record;

(xi) referrals to other agencies; and

(xii) final release or transfer report.

(10) *Admission information.* The administrator or designee shall record initial admission information for each resident. The record shall included, unless prohibited by statute, at a minimum:

(i) admission number;

(ii) name and address;

(iii) date and place of birth;

(iv) gender;

(v) ethnic origin or tribal affiliation;

(vi) present or last place of employment;

(vii) emergency contact name, relationship, address and phone number;

(viii) date and time of admission;

(ix) name of referring agency or committing authority;

(x) special medical problems or needs;

(xi) legal status, including jurisdiction, length and conditions of sentence; and

(xii) signature of both resident and employee taking the information.

(11) *Conducting research.* All research conducted shall comply with federal and tribal regulations pertaining to conducting and disseminating research findings as well as professional and scientific ethics. The administrator, Agency Superintendent and the Area Director shall approve all research prior to implementation. The administrator shall regulate voluntary resident participation in research.

(f) *Citizen involvement and volunteers*—(1) *Volunteer coordinator.* The administrator shall encourage citizen participation in volunteer programs by designating a staff member as volunteer coordinator.

(2) *Volunteer plan.* The volunteer coordinator shall develop and implement a written plan for volunteer services. The volunteer coordinator and administrator shall update the plan as necessary and review it at least annually. The plan shall include:

(i) lines of authority;

(ii) responsibility and accountability for volunteer services;

(iii) procedures for the screening and selection of volunteers;

(iv) a volunteer orientation or training program, which is appropriate to the nature of the assignments;

(v) a requirement that volunteers shall agree in writing to abide by all facility rules, policies, procedures and practices, particularly those related to security and confidentiality of information; and

(vi) a statement that the administrator may discontinue a volunteer activity at any time by written notice.

§ 10.32 Physical plant.

(a) *Code compliance*—(1) *Building and safety code compliance.* If owned by the Bureau, the facility shall comply with 29 CFR Part 1910, Subparts D, E, G and L. If owned by a tribe, the facility shall comply with the National Fire Protection Association (NFPA) Life Safety Code 101 Chapters 2, 4 through 7, and 16 (if new community residential occupancy) or 17 (if existing community residential occupancy), or comparable tribal regulations.

(2) *Zoning.* The facility shall comply with applicable zoning and land use requirements.

(3) *Accessibility.* The facility shall comply with 25 U.S.C. 794 (the Rehabilitation Act of 1973) as amended, 41 CFR 101–19.6 (Uniform Federal Accessibility Standards), and 43 CFR Part 17.

(4) *OSHA compliance.* The facility shall comply with 29 CFR Part 1910, Subparts C through E, G, K, L and S (Occupational Health and Safety Standards) or comparable tribal regulations. If other activities governed by sections of 29 CFR Part 1910 not identified in this standard are carried out in the facility, the section(s) of 29 CFR Part 1910 governing that activity or comparable tribal regulations apply.

(5) *Health and safety inspection.* In compliance with 29 CFR Part 1960 Subparts B through D, the facility shall receive at least one inspection each year by a qualified safety and health inspector and Environmental Health Specialist and/or Sanitarian. Any request for inspection shall be directed

to the Area Safety Manager or Officer through the Agency Superintendent.

(6) *Furnishings and equipment code compliance.* The administrator shall maintain documentation by an independent, qualified source that the interior furnishing materials in inmate living areas, exit areas and places of public assembly shall be in accordance with NFPA Life Safety Code Section 6–5 or comparable tribal regulations.

(b) *Facility organization*—(1) *Separation from detention.* When the facility is part of or attached to a detention facility, residents shall be housed separately from detained inmates. Community residential facility residents and detained inmates shall not use program and activity spaces at the same time.

(2) *Separation of males and females.* The facility shall provide for sight and sound separation of male and female residents in their sleeping, shower and toilet areas.

(3) *Rated capacity.* The number of residents shall not exceed the facility's rated capacity.

(4) *Location.* The facility shall be located conveniently for criminal justice agencies, the health authority, community agencies and residents' legal representatives, families and friends.

(c) *Environmental conditions*—(1) *Artificial light levels.* Lighting levels in resident cells or rooms shall be at least twenty footcandles at the desk and in the personal grooming areas. Lighting levels throughout the facility shall be appropriate to the tasks and activities carried out in its spaces. An independent, qualified source shall document lighting levels.

(2) *Noise levels.* Noise levels shall not exceed seventy decibels in the daytime and forty five decibels at night. An independent, qualified source shall document noise levels.

(3) *Indoor air quality.* Air circulation shall be at least ten cubic feet of outside or recirculated filtered air per minute per occupant. An independent, qualified source shall document air circulation.

(4) *Use of tobacco.* The administrator shall regulate the use of tobacco in the facility by staff, residents and the public.

(5) *Heating and cooling.* Temperatures shall be appropriate to the summer and winter comfort zones.

(d) *Security and control*—(1) *Emergency exits.* In compliance with 29 CFR 1910.37, designated exits in the facility shall permit prompt evacuation of residents and staff members in an emergency. Facility exits shall be properly positioned, clear and distinctly and permanently marked.

(2) *Emergency equipment.* The facility shall have the equipment necessary to maintain essential lights in an emergency.

(e) *New facility planning process*—(1) *New facility planning requirement.* All new construction, renovation and expansion projects shall follow the Planning of New Institutions (PONI) process as required by 25 CFR Part 296.

(2) *Safety management review.* The design and specifications for all new construction, renovation and expansion projects shall be reviewed by the Bureau of Indian Affairs in compliance with 29 CFR 1960, Suparts B through D.

(f) *New construction, renovation and expansion*—(1) *Single occupancy requirements.* Only one resident shall occupy each room designed for single occupancy. All single rooms shall have at least sixty square feet of floor space of which no more than four square feet is closet or wardrobe space. Each room shall have, at a minimum:

(i) natural light;

(ii) bed, mattress, pillow and bedding;

(iii) access to toilets, wash basins and showers with some degree of privacy; and closet or locker space for the storage of personal items.

(2) *Multiple occupancy requirements.* Where used, multiple occupancy rooms shall provide:

(i) a minimum of sixty square feet of floor space per occupant in the sleeping area of which no more than four square feet is closet or wardrobe space;

(ii) natural light;

(iii) access to toilets, washbasins and showers, with some degree of privacy; and

(iv) some degree of privacy in the sleeping area.

(3) *Space, furnishings and conditions for dayrooms.* The facility shall provide dayroom space sufficient for facility residents. The dayroom shall provides:

(i) natural light;

(ii) a minimum of thirty-five square feet of space per resident; and

(iii) seating and writing surfaces, sufficient for the number of residents who use the dayroom.

(4) *Toilets.* The facility shall provide operable toilets at a minimum ratio of one for every twelve residents in male facilities and one for every eight residents in female facilities. Urinals may be substituted for up to one-half of the toilets in male facilities. All housing units with three or more residents shall have two toilets.

(5) *Wash basins.* Residents shall have access to operable wash basins with hot and cold running water in the housing units at a minimum ratio of one basin for every twelve occupants.

(6) *Showers.* Residents shall have access to operable showers with temperature-controlled hot and cold running water at a minimum of one shower for every eight residents. Water for showers shall be thermostatically controlled to temperatures ranging from one hundred degrees to one hundred-twenty degrees Fahrenheit.

(7) *Housing for the disabled.* Disabled residents shall be housed in a manner that provides for their safety in compliance with 25 U.S.C. 794 (the Rehabilitation Act of 1973) as amended, 41 CFR 101–19.6 (Uniform Federal Accessibility Standards), and 43 CFR Part 17, yet prevents their being discriminated against in their use of the facility.

(8) *Exercise and recreation areas.* The facility shall provide access to outdoor, covered or enclosed exercise areas. Outdoor exercise areas shall provide a minimum of one thousand five hundred square feet of unencumbered space; covered and enclosed exercise areas shall provide a minimum of one thousand square feet of unencumbered space. Exercise areas shall be adequate in size and type to ensure that each resident shall be offered at least one hour of access daily regardless of climatic conditions.

(9) *Multi-purpose and interview rooms.* The facility shall provide a minimum of one accessible multi-purpose room and one accessible interview room.

(10) *Visiting spaces.* The facility shall provide space and furnishings for group activities and visits. The space shall allow contact between residents and visitors.

(11) *Food service spaces.* When the facility provides for food preparation, it shall have adequate space for food processing, storage, refrigeration and sanitation. Toilet and wash basin facilities shall be available to food service personnel and residents in the vicinity of the food preparation area. The square footage of the kitchen shall be appropriate to the needs of the facility. The facility shall provide a dining area with a minimum of fifteen square feet per occupant.

(12) *Storage spaces.* The facility shall provide the following storage spaces:

(i) a secure, well-ventilated janitor closet, which includes sink and adequate space for the storage of cleaning implements and supplies;

(ii) secure storage for flammable, toxic and caustic items; and

(iii) storage space for resident clothing, bedding, mattresses, personal hygiene items and facility supplies.

(13) *Laundry.* The facility shall have a minimum of one operable washer and one operable dryer, appropriate to the

level of use, or equivalent laundry services available in the community.

(14) *Medication storage.* The facility shall provide space for the secure storage of medications kept in the facility.

(15) *Staff toilets.* The facility shall provide staff toilets that residents shall not use.

(16) *Public spaces.* The facility shall provide public restroom(s) and a visitor waiting or entry with an adequate number of seats to accommodate anticipated visitors outside resident living areas.

(17) *Administration.* The facility shall provide adequate space for its administrative functions. This space shall include an office for the administrator, work space for clerical staff, space for duplication of copies, supply and equipment storage, space for storage of facility records and space for meetings.

(18) *Staff.* The facility shall provide adequate space for staff assigned to work in the facility. These spaces include an area in which they can store personal property, change clothes and shower, and an area in which training, meetings, briefings and breaks can occur.

(19) *Mechanical.* The facility shall provide separate and adequate space for mechanical systems and equipment.

§ 10.33 Institutional operations.

(a) *Security and control*—(1) *Full coverage of posts.* At least one staff person shall be on the facility premises, awake, available and responsible to residents' needs twenty-four hours a day. The staffing pattern of the facility shall concentrate staff at the times when most residents are in the facility.

(2) *Supervision of coed activities.* Facility staff shall supervise male and female residents in coed activities and spaces continuously and directly.

(3) *Male and female staff requirement.* When both males and females are housed in the facility, at least one male and female staff member shall be on duty at all times.

(4) *Prohibited supervision.* No resident or group of residents shall be given control or authority over other residents.

(5) *Counts.* The facility shall have a system to physically count residents that includes strict accountability for residents assigned to work and education release and other approved temporary releases.

(6) *Movement.* Community residential staff shall regulate all resident movement outside the facility.

(7) *Transportation of residents.* The administrator shall govern the safe and secure transportation of residents outside the facility.

(8) *Use of vehicles.* The administrator shall govern the use of departmental and personal vehicles for official purposes and shall prohibit the use of personal vehicles for transportation of residents.

(9) *Shift activity log.* The facility shall maintain a written record of the following:

(i) personnel on duty;

(ii) resident population at the beginning and end of each shift;

(iii) record of counts taken;

(iv) shift activities; and

(v) unusual occurrences or incidents.

(10) *Weekly inspection.* The administrator or designee shall inspect all facility spaces and equipment at least weekly, to determine the status of all security items and the sanitary condition of the facility. The administrator or designee shall document the inspection and initiate corrective action if needed.

(11) *Monthly inspection.* The administrator shall inspect all areas of the facility at least monthly to determine the status of all safety items, determine the sanitary condition of the facility, document the inspection and initiate corrective action if needed.

(12) *Fire safety inspection.* A qualified fire protection specialist shall inspect the facility to test the fire suppression and detection system, equipment and facility training in compliance with 29 CFR 1910.36(d), 1910.37(m), 1910.37(n), 1910.38, and 29 CFR 1960, Subpart D.

(13) *Use of restraints.* Staff shall use instruments of restraint are only used as a precaution against escape during transfer. Staff shall use restraints during transfer only with the approval of the administrator or designee and only for the amount of time that is absolutely necessary.

(14) *Contraband control.* The administrator shall provide for searches of facilities and residents to control contraband and to provide for its disposition. When a new crime is suspected, the administrator shall be notified. The administrator shall maintain and make available to the appropriate authorities all evidence.

(15) *Visual inspections.* Trained staff shall conduct visual inspections of unclothed residents only when there is a reasonable belief that the resident is carrying contraband or other prohibited material or at the time of admission if the resident is admitted from the community. Trained staff of the same sex as the resident shall conduct all visual inspections in private.

(16) *Key and tool control.* The administrator shall govern the control, issuance, use and storage of keys, tools and culinary and medical equipment.

(17) *Use of force and firearms.* The facility shall comply with 25 CFR 11.304 with regard to the use of force, firearms, chemical agents, or any other weapon. The administrator shall prohibit the presence of firearms of any kind within the facility or on its grounds.

(b) *Safety and emergency procedures*—(1) *Fire prevention.* The administrator shall govern the storage and use of all flammable, toxic and caustic materials, the use of non-combustible receptacles for smoking materials, the amount of personal items, including reading materials, which residents may keep in their living units and the amount and location of items stored in the facility.

(2) *Preventive maintenance.* The administrator or designee shall develop a written plan for preventive maintenance of the facility. The administrator shall review the plan annually and update it as needed. If tribally operated, the plan shall be supported by a Memorandum of Agreement between the tribe and the Agency.

(3) *Evacuation plan.* The administrator shall develop a written evacuation plan prepared in case of fire or major emergency. The plan shall comply with 29 CFR 1910.38 or comparable tribal code. The applicable Safety Officer or designee shall review and approve the plan initially and annually. The administrator shall update and reissue the plan if necessary. The plan shall include:

(i) location of floor plans;

(ii) use of exit signs and directional arrows for traffic flow;

(iii) location of a publicly posted plan;

(iv) at least quarterly drills in all facility locations; and

(v) coordination with the fire department which services the facility.

(4) *Emergency plans.* The administrator or designee shall develop written plans that specify procedures to be followed in emergency situations. The administrator shall make these plans available to applicable personnel and shall review and update them at least annually. All facility personnel shall be trained in the implementation of these plans. Emergency situations shall include, but not be limited to:

(i) riots and disturbances;

(ii) hunger strikes;

(iii) hostage situations;

(iv) work stoppages;

(v) unattended deaths, including successful suicides;

(vi) attempted suicides;

(vii) escapes and unauthorized absences; and

(viii) other threats to the security of the facility.

(5) *Incident reporting.* The administrator shall require the immediate reporting of all incidents that result in physical harm to any person, threaten the safety of any person, result in the need for emergency care, result in damage to the facility or facility property, threaten the security of the facility, or involve the commission of a criminal offense. The administrator shall forward the reports to the Agency Superintendent through the appropriate chain of command.

(6) *Medical treatment (incident).* The administrator or designee shall ensure that all persons injured in an incident receive an immediate medical examination and treatment.

(7) *Notification of family.* The administrator shall provide for the notification of persons designated by the resident in the event of serious illness, injury or death.

(c) *Rules and discipline*—(1) *Rules of conduct.* The administrator shall develop written rules of resident conduct that specify acts prohibited within the facility and penalties that may be imposed for various degrees of violations. The administrator or designee shall provide these to all residents and shall ensure that all residents understand them. All personnel who deal with residents shall receive sufficient training prior to working in the facility to be thoroughly familiar with the rules of resident conduct, the sanctions available and the rationale for the rules. The administrator shall review the written rules of resident conduct annually and update them, if necessary, to ensure that they are consistent with constitutional and legal principles as well as BIA and tribal standards and codes.

(2) *Minor infractions.* The administrator shall provide guidelines for the informal resolution of minor resident misbehavior.

(3) *Grievance procedure.* The administrator or designee shall make a written grievance procedure available to all residents. The procedure shall include at least one level of appeal.

(4) *Criminal violations.* In instances in which a resident is alleged to have committed a crime, the administrator or designee shall refer the case to the appropriate law enforcement officials for possible prosecution.

(5) *Disciplinary reports.* When rule violations require formal resolution, staff members shall prepare a disciplinary report and forward it to the administrator or designee. The disciplinary report shall include, but is not limited to:

(i) specific rules violated;

(ii) a formal statement of the charge(s);

(iii) an explanation of the event, which shall include who was involved, what transpired and the time and location of the occurrence;

(iv) unusual resident behavior;

(v) staff witnesses;

(vi) disposition of any physical evidence;

(vii) any immediate action taken, including the use of force; and

(viii) reporting staff member's signature; and

(ix) date and time the report is made.

(6) *Disciplinary process.* Residents shall receive notification of the rules violated, a formal statement of the charge, a description of the incident and notice of the date and time of hearing. The administrator or designee shall advise residents of their rights to be present at the hearing, to call witnesses on their behalf, to make a statement, to present documentary evidence, and to ask for assistance from staff in representing them at the hearing. An impartial person or panel of persons shall conduct the hearing.

(7) *Immediate removal from program for disciplinary reasons.* The administrator shall provide for the immediate return of a resident for an alleged disciplinary violation to a secure facility if the safety of the resident, other residents, staff or the security of the facility is at stake.

(8) *Disciplinary detention.* The administrator shall remove residents from program for a disciplinary violation only after a hearing.

(9) *Record of disciplinary hearing.* The persons conducting the disciplinary hearing shall make a written copy of the decision and its disposition and shall provide copies to the resident and the administrators of the secure and community residential facilities for review. Residents shall have the right to appeal the decision to the administrator of the community residential facility or the next level of authority. The disciplinary report shall be removed from all files of residents found not guilty of an alleged rule violation.

(d) *Removal from program*—(1) *Emergency removal.* Pursuant to a placement order, the administrator of the facility or designee can order immediate removal from program and return to a secure facility when it is necessary to protect the resident or others. The immediate supervisor of the person ordering removal from program or the contracting officer shall review this action within three working days.

(2) *Return to program.* The administrator or designee shall use a review process to reinstate a resident who has been removed from program.

(e) *Resident rights*—(1) *Access to courts, counsel and legal materials.* Residents shall have the right to have access to attorneys, legal representatives, the courts and legal materials and to address uncensored communications to governmental authorities.

(2) *Freedom from discrimination.* Residents shall have the right to be free from discrimination based on race, religion, national origin, tribal affiliation, sex, disability, political beliefs, favoritism or nepotism. Residents shall have the right to equal access to programs and work assignments as provided in the classification program.

(3) *Equal access for women.* Male and female residents shall have the right to equal access to programs and services.

(4) *Right to communicate.* Residents shall have the right to receive visits and to communicate or correspond with persons or organizations, subject only to the limitations necessary to maintain order and security.

(5) *Protection from harm.* Residents shall have the right to protection from personal abuse, corporal punishment, personal injury, disease, property damage and harassment, by either staff or residents.

(6) *Freedom of personal grooming.* Residents shall have the right to determine the length and style of scalp or facial hair, unless health and safety reasons exist.

(7) *Treatment.* Residents shall have the right to medical, dental, mental health and substance abuse treatment and rehabilitative services as directed by the health authority.

(f) *Admission*—(1) *Admission policies.* The facility shall have clearly defined written procedures governing admission.

(2) *Documentation of commitment.* Court order, statute or compact shall document legal commitment authority.

(3) *Notification of non-acceptance.* The administrator or designee shall advise the referring agency when a prospective resident is not accepted into the program, citing specific reasons.

(4) *Admission criteria.* The administrator shall distribute a copy of admission policies and criteria to referring agencies and interested parties.

(5) *Admission process.* Written procedures for admitting new residents shall include, at a minimum:

(i) verification of court commitment papers or other legal documentation for placement;

(ii) inventory of clothing and personal property taken into the facility;

(iii) receipt of health record if required because of transfer;

(iv) completion of admission form as required by these standards;

(v) orientation; and

(vi) assignment to a room.

(6) *Suicide screening.* The administrator or designee shall ensure that all residents have been screened for suicide risk prior to acceptance in the community residential program.

(7) *Orientation.* All newly admitted residents shall receive written or oral information in the language they understand. The admitting officer shall document completion of orientation by a statement that shall be signed and dated by the resident and employee. The orientation shall include, but not be limited to:

(i) resident rules of conduct and potential disciplinary actions that may be taken;

(ii) programs and services available in the facility or community;

(iii) procedures for accessing health care services; and

(iv) resident rights and privileges.

(8) *Personal property inventory.* The admitting employee shall complete a written, itemized inventory of all personal property of newly admitted residents. The resident shall sign a waiver of liability for all personal property taken into the facility.

(9) *Regulation of resident property.* The administrator or designee shall identify personal property that residents may receive or keep in their possession while in the facility, the sources from which these items may be obtained and how these items are received and inspected.

(g) *Classification*—(1) *Classification policy.* The administrator or designee shall screen all residents and classify them as appropriate for community residential status prior to placement in the community residential facility. The administrator or designee shall review these policies and procedures annually and update them as necessary.

(2) *Prohibited segregations.* The administrator shall prohibit the segregation of residents by race, color, creed, tribal affiliation, national origin, political beliefs, nepotism, favoritism or other prohibited criteria.

(h) *Food service*—(1) *Food service records.* At a minimum, the facility shall maintain records of the number of meals served to the resident population, the expenditures for food supplies and menus (planned and as served).

(2) *Dietary allowances.* The facility shall document that a registered dietician reviews dietary allowance at least annually to ensure compliance with nationally recommended food allowances. A diet manual, approved by a registered dietician, shall guide dietary allowances, including special diets.

(3) *Menu planning.* The administrator or designee shall plan, date and make all menus available for review at least one week in advance. The administrator or designee shall make notations of any substitutions, which shall be of equal nutritional value, in the meals actually served. The administrator or designee shall consider Native American food preferences in menu planning. The administrator or designee shall direct that menu evaluations shall be conducted at least quarterly to verify adherence to the nationally recommended basic daily servings.

(4) *Medical special diets.* The administrator or designee shall provide for special diets that are prescribed by appropriate medical or dental personnel.

(5) *Religious preference special diets.* The administrator or designee shall provide for special diets for residents whose beliefs require adherence to religious dietary laws.

(6) *Food and discipline.* The administrator shall prohibit the use of food as a disciplinary measure.

(7) *Health protection.* Food service facilities and equipment shall meet health and safety standards. Food service personnel and residents working in the food service area shall comply with applicable health regulations. The administrator or designee shall document compliance with health and safety regulations, including but not limited to, a pre-assignment medical examination.

(8) *Inspections of food products.* The appropriate government agency shall inspect and approve food products that are grown or produced within the system. The administrator or designee shall implement a distribution system that ensures prompt delivery of foodstuffs.

(9) *Inspection of food service area.* The administrator or designee shall conduct a weekly inspection of all food service areas and equipment to ensure that they are sanitary, that all food storage areas are temperature controlled, and that food service personnel have made daily checks of refrigerator and water temperatures.

(10) *Meal service.* The facility shall serve meals under the direct supervision of staff. The facility shall provide at least three meals, of which two shall be hot, served at regular meal times during each twenty-four hour period, with no more than fourteen hours between the evening meal and breakfast. Provided that basic nutritional goals are met, variations may be allowed based on weekend and holiday food service demands.

(i) *Sanitation and hygiene*—(1) *Water supply.* The administrator shall maintain documentation that the entity which provides the facility's water source, supply, storage and distribution system meets the requirements of 42 U.S.C. 300g–6 (the Safe Drinking Water Act).

(2) *Sewage system.* The administrator shall maintain documentation that entity which provides the facility's sewage system complies with 33 U.S.C. 1251 *et seq.* (the Clean Water Act of 1977).

(3) *Sanitation plan.* The administrator or designee, in cooperation with the BIA or tribal maintenance program, shall develop a written housekeeping plan for all areas of the physical plant. The administrator or designee shall update the plan as needed and review it at least annually. The plan shall provide for daily housekeeping and regular maintenance by assigning specific duties to staff, residents and BIA or tribal Facility Maintenance. The plan shall require that:

(i) Facility floors be kept clean, dry and free of hazardous substances;

(ii) A qualified person conduct monthly inspections to control vermin and pests;

(iii) Solid and liquid wastes be disposed of properly;

(iv) Clean, suitable and presentable bedding, linens, towels and (if applicable) clothing be issued to new residents and exchanged on at least a weekly basis;

(v) Necessary cleaning and storage of resident personal clothing be provided;

(vi) Articles needed for personal hygiene be furnished; and

(vii) Sufficient facilities in the housing areas to permit residents to shower or bathe on admission to the facility and daily thereafter.

(4) *Special clothing issue.* The facility shall provide for the issue of special and, where appropriate, protective clothing and equipment to residents participating in special work assignments. Such clothing shall be available in quantities that permit exchange as frequently as the work assignment requires.

(5) *Hair care.* The administrator or designee shall allow residents to arrange for hair cutting services.

(j) *Health care*—(1) *Written health care plan.* A written plan shall provide for the delivery of health care services, including medical, dental, mental health and substance abuse treatment, under the control of a designated health authority. The plan shall include the

participation of IHS, social services and tribal health care providers. A Memorandum of Agreement between the administrator and the Director of the appropriate Indian Health Service (IHS) Service Unit or IHS contract health care provider shall document the health care plan. When this authority is other than a physician, final medical judgments shall rest with a single responsible physician, designated by the appropriate health authority, who shall meet the applicable licensure requirements.

(2) *Health program coordinator.* In facilities without full-time, qualified health personnel, a health-trained staff member shall coordinate the health care delivery system in the facility under the joint supervision of the responsible health authority and the administrator.

(3) *Annual review.* The administrator and the health authority shall update the plan as needed, review it annually to determine program needs include staffing, equipment and supplies and document its review by signature and date.

(4) *Medical/mental health judgment.* Medical, dental and mental health matters involving clinical judgments shall be the sole province of the responsible physician, dentist and/or psychiatrist or qualified psychologist.

(5) *Security regulations.* Security regulations applicable to facility personnel shall apply to health personnel.

(6) *Meetings with provider.* The health authority shall meet with the administrator or designee at least quarterly to review and evaluate the health care delivery system. The health authority shall provide an annual statistical report which documents the level and amount of health care services provided.

(7) *Review of health care policies.* The health authority and the administrator shall review and approve all policies and procedures relative to the health care plan prior to submission of these policies to the Chief, Division of Law Enforcement. Policies and procedures shall be reviewed at least annually and documented by signature and date.

(8) *Health training program.* The responsible health authority, in cooperation with the administrator, shall establish a health training program. The program shall provide instruction in the following areas:

(i) Appropriate procedures to prevent the spread of communicable diseases;

(ii) Ability to respond to health-related situations within four minutes;

(iii) Recognition of signs, symptoms and actions required in potential emergency situations;

(iv) Recognition of chronic illness;

(v) Administration of first aid and cardiopulmonary resuscitation (CPR);

(vi) Methods of obtaining assistance from the health care provider;

(vii) Recognition of signs and symptoms of and management of residents with mental illness, retardation, emotional disturbance, chemical dependency and suicidal behavior; and

(viii) Procedures for patient transfers to appropriate medical facilities or health care providers.

(9) *Sick call.* The administrator or designee shall provide for the collection and referral of resident requests for health care. The facility shall have a system of sick call in-house or at the health care facility. The system shall include provision for referral of residents by staff for medical or other behavioral health evaluation, i.e, mental health, substance abuse, suicide. Sick call shall be held no less than once per week.

(10) *Twenty-four-hour emergency care.* The administrator and health authority shall develop a written plan for the provision of twenty-four hour emergency medical, dental and mental health care. The administrator and the health authority shall update the plan as needed and shall review it at least annually. At a minimum, the plan shall include:

(i) Emergency evacuation of the resident from the facility;

(ii) Emergency evaluation of the resident for medical or mental health problems;

(iii) Use of an emergency medical vehicle;

(iv) Use of one or more designated hospital, clinic, emergency on-call physician, dentist, psychiatrist, qualified psychologist or otherwise qualified clinician; and

(v) Procedures that provide for the immediate transfer of residents when appropriate.

(11) *Health care treatment.* Health care staff or health-trained community residential staff shall perform treatment pursuant to written direct orders by personnel authorized by law to give such orders.

(12) *Licensure requirements.* The health authority shall comply with all applicable federal law, licensure requirements, rules, regulations and medical protocols in the delivery of health care services to the resident population.

(13) *Traditional practitioners.* The facility shall allow residents to participate in or receive traditional healing ceremonies and to use traditional healing methods, limited only to the degree necessary to preserve institutional security and order.

(14) *Prohibited use of residents.* Residents shall not perform direct patient services, schedule health care appointments, determine access of other residents to health care services, access to first aid kits, handle or have access to surgical instruments, syringes, needles, medications, or health records, or operate equipment for which they are not trained.

(15) *Management of medications.* The administrator and health authority shall provide for the proper management of individual doses of medications kept in the facility. The administrator and health authority shall review the policy annually and update it as needed.

(16) *Administration of medications.* The administrator or designee shall ensure that persons administering medications have received training appropriate to their assignment. Employees shall administer medications according to direct or physician orders and shall record the administration of medications in a manner and on a form approved by the responsible physician.

(17) *Preliminary health care screening.* The administrator or designee shall ensure that all residents have received a health screening interview prior to acceptance into the community residential program.

(18) *Health appraisal.* The health authority shall provide a health appraisal for each resident is provided within fourteen days of admission unless there is documentation that the resident has had an appraisal within thirty days prior to admission to the facility. A health-trained professional or otherwise qualified personnel shall collect health history and vital signs. Only qualified health care personnel shall collect other data. The health appraisal shall include:

(i) Review of the transferred health record and/or health screening;

(ii) Screening for diet counseling for medical reasons;

(iii) Collection of additional data to complete the medical, dental, psychiatric and immunization histories, if not already available;

(iv) Recording of height, weight, pulse, blood pressure and temperature, if not already available;

(v) Administration of laboratory and other tests and examinations as appropriate, if medically indicated;

(vi) Notation of additional comments as needed; and

(vii) Initiation of therapy as appropriate.

(19) *Health examination.* Qualified health care personnel shall complete a health examina tion for each resident

within thirty days of admission. The examination shall include:

(i) A "hands-on" examination by an appropriately licensed health care professional;

(ii) Dental screening, hygiene and treatment when the health of the resident would be adversely affected; and

(iii) Additional health care services as indicated by qualified health care personnel.

(20) *First aid kits.* The administrator shall ensure that first aid kits are available in designated areas of the facility as determined by the Safety Officer during the annual inspection. The health care provider shall determine the appropriate content of first aid kits.

(21) *Special medical programs.* The health authority shall provide specialized health education and treatment programs, including, but not limited to, personal hygiene, diet and exercise, family planning, communicable diseases, including sexually transmitted diseases and substance abuse education, prevention, intervention and treatment.

(22) *Detoxification.* The administrator and health authority shall develop a written plan to guide the clinical management of chemically dependent residents. The plan shall specify the process for involving the health authority and the substance abuse program on both a continuing and crisis intervention basis. The plan shall include:

(i) Completion of assessment prior to admission into the program;

(ii) Validation that the individual only requires non-pharmacologically supported care;

(iii) Integration of individual treatment plans into the individualized program plan; and

(iv) Referrals to specified community resources on release when appropriate.

(23) *Substance abuse programming.* The administrator and health authority shall develop a written plan to provide substance abuse education, intervention, assessment and treatment to residents who are diagnosed as substance abusers. The administrator, the health authority and the substance abuse program provider shall update the plan as needed and review it at least annually. The plan shall link existing community programs and services to the facility program. The plan shall include, at a minimum:

(i) Assessment and evaluation;

(ii) Referral for treatment, if requested or court-ordered; and

(iii) Availability of appropriate self-help groups.

(24) *Informed consent.* The health authority shall observe informed consent standards of the community for all resident care, examinations, treatments and procedures affected by informed consent. Health care shall not be rendered against a resident's will.

(25) *Participation in research.* The health authority shall prohibit the use of residents for medical, pharmaceutical, or cosmetic experiments. This standard shall not preclude individual treatment of a resident based on need for a specific medical procedure that is not generally available.

(26) *Confidentiality of health records.* In compliance with 5 U.S.C. 552(a) (the Privacy Act of 1974) as amended and 42 CFR Part 2 (Regulations on Confidentiality of Alcohol and Drug Abuse Patient Records), the health authority shall keep the health record confidential. The health authority shall require that, at a minimum:

(i) The active health record be maintained separately from the program record;

(ii) Access to the health record be controlled by the health authority; and

(iii) The health authority shall share with the administrator of the facility or designee information regarding a resident's medical management, security and the ability to participate in programs.

(27) *Medical record contents.* The health authority shall approve the method of recording entries in the record and the form and format of the record. A resident's medical record shall contain:

(i) Transferred health record;

(ii) Copies of the completed intake screening form, if separate;

(iii) The health appraisal data collection form, if separate;

(iv) Prescribed medications and their administration;

(v) Laboratory, x-ray and diagnostic studies;

(vi) The signature and title of each documenter;

(vii) Consent and refusal forms;

(viii) Release of information forms;

(ix) Place, date and time of health encounters;

(x) Discharge summary of hospitalization (if applicable); and

(xi) Health service reports (e.g., dental, psychiatric and other consultations).

(28) *Transfer of health information and records.* Summaries or copies of the health record shall be sent routinely to the health authority of any facility to which the resident is transferred. The resident shall authorize, in writing, the transfer of health records and information, unless otherwise provided by law or administrative regulation having the force and effect of law.

(k) *Release*—(1) *Temporary release.* Temporary release programs shall include:

(i) Identification of the circumstances under which residents may be released on a temporary basis;

(ii) Operating procedures;

(iii) Written rules of resident conduct;

(iv) A record-keeping system that documents dates, times and authorization for release;

(v) A system to evaluate program effectiveness; and

(vi) Efforts to obtain community cooperation and support.

(2) *Work or education release.* The administrator or designee shall encourage residents to participate in work or education release programs. The appropriate court shall sanction education and work release.

(3) *Final release.* Written procedures for the final release of residents shall include, but not be limited to:

(i) Verification of identity and release authority, including verification of completion of terms of the sentence;

(ii) Verification that all resident property leaves with the resident and that no facility property leaves the facility;

(iii) Completion of any pending action, such as grievances or claims for damages or lost possessions;

(iv) Transfer of health information if appropriate; and

(v) Transportation arrangements, if required.

(4) *Sentence reduction.* Where tribal code permits, the administrator or designee shall allow sentence reduction based on evidence of good behavior.

(5) *Detainers.* The presence of a detainer shall not automatically prevent the release of a resident from the community residential facility.

§ 10.34 Resident programs and services.

(a) *Individual program plan*—(1) *Development of individual program plan.* Within the first two weeks of admission, the facility staff shall design a written program, tailored for each individual, with and for each resident. The staff and resident shall sign and date the plan, which shall include measurable criteria of expected behavior and accomplishments and a time schedule for achieving specified goals.

(2) *Program review.* Staff shall review resident progress at least monthly either through staff meetings or by individual staff; staff shall document the outcome of each review.

(3) *Change in program.* Staff shall review and discuss any change in an individualized program with the

resident. Staff and resident shall document the review by signature and date.

(4) *Removal from program.* The administrator shall govern the removal of any resident from the program.

(5) *Case management.* Facility staff shall use a case management approach to provide counseling services for each resident. Staff of the community residential facility shall either provide or coordinate this service.

(6) *Facility reimbursement.* The administrator shall govern the facility's reimbursement by residents.

(7) *Resident budget.* Residents who earn money shall develop a written personal budget.

(b) *Program coordination*—(1) *Availability of programs.* The administrator or designee shall develop a written plan for resident activities, programs and services to prevent enforced idleness. Resident programs and services shall be available in the facility or accessible in the community. Programs and services shall include, but not be limited to social services, religious services, including traditional religious practices and ceremonies, recreation and leisure time activities, counseling, library services, education programs and substance abuse programming.

(2) *Inventory of community services.* The administrator or designee shall maintain and make available to all staff and residents a periodic inventory of functioning community services.

(c) *Work programs*—(1) *Work assignments.* The administrator or designee shall develop a written resident work assignment plan that provides work assignments for residents include the disabled. Work may include facility maintenance duties and community service projects. The administrator shall prohibit discrimination in resident work assignments based on race, creed, gender, age, marital status, disability or tribal affiliation.

(2) *Regulation of work programs.* Facility resident work programs shall comply with applicable federal regulations.

(d) *Recreation, library and religious programming*—(1) *Comprehensive recreation program.* The administrator or designee shall require that residents be offered opportunities for recreation and leisure time activities. A facility staff member or trained volunteer shall coordinate the recreation program.

(2) *Library.* The administrator or designee shall develop a written plan to provide reading materials to residents. The plan shall include the location where reading materials are kept, the process by which residents obtain and return these materials and designation of the staff member or trained volunteer who is responsible for library services. The administrator shall update the plan as needed and review it at least annually.

(3) *Religious programs.* Residents shall have the right to practice their religion, subject only to the limitations necessary to maintain institutional order and security.

(e) *Correspondence and telephone*—(1) *Regulation of correspondence.* The administrator shall regulate resident correspondence and shall make this policy available to all staff and residents. The administrator shall review this policy annually and update it as needed.

(2) *Limitations on resident correspondence.* The administrator shall not limit the volume of lawful correspondence (e.g., letters, packages and publications) a resident may send or receive and shall not restrict the length, language, content or source of the correspondence, except where there is clear and convincing evidence to justify the limitations for reasons of public safety, facility order or security.

(3) *Indigents' correspondence.* The administrator or designee shall provide indigent residents with a system that enables them to send a minimum of two letters per week.

(4) *Inspection of letters and packages.* The administrator or designee may open resident letters or packages, both incoming and out-going, to inspect them for contraband. The administrator or designee shall notify residents when incoming or out-going letters or packages are rejected. The administrator or designee shall deposit any cash, checks, or money orders in the resident's account and issue a receipt to both the resident and the sender. The administrator or designee shall forward any contraband found to the appropriate law enforcement authority. The supervisor shall forward all mail within twenty-four hours of receipt except for Saturdays, Sundays and holidays. Residents shall be prohibited from carrying money in the facility.

(5) *Privileged correspondence.* The administrator shall permit residents to send sealed letters to specified groups of persons and organizations including, but not limited to, courts, including probation staff, counsel, officials of the confining authority, administrators of grievance systems and the media. Mail to residents from this specified class of persons and organizations shall be opened only to inspect for contraband and only in the presence of the resident.

(6) *Holding and forwarding mail.* The administrator or designee shall forward or return first-class letters and packages for residents after transfer or release.

(7) *Telephone.* The administrator or designee shall provide for resident access to telephones.

(f) *Visiting*—(1) *Visiting rules.* The administrator shall establish rules for resident visiting.

(2) *Number of visitors.* The administrator or designee shall limit the number of visitors a resident may receive and the length of the visits only to the degree necessary in terms of facility schedules, space, the terms of the resident's individualized program plan and personnel constraints except where there are substantial reasons to justify such limitations.

(3) *Sobriety statement.* Facility visitors and volunteers shall sign a sobriety statement. The statement shall stipulate that:

(i) They are not under the influence of alcohol or illegal mood-altering substances;

(ii) They are not carrying such substances on their person or in their belongings; and

(iii) They consent to a breath test or non-invasive search as a condition of entry, if there is probable cause.

(4) *Searches (visiting).* The administrator or designee shall provide clear instructions to staff and residents concerning resident and visitor search procedures and the approval required for visual observations of unclothed residents.

(5) *Special visits.* The administrator or designee shall provide for special visits.

(6) *Visitor registration.* The administrator or designee shall provide for visitor registration and identification on entry into the facility.

Subpart E—Juvenile Community Residential Facilities

§ 10.41 Administration and management.

(a) *General administration*—(1) *Mission and goals.* A written statement, which shall be updated as necessary, shall describe the philosophy, goals and policies of the facility and its relationship to the juvenile justice system.

(2) *Administration of facility.* An administrator, whose responsibility and authority shall be documented, shall oversee each facility. The appointment shall be based on written qualifications.

(3) *Organization chart.* An organization chart shall describe the facility's organization and chain of command. The chart shall be updated as needed.

(4) *Service provider roles.* A Memorandum of Agreement (MOA),

which shall be updated as needed and reviewed at least annually, shall define the role and function of employees of public or private agencies providing a service to the facility. The MOA shall specify the relation of service providers to the authority and responsibility of the administrator.

(5) *Interagency meetings.* The administrator shall conduct regular meetings between the staff of juvenile justice, youth services, education, health care, emergency shelter and community residential agencies to develop and maintain effective interagency coordination.

(6) *Policy and procedure manual.* All employees of the facility shall have access to a policy and procedure manual and its supporting documents. The Chief, Division of Law Enforcement, shall approve the manual and its supporting documents, which shall provide for the implementation of these standards and shall direct documentation of compliance. The administrator shall update the manual as needed and review it annually.

(7) *Dissemination of policy and procedure.* The administrator shall disseminate approved, new or revised policies and procedures to designated staff, volunteers and, where appropriate, residents prior to implementation. Staff shall review and indicate in writing that they understand the content of policies and procedures prior to their implementation.

(8) *Channels of communication.* The administrator or designee shall regularly disseminate information to staff prior to the beginning of their shift.

(9) *Monitoring and assessment.* The Agency Superintendent or designee shall review and inspect operations and programs at least annually.

(10) *Annual report.* The administrator shall submit a written annual report to the Chief, Division of Law Enforcement, through the Area Director and Agency Superintendent, and shall forward a copy to the appropriate court and health care authority. The report shall address goals, objectives, population data, programs and services provided, budget, space and equipment needs and major developments.

(11) *Public information program.* The administrator or designee shall provide for a public information program, which protects the juveniles' right to privacy.

(12) *Governing board.* The facility shall have a local governing board or advisory committee which shall be representative of the community and shall meet at least semi-annually.

(13) *Meeting with governing board.* The governing board shall maintain a permanent record of all meetings.

(14) *Legal counsel.* Legal counsel shall be available to the administrator and other staff as needed in the performance of their duties.

(15) *Separation of adults and juveniles.* If services for adult and juvenile offenders are provided by the same agency, statements of philosophy, policy, program and procedure shall distinguish between criminal codes and the statutes that establish and give direction to programs for juveniles.

(b) *Fiscal management*—(1) *Budgetary compliance.* If operated by the BIA, the facility shall comply with the directives of the Agency regarding budget preparation, submission, and administration. If operated by a tribe, the facility shall comply with the directives of the tribe regarding budget preparation, submission, and administration.

(2) *Accounting compliance.* If operated by the BIA, the facility shall comply with the Agency accounting directives. If operated by a Tribe, the facility shall comply with Tribal accounting directives.

(3) *Basis of budget.* The administrator shall document a direct relationship between the budget and planned operational, staffing and program needs of the facility.

(4) *Property management compliance.* If operated by the BIA, the facility shall comply with Agency property management directives. If operated by a Tribe, the facility shall comply with Tribal property management directives.

(5) *Federal acquisition regulation compliance.* If operated by the BIA, the facility shall comply with Agency directives for facility services, equipment and supply purchases. If operated by a tribe, the facility shall comply with tribal directives for facility services, equipment and supply purchases.

(6) *Space and equipment needs and deficiencies.* The administrator shall report space and equipment needs and deficiencies annually to the Area Director through the Agency Superintendent.

(7) *Program needs and deficiencies.* The administrator shall report program needs and deficiencies, i.e., staffing, supplies, training and contract services, annually to the Chief, Division of Law Enforcement, through the Area Director and Agency Superintendent.

(8) *Cost of resident board.* The facility shall charge all contract users at the same rate.

(9) *Fund accounts.* The administrator shall arrange for an independent audit of resident fund accounts, including canteen or commissary, following standard accounting practices. The administrator shall use any profit or interest which accrues for the benefit of the residents.

(c) *Personnel*—(1) *Personnel policy.* If operated by the BIA, the facility shall comply with Agency personnel management directives. If operated by a Tribe, the facility shall comply with Tribal personnel management directives.

(2) *Personnel manual.* The administrator shall make a copy of the applicable personnel manuals and regulations available to every employee.

(3) *Staffing requirements.* The administrator shall review employee workload annually to ensure that residents have access to staff, programs and services. The administrator shall develop and update the facility's shift relief factor annually.

(4) *Criminal record check.* In accordance with the Indian Child Protection and Family Violence Prevention Act of 1990 (25 U.S.C. 3201), the administrator or designee shall conduct a criminal record check of all new employees prior to employment to determine if there are criminal convictions that have a specific relationship to job performance.

(5) *Physical examination.* All employees who have direct contact with residents shall have a pre-employment physical examination. There shall be provisions for re-examination.

(6) *Physical fitness.* Juvenile community residential workers shall meet BIA or comparable tribal standards for physical fitness.

(7) *Code of ethics.* The facility shall have a written Code of Ethics that outlines the professional standards expected of all employees and recognizes that community residential personnel may be held to a higher behavioral standard because of the nature of their duties.

(8) *Confidentiality.* Consultants, contract personnel, employees of other public and private agencies and volunteers who work with residents shall agree to comply with the facility's policies on confidentiality of information.

(d) *Training and staff development*—(1) *Management of training programs.* A qualified employee, who has received training in training delivery methods, shall plan, coordinate and supervise employee and volunteer training programs. The administrator shall identify, evaluate and update job-related training needs annually.

(2) *Training curriculum approval.* The Chief, Division of the Law Enforcement, in conjunction with the Indian Police Academy, shall approve training

programs and curriculum required by these standards.

(3) *Outside resources.* The facility shall support the integration of IHS-approved and other training with the approval of the administrator.

(4) *Education and training.* The administrator shall encourage employees to continue their education and training.

(5) *Cultural awareness.* Orientation training shall include a component on cultural issues relative to the local tribe(s).

(6) *Juvenile community residential worker orientation training.* All new full or part-time juvenile community residential workers shall receive the number of hours of orientation training recommended by the Chief, Division of Law Enforcement, during their first year of employment. Employees shall complete forty of these hours prior to being independently assigned to work in the facility.

(7) *Juvenile community residential worker in-service training.* All full or part-time juvenile community residential workers shall receive an additional forty hours of job-relevant training each subsequent year of employment.

(8) *Clerical and support staff orientation training.* All new clerical and support staff who have minimal resident contact shall receive the number of hours of orientation training recommended by the Chief, Division of Law Enforcement, within their first year of employment.

(9) *Clerical and support staff in-service training.* All clerical and support staff shall receive an additional sixteen hours of job-relevant training each subsequent year of employment.

(10) *Administrative and managerial staff orientation training.* New administrative and managerial staff shall receive at least the number of hours of training recommended by the Chief, Division of Law Enforcement, within their first year of employment in this position.

(11) *Administrative and managerial staff in-service training.* Administrative and managerial staff shall receive at least twenty-four hours of job-relevant training each subsequent year of employment.

(12) *Specialized training.* At least one juvenile community residential worker per shift shall be certified as an emergency medical technician. All community residential staff who have contact with residents shall receive training in advanced first aid and CPR.

(e) *Facility records*—(1) *Compliance.* The facility shall comply with 5 U.S.C. 552 (the Freedom of Information Act), 5 U.S.C. 552(a) (the Privacy Act of 1974), as amended, 43 CFR 2.79(a), or comparable tribal regulations.

(2) *Records management.* The facility shall have a system for the management, dissemination, retrieval, storage, archiving and (when appropriate) destruction of information and community residential records.

(3) *Law enforcement sensitive information.* Law enforcement sensitive records and information shall be marked privileged. The administrator or designee shall keep these records in a locked cabinet or file room.

(4) *Release of information and consent.* Juvenile residents shall sign a Release of Information Consent Form in compliance with 5 U.S.C. 552(a) (the Privacy Act of 1974) as amended prior to the release of privileged information. The administrator or designee shall keep a copy of the signed release in the resident's record.

(5) *Separation of record contents.* The administrator or designee shall identify and separate contents of resident records according to an established format which, at a minimum, shall separate privileged from public information, and shall separate juvenile resident records from those of adult residents managed by the same program.

(6) *Access to information.* The administrator shall define clearly personnel who have access to resident records.

(7) *Daily report.* The administrator or designee shall maintain a daily report which shall identify:

(i) The names of residents in custody, including residents on temporary release or in other locations;

(ii) Names of residents admitted and released; and

(iii) The number of days each juvenile has been in custody.

(8) *Identification and location record.* The facility shall maintain a system that identifies all residents in custody and their actual physical location.

(9) *Custody record.* The facility shall maintain custody records of all residents held at the facility. The record shall include only relevant and necessary information and shall be limited to:

(i) Initial intake form;

(ii) A copy of the initial detention booking record which resulted in this placement;

(iii) Case information from referral source, if available;

(iv) Case history or social history;

(v) Medical record;

(vi) Individual plan or program;

(vii) Signed release of information forms;

(viii) Current employment or education data;

(ix) Signed acknowledgment of receipt of program rules and disciplinary policy;

(x) Documented legal authority to accept resident;

(xi) Grievance and disciplinary record;

(xii) Referrals to other agencies; and

(xiii) Final release or transfer report.

(10) *Admission information.* The administrator or designee shall record admission information for each resident admitted to the facility. The record shall include the following data, unless prohibited by statute:

(i) Admission number;

(ii) Name and address;

(iii) Name of parent, guardian or legal custodian;

(iv) Date and place of birth;

(v) Gender;

(vi) Ethnic origin or tribal affiliation;

(vii) Emergency contact name, relationship, address and phone number;

(viii) Date and time of admission;

(ix) Name of referring agency or committing authority;

(x) Reason for referral;

(xi) Social history if available;

(xii) Special medical problems or needs;

(xiii) Legal status, including jurisdiction, length and conditions of sentence; and

(xiv) Signature of both resident and employee taking the information.

(11) *Conducting research.* All research conducted shall comply with federal and tribal regulations pertaining to conducting and disseminating research findings as well as professional and scientific ethics. The administrator, the Agency Superintendent and the Area Director shall approve all research prior to implementation. The administrator shall regulate voluntary resident participation in research.

(f) *Citizen involvement and volunteers*—(1) *Volunteer coordinator.* The administrator shall encourage citizen participation in volunteer programs by designating a staff member as volunteer coordinator.

(2) *Volunteer plan.* The volunteer coordinator shall develop and implement a written plan for volunteer services. The volunteer coordinator and administrator shall update the plan as necessary and review it at least annually. The plan shall include:

(i) Lines of authority;

(ii) Responsibility and accountability for volunteer services;

(iii) Procedures for the screening and selection of volunteers;

(iv) A volunteer orientation or training program, which is appropriate to the nature of the assignments;

(v) A requirement that volunteers shall agree in writing to abide by all facility rules, policies, procedures and practices, particularly those related to security and confidentiality of information; and

(vi) A statement that the administrator may discontinue a volunteer activity at any time by written notice.

§ 10.42 Physical plant.

(a) *Code compliance*—(1) *Building and safety code compliance.* If owned by the Bureau, the facility shall comply with 29 CFR Part 1910, Subparts D, E, G and L. If owned by a tribe, the facility shall comply with the National Fire Protection Association (NFPA) Life Safety Code 101 Chapters 2, 4 through 7, and 16 (if new community residential occupancy) or 17 (if existing community residential occupancy), or comparable tribal regulations.

(2) *Zoning.* The facility shall comply with applicable zoning and land use requirements.

(3) *Accessibility.* The facility shall comply with 25 U.S.C. 794 (the Rehabilitation Act of 1973) as amended, 41 CFR 101–19.6 (Uniform Federal Accessibility Standards), and 43 CFR Part 17.

(4) *OSHA compliance.* The facility shall comply with 29 CFR Part 1910, Subparts C through E, G, K, L and S (Occupational Health and Safety Standards) or comparable tribal regulations. If other activities governed by sections of 29 CFR Part 1910 not identified in this standard are carried out in the facility, the section(s) of 29 CFR Part 1910 governing that activity or comparable tribal regulations apply.

(5) *Health and safety inspection.* In compliance with 29 CFR Part 1960, Subparts B through D, the facility shall receive at least one inspection each year by a qualified safety and health inspector and Environmental Health Specialist and/or Sanitarian. Any request for inspection shall be directed to the Area Safety Manager or Officer through the Agency Superintendent.

(6) *Furnishings and equipment code compliance.* The administrator shall maintain documentation by an independent, qualified source that the interior furnishing materials in inmate living areas, exit areas and places of public assembly shall be in accordance with NFPA Life Safety Code Section 6–5 or comparable tribal regulations.

(b) *Facility organization*—(1) *Co-located adult and juvenile facility.* If the juvenile facility is on the grounds of any other type of detention or community residential facility, it shall be a separate, self-contained unit.

(2) *Separation from detention.* When the facility is part of or attached to a juvenile detention facility, residents shall be housed separately from detained juveniles. Community residential facility residents and detained juveniles shall not use program and activity spaces at the same time.

(3) *Separation of males and females.* The facility shall provide for sight and sound separation of male and female residents in their sleeping, shower and toilet areas.

(4) *Rated capacity.* The number of residents shall not exceed the facility's rated capacity.

(5) *Location.* The facility shall be located conveniently for criminal justice agencies, the health authority, community agencies and residents' legal representatives, families and friends.

(c) *Environmental conditions*—(1) *Artificial light levels.* Lighting levels in resident cells or rooms shall be at least twenty footcandles at the desk and in the personal grooming areas. Lighting levels throughout the facility shall be appropriate to the tasks and activities carried out in its spaces. An independent, qualified source shall document lighting levels.

(2) *Noise levels.* Noise levels shall not exceed seventy decibels in the daytime and forty-five decibels at night. An independent, qualified source shall document noise levels.

(3) *Indoor air quality.* Air circulation shall be at least ten cubic feet of outside or recirculated filtered air per minute per occupant. An independent, qualified source shall document air circulation.

(4) *Use of tobacco.* The administrator shall prohibit the use of tobacco in the facility by staff, juveniles and the public except in traditional ceremonies and then only in designated areas.

(5) *Heating and cooling.* Temperatures shall be appropriate to the summer and winter comfort zones.

(d) *Security and control*—(1) *Emergency exits.* In compliance with NFPA Code and OSHA regulations, designated exits in the facility shall permit prompt evacuation of residents and staff members in an emergency. Facility exits shall be properly positioned, clear and distinctly and permanently marked.

(2) *Emergency equipment.* The facility shall have the equipment necessary to maintain essential lights in an emergency.

(e) *New facility planning process*—(1) *New facility planning requirement.* All new construction, renovation and expansion projects shall follow the Planning of New Institutions (PONI) process as required by 25 CFR Part 296.

(2) *Safety management review.* The design and specifications for all new construction, renovation and expansion projects shall be reviewed by the Bureau of Indian Affairs in compliance with 29 CFR 1960, Suparts B through D.

(f) *New construction, renovation and expansion*—(1) *Single occupancy requirements.* Only one resident shall occupy each room designed for single occupancy. All single rooms shall have at least sixty square feet of floor space of which no more than four square feet is closet or wardrobe space. Each room shall have, at a minimum:

(i) Natural light;

(ii) Bed, mattress, pillow and bedding;

(iii) Access to toilets, wash basins and showers with some degree of privacy; and closet or locker space for the storage of personal items.

(2) *Multiple occupancy requirements.* Where used, multiple occupancy rooms shall provide:

(i) A minimum of sixty square feet of floor space per occupant in the sleeping area of which no more than four square feet is closet or wardrobe space;

(ii) Natural light;

(iii) Access to toilets, washbasins and showers, with some degree of privacy; and

(iv) Some degree of privacy in the sleeping area.

(3) *Space, furnishings and conditions for dayrooms.* The facility shall provide dayroom space sufficient for facility residents. The dayroom shall provide:

(i) Natural light;

(ii) A minimum of thirty-five square feet of space per resident; and

(iii) Seating and writing surfaces, sufficient for the number of residents who use the dayroom.

(4) *Toilets.* The facility shall provide operable toilets at a minimum ratio of one for every twelve residents in male facilities and one for every eight residents in female facilities. Urinals may be substituted for up to one-half of the toilets in male facilities. All housing units with three or more residents shall have two toilets.

(5) *Wash basins.* Residents shall have access to operable wash basins with hot and cold running water in the housing units at a minimum ratio of one basin for every twelve occupants.

(6) *Showers.* Residents shall have access to operable showers with temperature-controlled hot and cold running water at a minimum of one shower for every eight residents. Water for showers shall be thermostatically controlled to temperatures ranging from one hundred degrees to one hundred-twenty degrees Fahrenheit.

(7) *Housing for the disabled.* Disabled residents shall be housed in a manner

that provides for their safety in compliance with 25 U.S.C. 794 (the Rehabilitation Act of 1973) as amended, 41 CFR 101–19.6 (Uniform Federal Accessibility Standards), and 43 CFR Part 17, yet prevents their being discriminated against in their use of the facility.

(8) *Coeducational program space.* If the facility houses both male and female residents, space shall be provided for coeducational activities.

(9) *Exercise and recreation areas.* The facility shall provide access to outdoor, covered or enclosed exercise areas. Outdoor exercise areas shall provide a minimum of one thousand five hundred square feet of unencumbered space; covered and enclosed exercise areas shall provide a minimum of one thousand square feet of unencumbered space. Exercise areas shall be adequate in size and type to ensure that each resident shall be offered at least one hour of access daily regardless of climatic conditions.

(10) *Multi-purpose and interview rooms.* The facility shall provide a minimum of one accessible multi-purpose room and one accessible interview room.

(11) *Visiting spaces.* The facility shall provide space and furnishings for group activities and visits. The space shall allow contact between residents and visitors.

(12) *Food service spaces.* When the facility provides for food preparation, it shall have adequate space for food processing, storage, refrigeration and sanitation. Toilet and wash basin facilities shall be available to food service personnel and residents in the vicinity of the food preparation area. The square footage of the kitchen shall be appropriate to the needs of the facility. The facility shall provide a dining area with a minimum of fifteen square feet per occupant.

(13) *Storage spaces.* The facility shall provide the following storage spaces:

(i) A secure, well-ventilated janitor closet, which includes sink and adequate space for the storage of cleaning implements and supplies;

(ii) Secure storage for flammable, toxic and caustic items; and

(iii) Storage space for resident clothing, bedding, mattresses, personal hygiene items and facility supplies.

(14) *Laundry.* The facility shall have a minimum of one operable washer and one operable dryer, appropriate to the level of use, or equivalent laundry services available in the community.

(15) *Medication storage.* The facility shall provide space for the secure storage of medications kept in the facility.

(16) *Staff toilets.* The facility shall provide staff toilets that residents shall not use.

(17) *Public spaces.* The facility shall provide public restroom(s) and a visitor waiting or entry with an adequate number of seats to accommodate anticipated visitors outside resident living areas.

(18) *Administration.* The facility shall provide adequate space for its administrative functions. This space shall include an office for the administrator, work space for clerical staff, duplication of copies and supply and equipment storage, space for storage of facility records. and space for meetings.

(19) *Staff.* The facility shall provide adequate space for staff assigned to work in the facility. These spaces include an area in which they can store personal property, change clothes and shower and an area in which training, meetings, briefings and breaks can occur.

(20) *Mechanical.* The facility shall provide separate and adequate space for mechanical systems and equipment.

§ 10.43 Institutional operations.

(a) *Security and control*—(1) *Full coverage of posts.* At least one staff person shall be on the facility premises, awake, available and responsible to residents' needs twenty-four hours a day. The staffing pattern of the facility shall concentrate staff at the times when most residents are in the facility.

(2) *Supervision of coed activities.* Facility staff shall supervise male and female residents in coed activities and spaces continuously and directly.

(3) *Male and female staff requirement.* When both males and females are housed in the facility, at least one male and female staff member shall be on duty at all times.

(4) *Prohibited supervision.* No resident or group of residents shall be given control or authority over other residents.

(5) *Counts.* The facility shall have a system to physically count residents that includes strict accountability for residents assigned to work and education release and other approved temporary releases.

(6) *Movement.* Community residential staff shall regulate all resident movement outside the facility.

(7) *Transportation of residents.* The administrator shall govern the safe and secure transportation of residents outside the facility.

(8) *Use of vehicles.* The administrator shall govern the use of departmental and personal vehicles for official purposes and shall prohibit the use of personal vehicles for transportation of residents.

(9) *Shift activity log.* The facility shall maintain a written record of the following:

(i) Personnel on duty;

(ii) Resident population at the beginning and end of each shift;

(iii) Record of counts taken;

(iv) Shift activities; and

(v) Unusual occurrences or incidents.

(10) *Weekly inspection. The administrator or designee shall inspect all facility spaces and equipment at least weekly, to determine the status of all security items and the sanitary condition of the facility. The administrator or designee shall document the inspection and initiate corrective action if needed.*

(11) *Monthly inspection.* The administrator shall inspect all areas of the facility at least monthly to determine the status of all safety items, determine the sanitary condition of the facility, document the inspection and initiate corrective action if needed.

(12) *Fire safety inspection.* A qualified fire protection specialist shall inspect the facility to test the fire suppression and detection system, equipment and facility training in compliance with 29 CFR 1910.36(d), 1910.37(m), 1910.37(n), 1910.38, and 29 CFR 1960, Subpart D.

(13) *Use of restraints.* Staff shall use instruments of restraint only as a precaution against escape during transfer. Staff shall apply restraints during transfer only with the approval of the administrator or designee and only for the amount of time that is absolutely necessary.

(14) *Contraband control.* The administrator shall provide for searches of facilities and residents to control contraband and to provide for its disposition. When a new crime is suspected, the administrator shall be notified. The administrator shall maintain and make available to the appropriate authorities all evidence.

(15) *Visual inspections.* Trained staff shall conduct visual inspections of unclothed residents only when there is a reasonable belief that the resident is carrying contraband or other prohibited material or at the time of admission if the resident is admitted from the community. Trained staff of the same sex as the resident shall conduct all visual inspections in private.

(16) *Key and tool control.* The administrator shall govern the control, issuance, use and storage of keys, tools and culinary and medical equipment.

(17) *Use of force and firearms.* The facility shall comply with 25 CFR 11.304 with regard to the use of force, firearms, chemical agents, or any other

weapon. The administrator shall prohibit the presence of firearms of any kind within the facility or on its grounds.

(b) *Safety and emergency procedures*—(1) *Fire prevention.* The administrator shall govern the storage and use of all flammable, toxic and caustic materials, the use of non-combustible receptacles for smoking materials, the amount of personal items, including reading materials, which residents may keep in their living units and the amount and location of items stored in the facility.

(2) *Preventive maintenance.* The administrator or designee shall develop a written plan for preventive maintenance of the facility. The administrator shall review the plan annually and update it as needed. If tribally operated, the plan shall be supported by a Memorandum of Agreement between the tribe and the Agency.

(3) *Evacuation plan.* The administrator shall develop a written evacuation plan prepared in case of fire or major emergency. The plan shall comply with 29 CFR 1910.38 or comparable tribal code. The applicable Safety Officer or designee shall review and approve the plan initially and annually. The administrator shall update and reissue the plan if necessary. The plan shall include:

(i) Location of floor plans;

(ii) Use of exit signs and directional arrows for traffic flow;

(iii) Location of a publicly posted plan;

(iv) At least quarterly drills in all facility locations; and

(v) Coordination with the fire department which services the facility.

(4) *Emergency plans.* The administrator or designee shall develop written plans that specify procedures to be followed in emergency situations. The administrator shall make these plans available to applicable personnel and shall review and update them at least annually. All facility personnel shall be trained in the implementation of these plans. Emergency situations shall include, but not be limited to:

(i) Riots and disturbances;

(ii) Hunger strikes;

(iii) Hostage situations;

(iv) Work stoppages;

(v) Unattended deaths, including successful suicides;

(vi) Attempted suicides;

(vii) Escapes and unauthorized absences; and

(viii) Other threats to the security of the facility.

(5) *Incident reporting.* The administrator shall require the immediate reporting of all incidents that result in physical harm to any person, threaten the safety of any person, result in the need for emergency care, result in damage to the facility or facility property, threaten the security of the facility, or involve the commission of a criminal offense. The administrator shall forward the reports to the Agency Superintendent through the appropriate chain of command.

(6) *Medical treatment (incident).* The administrator or designee shall ensure that all persons injured in an incident receive an immediate medical examination and treatment.

(7) *Notification of family.* The administrator shall provide for the notification of persons designated by the resident in the event of serious illness, injury or death.

(c) *Rules and discipline*—(1) *System of rewards and sanctions.* The administrator shall provide for a system to reward the positive behavior of residents and to provide sanctions for misbehavior.

(2) *Rules of conduct.* The administrator shall develop written rules of resident conduct that specify acts prohibited within the facility and penalties that may be imposed for various degrees of violations. The administrator or designee shall provide these rules to all residents and shall ensure that all residents understand them. All personnel who deal with residents shall receive sufficient training prior to working in the facility to be thoroughly familiar with the rules of resident conduct, the sanctions available and the rationale for the rules. The administrator shall review the written rules of resident conduct annually and update them, if necessary, to ensure that they are consistent with constitutional and legal principles as well as BIA and tribal standards and codes.

(3) *Minor infractions.* The administrator shall provide guidelines for the informal resolution of minor resident misbehavior.

(4) *Grievance procedure.* The administrator or designee shall make a written grievance procedure available to all residents. The procedure shall include at least one level of appeal.

(5) *Criminal violations.* In instances in which a resident is alleged to have committed a crime, the administrator or designee shall refer the case to the appropriate law enforcement officials for possible prosecution.

(6) *Disciplinary reports.* When rule violations require formal resolution, staff members shall prepare a disciplinary report and forward it to the administrator or designee. The disciplinary report shall include, but not be limited to:

(i) specific rules violated;

(ii) a formal statement of the charge(s);

(iii) an explanation of the event, which shall include who was involved, what transpired and the time and location of the occurrence;

(iv) unusual resident behavior;

(v) staff witnesses;

(vi) disposition of any physical evidence;

(vii) any immediate action taken, including the use of force; and

(viii) reporting staff member's signature; and

(ix) date and time the report is made.

(7) *Disciplinary process.* Residents shall receive notification of the rules violated, a formal statement of the charge, a description of the incident and notice of the date and time of hearing. The administrator or designee shall advise residents of their rights to be present at the hearing, to call witnesses on their behalf, to make a statement, to present documentary evidence, and to ask for assistance from staff in representing them at the hearing. An impartial person or panel of persons shall conduct the hearing.

(8) *Immediate removal from program for disciplinary reasons.* The administrator shall provide for the immediate return of a resident for an alleged disciplinary violation to a secure facility if the safety of the resident, other residents, staff or the security of the facility is at stake.

(9) *Record of disciplinary hearing.* The persons conducting the disciplinary hearing shall make a written copy of the decision and its disposition and shall provide copies to the resident and the administrators of the secure and community residential facilities for review. Residents shall have the right to appeal the decision to the administrator of the community residential facility or the next level of authority. The disciplinary report shall be removed from all files of residents found not guilty of an alleged rule violation.

(d) *Room restriction and removal from program*—(1) *Explanation for restriction.* Prior to room and/or privilege restriction, community residential staff shall explain the reasons for the restriction to residents, and residents shall have the opportunity to explain the behavior leading to the restriction.

(2) *Room restriction (minor).* Room restriction for minor misbehavior shall serve only a "cooling off" purpose and is short in duration, with the time period (fifteen–sixty minutes) specified at the time of assignment.

(3) *Room restriction (major).* Room restriction shall not exceed eight hours without review and administrative authorization and shall be used only when the resident is dangerous to self or others, and/or there is substantial evidence of plans to abscond.

(4) *Supervision during room restriction.* During room restriction, staff shall contact residents at least every fifteen minutes to ensure the well-being of the resident. The resident shall assist in determining the end of the restriction period.

(5) *Disciplinary removal from program.* The administrator shall remove residents from program for a disciplinary violation only after a hearing.

(6) *Emergency removal.* Pursuant to a placement order, the administrator of the facility or designee can order immediate removal from program and return to a secure facility when it is necessary to protect the resident or others. The immediate supervisor of the person ordering removal from program or the contracting officer shall review this action within three working days.

(7) *Authority for removal.* The administrator shall have the authority to define the criteria for removal of residents from the program. The procedure for removal from the program and transfer shall follow due process requirements and shall allow for resident appeal.

(e) *Resident rights*—(1) *Access to courts, counsel and legal materials.* Residents shall have the right to have access to attorneys, legal representatives, the courts and legal materials and to address uncensored communications to governmental authorities.

(2) *Freedom from discrimination.* Residents shall have the right to be free from discrimination based on race, religion, national origin, tribal affiliation, sex, disability, political beliefs, favoritism or nepotism. Residents shall have the right to equal access to programs and work assignments as provided in the classification program.

(3) *Equal access for women.* Male and female residents shall have the right to equal access to programs and services.

(4) *Right to communicate.* Residents shall have the right to receive visits and to communicate or correspond with persons or organizations, subject only to the limitations necessary to maintain order and security.

(5) *Protection from harm.* Residents shall have the right to protection from personal abuse, corporal punishment, personal injury, disease, property damage and harassment, by either staff or residents.

(6) *Freedom of personal grooming.* Residents shall have the right to determine the length and style of scalp or facial hair, unless health and safety reasons exist.

(7) *Treatment.* Residents shall have the right to medical, dental, mental health and sub stance abuse treatment and rehabilitative services as directed by the health authority.

(f) *Admission*—(1) *Admission policies.* The facility shall have clearly defined written procedures governing admission.

(2) *Documentation of commitment.* Court order, statute or compact shall be document legal commitment authority.

(3) *Notification of non-acceptance.* The administrator or designee shall advise the referring agency when a prospective resident is not accepted into the program, citing specific reasons.

(4) *Admission criteria.* The administrator shall distribute a copy of admission policies and criteria to referring agencies and interested parties.

(5) *Admission process.* Written procedures for admitting new residents shall include, at a minimum:

(i) determination that the juvenile is legally committed to the facility;

(ii) inventory of clothing and personal property taken into the facility;

(iii) receipt of health record, if required because of transfer;

(iv) completion of admission form as required by these standards;

(v) orientation; and

(vi) assignment to a room.

(6) *Suicide screening.* The administrator or designee shall ensure that all residents have been screened for suicide risk prior to acceptance in the community residential program.

(7) *Orientation.* All newly admitted residents shall receive written or oral information in the language they understand. The admitting officer shall document completion of orientation by a statement that shall be signed and dated by the resident and employee. The orientation shall include, but not be limited to:

(i) resident rules of conduct and potential disciplinary actions that may be taken;

(ii) programs and services available in the facility or community;

(iii) procedures for accessing health care services; and

(iv) resident rights and privileges.

(8) *Personal property inventory.* The admitting employee shall complete a written, itemized inventory of all personal property of newly admitted residents. The admitting employee shall store securely all juvenile property, including money and other valuables. The employee shall give the resident a receipt for all property held until release.

(9) *Policy on personal property.* The administrator or designee shall identify personal property that residents may receive or keep in their possession while in the facility, the sources from which these items may be obtained and how these items are received and inspected.

(g) *Classification*—(1) *Classification policy.* The administrator or designee shall review all residents and classify them as appropriate for community residential status prior to placement in the community residential facility.

(2) *Prohibited segregations.* The administrator shall prohibit the segregation of residents by race, color, creed, tribal affiliation, national origin, political beliefs, nepotism, favoritism or other prohibited criteria.

(h) *Food service*—(1) *Food service records.* At a minimum, the facility shall maintain records of the number of meals served to the resident population, the expenditures for food supplies and menus (planned and as served).

(2) *Dietary allowances.* The facility shall document that a registered dietician reviews dietary allowance at least annually to ensure compliance with nationally recommended food allowances. A diet manual, approved by a registered dietician, shall guide dietary allowances, including special diets.

(3) *Menu planning.* The administrator or designee shall plan, date and make all menus available for review at least one week in advance. The administrator or designee shall make notations of any substitutions, which shall be of equal nutritional value, in the meals actually served. The administrator or designee shall consider Native American food preferences in menu planning. The administrator or designee shall direct that menu evaluations shall be conducted at least quarterly to verify adherence to the nationally recom mended basic daily servings.

(4) *Medical special diets.* The administrator or designee shall provide for special diets that are prescribed by appropriate medical or dental personnel.

(5) *Religious preference special diets.* The administrator or designee shall provide for special diets for residents whose beliefs require adherence to religious dietary laws.

(6) *Food and discipline.* The administrator shall prohibit the use of food as a disciplinary measure.

(7) *Health protection.* Food service facilities and equipment shall meet

health and safety standards. Food service personnel and residents working in the food service area shall comply with applicable health regulations. The administrator or designee shall document compliance with health and safety regulations, including but not limited to, a pre-assignment medical examination.

(8) *Inspections of food products.* The appropriate government agency shall inspect and approve food products that are grown or produced within the system. The administrator or designee shall implement a distribution system that ensures prompt delivery of foodstuffs.

(9) *Inspection of food service area.* The administrator or designee shall conduct a weekly inspection of all food service areas, including dining and food preparation areas and equipment to ensure that they are sanitary, that all food storage areas are temperature controlled, and that food service personnel have made daily checks of refrigerator and water temperatures.

(10) *Meal service.* The facility shall serve meals under the direct supervision of staff. The facility shall provide at least three meals, of which two shall be hot, served at regular meal times during each twenty-four hour period, with no more than fourteen hours between the evening meal and breakfast. Provided that basic nutritional goals are met, variations may be allowed based on weekend and holiday food service demands.

(i) *Sanitation and hygiene*—(1) *Water supply.* The administrator shall maintain documentation that the entity which provides the facility's water source, supply, storage and distribution system meets the requirements of 42 U.S.C. 300g–6 (the Safe Drinking Water Act).

(2) *Sewage system.* The administrator shall maintain documentation that entity which provides the facility's sewage system complies with 33 U.S.C. 1251 *et seq.* (the Clean Water Act of 1977).

(3) *Sanitation plan.* The administrator or designee, in cooperation with the BIA or tribal maintenance program, shall develop a written housekeeping plan for all areas of the physical plant. The administrator or designee shall update the plan as needed and review it at least annually. The plan shall provide for daily housekeeping and regular maintenance by assigning specific duties to staff, residents and BIA or tribal Facility Maintenance. The plan shall require that:

(i) facility floors be kept clean, dry and free of hazardous substances;

(ii) a qualified person conduct monthly inspections to control vermin and pests;

(iii) solid and liquid wastes be disposed of properly;

(iv) clean, suitable and presentable bedding, linens, towels and (if applicable) be issued to new residents and exchanged on at least a weekly basis;

(v) necessary cleaning and storage of resident personal clothing be provided;

(vi) articles needed for personal hygiene be furnished; and

(vii) sufficient facilities in the housing areas to permit residents to shower or bathe on admission to the facility and daily thereafter.

(4) *Special clothing issue.* The facility shall provide for the issue of special and, where appropriate, protective clothing and equipment to residents participating in special work assignments. Such clothing shall be available in quantities that permit exchange as frequently as the work assignment requires.

(5) *Hair care.* The administrator or designee shall allow residents to arrange for hair cutting services.

(j) *Health care*—(1) *Written health care plan.* A written plan shall provide for the delivery of health care services, including medical, dental, mental health and substance abuse treatment, under the control of a designated health authority. The plan shall include the participation of IHS, social services and tribal health care providers. A Memorandum of Agreement between the administrator and the Director of the appropriate Indian Health Service (IHS) Service Unit or IHS contract health care provider shall document the health care plan. When this authority is other than a physician, final medical judgments shall rest with a single responsible physician, designated by the appropriate health authority, who shall meet the applicable licensure requirements.

(2) *Health program coordinator.* In facilities without full-time, qualified health personnel, a health-trained staff member shall coordinate the health care delivery system in the facility under the joint supervision of the responsible health authority and the administrator.

(3) *Annual review.* The administrator and the health authority shall update the plan as needed, review it annually to determine program needs including staffing, equipment and supplies and document its review by signature and date.

(4) *Medical/mental health judgment.* Medical, dental and mental health matters involving clinical judgments shall be the sole province of the responsible physician, dentist and/or psychiatrist or qualified psychologist.

(5) *Security regulations.* Security regulations applicable to facility personnel shall apply to health personnel.

(6) *Meetings with provider.* The health authority shall meet with the administrator or designee at least quarterly to review and evaluate the health care delivery system. The health authority shall provide an annual statistical report which documents the level and amount of health care services provided.

(7) *Review of health care policies.* The health authority and the administrator shall review and approve all policies and procedures relative to the health care plan prior to submission of these policies to the Chief, Division of Law Enforcement. Policies and procedures shall be reviewed at least annually and documented by signature and date.

(8) *Health training program.* The responsible health authority, in cooperation with the administrator, shall establish a health training program. The program shall provide instruction in the following areas:

(i) appropriate procedures to prevent the spread of communicable diseases;

(ii) the ability to respond to health-related situations within four minutes;

(iii) recognition of signs, symptoms and actions required in potential emergency situations;

(iv) recognition of chronic illness;

(v) administration of first aid and cardiopulmonary resuscitation (CPR);

(vi) methods of obtaining assistance from the health care provider;

(vii) recognition of signs and symptoms of and management of residents with mental illness, retardation, emotional disturbance, chemical dependency and suicidal behavior; and

(viii) procedures for patient transfers to appropriate medical facilities or health care providers.

(9) *Sick call.* The administrator or designee shall provide for the collection and referral of resident requests for health care. The facility shall have a system of sick call in-house or at the health care facility. The system shall include provision for referral of residents by staff for medical or other behavioral health evaluation, i.e, mental health, substance abuse, suicide. Sick call shall be held no less than once per week.

(10) *Twenty-four-hour emergency care.* The administrator and health authority shall develop a written plan for the provision of twenty-four hour emergency medical, dental and mental health care. The administrator and

health authority shall update the plan as needed and review it at least annually. At a minimum, the plan shall include:

(i) emergency evacuation of the resident from the facility;

(ii) emergency evaluation of the resident for medical or mental health problems;

(iii) use of an emergency medical vehicle;

(iv) use of one or more designated hospital, clinic, emergency on-call physician, dentist, psychiatrist, qualified psychologist or otherwise qualified clinician; and

(v) procedures that provide for the immediate transfer of residents when appropriate.

(11) *Health care treatment.* Health care staff or health-trained community residential staff perform treatment pursuant to written direct orders by personnel authorized by law to give such orders.

(12) *Licensure requirements.* The health authority shall comply with all applicable federal law, licensure requirements, rules, regulations and medical protocols in the delivery of health care services to the resident population.

(13) *Traditional practitioners.* The facility shall allow residents to participate in or receive traditional healing ceremonies and to use traditional healing methods, limited only to the degree necessary to preserve institutional security and order.

(14) *Prohibited use of detainees.* Residents shall not perform duties in the health care program.

(15) *Management of medications.* The administrator and health authority shall provide for the proper management of individual doses of medications that are kept in the facility. The administrator and health authority shall review the policy annually and update it as needed.

(16) *Administration of medications.* The administrator or designee shall ensure that persons administering medications have received training appropriate to their assignment. Employees shall administer medications according to direct or physician orders and record the administration of medications in a manner and on a form approved by the responsible physician.

(17) *Preliminary health care screening.* The administrator or designee shall ensure that all residents have received a health screening interview prior to acceptance into the community residential program.

(18) *Health appraisal.* The health authority shall provide a health appraisal for each resident within fourteen days of admission unless there is documentation that the resident has had an appraisal within thirty days prior to admission to the facility. A health-trained or otherwise qualified health care personnel shall collect health history and vital signs. Only qualified health care personnel shall collect other data. The health appraisal shall include:

(i) review of transferred health record and/or health screening;

(ii) collection of additional data to complete the medical, dental, psychiatric and immunization histories, with attention to elements that may indicate the presence of chronic disease, such as diabetes, if not already available;

(iii) recording of height, weight, pulse, blood pressure and temperature, if not already available;

(iv) administration of laboratory and other tests and examinations as appropriate, if medically indicated;

(v) notation of additional comments as needed; and

(vi) initiation of therapy as appropriate.

(19) *Health examination.* Qualified health care personnel shall complete a health examination for each resident within thirty days of admission. The examination shall include:

(i) a "hands-on" examination by an appropriately licensed health care professional;

(ii) dental screening, hygiene and treatment when the health of the juvenile would be adversely affected; and

(iii) additional health care services as indicated by qualified health care personnel.

(20) *First aid kits.* The administrator shall ensure that first aid kits are available in designated areas of the facility as determined by the Safety Officer during the annual inspection. The health care provider shall determine the appropriate content of first aid kits.

(21) *Special medical programs.* The health authority shall provide specialized health education and treatment programs, including, but not limited to, personal hygiene, diet and exercise, family planning, communicable diseases, including sexually transmitted diseases and substance abuse education, prevention, intervention and treatment.

(22) *Detoxification.* The administrator and health authority shall develop a written plan to guide the clinical management of chemically dependent residents. The plan shall specify the process for involving the health authority and the substance abuse program on both a continuing and crisis-intervention basis. The plan shall include:

(i) completion of assessment as required by Public Law 99–570 or warranted by additional indications;

(ii) validation that the individual only requires non-pharmacologically supported care;

(iii) integration of individual treatment plans into the individualized program plan; and

(iv) referrals to specified community resources on release when appropriate.

(23) *Substance abuse programming.* The administrator and health authority shall develop a written plan to provide substance abuse education, intervention, assessment and treatment to residents who are diagnosed as substance abusers. The administrator, health authority and substance abuse program provider shall update the plan as needed and review it at least annually. The plan shall link existing community programs and services to the facility program. The plan shall include, at a minimum:

(i) assessment and evaluation;

(ii) referral for treatment, if requested or court-ordered; and

(iii) availability of appropriate self-help groups.

(24) *Informed consent.* The health authority shall observe informed consent standards of the community for all resident care, examinations, treatments and procedures affected by informed consent. The informed consent of a parent, guardian or legal custodian shall apply when required by law. Health care shall not be rendered against a resident's will.

(25) *Participation in research.* The health authority shall prohibit the use of residents for medical, pharmaceutical, or cosmetic experiments. This standard shall not preclude individual treatment of a resident based on his or her need for a specific medical procedure that is not generally available.

(26) *Confidentiality of health records.* In compliance with 5 U.S.C. 552(a) (the Privacy Act of 1974) as amended and 42 CFR Part 2 (Regulations on Confidentiality of Alcohol and Drug Abuse Patient Records), the health authority shall keep the health record confidential. The health authority shall require that, at a minimum:

(i) the active health record be maintained separately from the program record;

(ii) access to the health record be controlled by the health authority; and

(iii) the health authority share with the administrator or designee information regarding a resident's medical management, security and the ability to participate in programs.

(27) *Medical record contents.* The health authority shall approve the method of recording entries in the record and the form and format of the record. A resident's medical record shall contain:

(i) transferred health record;

(ii) copies of the completed intake screening form, if separate;

(iii) the health appraisal data collection form, if separate;

(iv) prescribed medications and their administration;

(v) laboratory, x-ray and diagnostic studies;

(vi) the signature and title of each documenter;

(vii) consent and refusal forms;

(viii) release of information forms;

(ix) place, date and time of health encounters;

(x) discharge summary of hospitalization (if applicable); and

(xi) health service reports (e.g., dental, psychiatric and other consultations).

(28) *Transfer of health information and records.* Summaries or copies of the health record shall be sent routinely to the health authority of any facility to which the resident is transferred. The resident shall authorize, in writing, the transfer of health records and information, unless otherwise provided by law or administrative regulation having the force and effect of law.

(k) *Release*—(1) *Temporary release.* Temporary release programs shall include:

(i) identification of the circumstances for which residents may be released on a temporary basis;

(ii) operating procedures;

(iii) written rules of resident conduct;

(iv) a record-keeping system that documents dates, times and authorization for release;

(v) a system to evaluate program effectiveness; and

(vi) efforts to obtain community cooperation and support.

(2) *Work or education release.* The administrator or designee shall encourage residents to participate in work or education release programs. The appropriate court shall sanction education and work release.

(3) *Final release.* Written procedures for final release of residents shall include, but not be limited to:

(i) verification of identity and release authority, including verification of completion of terms of the sentence;

(ii) verification that all resident property leaves with the resident and that no facility property leaves the facility;

(iii) completion of any pending action, such as grievances or claims for damages or lost possessions;

(iv) transfer of health information, if appropriate; and

(v) transportation arrangements, if required.

(4) *Detainers.* The presence of a detainer shall not automatically prevent the release of a resident from the community residential facility.

§ 10.44 Juvenile programs and services.

(a) *Individualized program plan*—(1) *Development of individual program plan.* Within the first two weeks of admission, the facility staff shall design a written program, tailored for each individual, with and for each resident. The staff and resident shall sign and date the plan, which shall include measurable criteria of expected behavior and accomplishments and a time schedule for achieving specified goals.

(2) *Program review.* Staff shall review resident progress every two weeks either through staff meetings or by individual staff; staff shall document the outcome of each review.

(3) *Change in program.* Staff shall review and discuss any change in an individualized program with the resident. Staff and resident shall document the review by signature and date.

(4) *Personalized program reports.* The administrator or designee shall make a quarterly progress report available to the parent or legal guardian of each resident. If a resident remains in program for six months, the administrator or designee shall submit a written report to the committing authority. The report shall state the justification for keeping the resident in the program.

(5) *Case management.* Facility staff shall use a case management approach to provide counseling services for each resident. Staff of the community residential facility shall either provide or coordinate this service.

(b) *Program coordination*—(1) *Availability of programs.* The administrator or designee shall develop a written plan to provide activities, programs and services for residents to prevent enforced idleness. Programs and services, appropriate to the needs of the juvenile population, shall be available in the facility or accessible in the community. Programs and services shall include, but not be limited to, social services, religious services, including traditional religious practices and ceremonies, recreation and leisure time activities, counseling, library services, education programs and substance abuse programming. Staff shall seek the cooperation of various community groups offering activities and programs for the benefit of residents.

(2) *Inventory of community services.* The facility administration shall maintain and make available to all staff and residents a periodic inventory of functioning community services.

(c) *Education and work programs*—(1) *Education program.* In conjunction with the applicable education authority, the administrator or designee shall develop a written plan for the comprehensive education of residents. The administrator and applicable education authority shall update the plan as needed, review it annually, and support it with a Memorandum of Agreement. At a minimum, the plan shall include:

(i) the roles and responsibilities of the facility and the school district, compliant with the provisions of Title 94;

(ii) education release;

(iii) education materials and equipment;

(iv) developmental, remedial, special and cultural education; and

(v) tutorial services as needed.

(2) *Work programs.* The administrator or designee shall develop a written work plan that shall provide for work assignments for residents including the disabled. Work may include facility maintenance duties and community service projects. The administrator shall prohibit discrimination in resident work assignments based on race, creed, gender, age, marital status, disability or tribal affiliation.

(3) *Regulation of work programs.* Resident work programs shall comply with applicable federal regulations. Residents shall not perform any work prohibited by federal or tribal regulations and/or statutes pertaining to child labor.

(d) *Recreation, library and religious programming*—(1) *Comprehensive recreation program.* The administrator or designee shall require that residents be offered opportunities for recreational and leisure time activities. A facility staff member or trained volunteer shall coordinate the recreation program.

(2) *Library.* The administrator or designee shall develop a written plan to provide reading materials to residents. The plan shall include the criteria for the selection and maintenance of library materials, the location where reading materials are kept, the process by which residents obtain and return these materials and designation of the staff member or trained volunteer who is responsible for library services. The administrator shall update the plan as needed and review it at least annually.

(3) *Religious programs.* Residents shall have the right to practice their religion, subject only to the limitations

necessary to maintain institutional order and security.

(e) *Correspondence and telephone*—(1) *Regulation of correspondence.* The administrator shall regulate resident correspondence and shall make this policy available to all staff and residents. The administrator shall review this policy annually and update it as needed.

(2) *Limitations on resident correspondence.* When the resident bears the mailing cost, the administrator shall not limit the volume of letters the resident can send or receive.

(3) *Indigents' correspondence.* The administrator or designee shall provide indigent residents with a system that enables them to send a minimum of two letters per week.

(4) *Inspection of letters and packages.* The administrator or designee may open resident letters and packages, both incoming and out-going, to inspect them for contraband. The administrator or designee shall not read, censor, or reject letters or packages except where there is reliable information that there is a threat to order and security or that they are being used to further illegal activities and shall notify residents when incoming or out-going letters are rejected. The administrator or designee shall deposit any cash, checks, or money orders in the resident's account and issue a receipt to both the residents and the sender. The administrator or designee shall forward any contraband found to the appropriate law enforcement authority. The supervisor shall forward all mail within twenty-four hours of receipt except for Saturdays, Sundays and holidays. Residents shall be prohibited from carrying money in the facility.

(5) *Privileged correspondence.* The administrator shall permit residents to send sealed letters to specified groups of persons and organizations including, but not limited to, courts, including probation staff, counsel, officials of the confining authority, administrators of grievance systems and members of the releasing authority. Mail to residents from this specified class of persons and organizations shall be opened only to inspect for contraband and only in the presence of the resident.

(6) *Holding and forwarding mail.* The administrator or designee shall forward or return first-class letters and packages for residents after transfer or release.

(7) *Telephone.* The administrator or designee shall provide for juvenile access to telephones.

(f) *Visiting*—(1) *Visiting rules.* The administrator shall establish rules for resident visiting. The facility shall permit the informal communication, including the opportunity for physical contact.

(2) *Times of visitation.* Residents shall receive visitors during normal visiting hours, in accordance with the individual program plan, except where there is substantial evidence that a visitor poses a threat to the safety of the resident or the security of the facility, or may disrupt the program.

(3) *Sobriety statement.* Facility visitors and volunteers shall sign a sobriety statement. The statement shall stipulate that:

(i) they are not under the influence of alcohol or illegal mood altering substances;

(ii) they are not carrying such substances on their person or in their belongings; and

(iii) they consent to a breath test or non-invasive search as a condition of entry, if there is probable cause.

(4) *Searches (visiting).* The administrator or designee shall provide clear instructions to staff and residents concerning resident and visitor search procedures and the approval required for visual observation of unclothed residents.

(5) *Special visits.* The administrator or designee shall provide for special visits.

(6) *Visitor registration.* The administrator or designee shall provide for visitor registration and identification on entry into the facility.

Subpart F—Adult Holding Facilities

§ 10.51 Administration and management.

(a) *General administration*—(1) *Administration of facility.* An administrator, whose responsibility and authority shall be documented, shall oversee each facility. The appointment shall be based on written qualifications.

(2) *Service provider roles.* A Memorandum of Agreement (MOA), which shall be updated as needed and reviewed at least annually, shall define the role and function of employees of public or private agencies providing a service to the facility. The MOA shall specify the relation of service providers to the authority and responsibility of the administrator.

(3) *Policy and procedure manual.* All employees of the facility shall have access to a policy and procedure manual and its supporting documents. The Chief, Division of Law Enforcement, shall approve the manual and its supporting documents, which shall provide for the implementation of these standards and shall direct documentation of compliance. The administrator shall update the manual as needed and review it annually.

(4) *Dissemination of policy and procedure.* The administrator shall disseminate approved, new, or revised policies and procedures to designated staff, volunteers and, where appropriate, inmates prior to implementation. Staff shall review and indicate in writing that they understand the content of policies and procedures prior to their implementation.

(5) *Channels of communication.* The administrator or designee shall regularly disseminate information to staff prior to the beginning of their shift.

(6) *Monitoring and assessment.* The Agency Superintendent or designee shall review and inspect operations and programs at least annually.

(7) *Annual report.* The administrator shall submit a written annual report to the Chief, Division of Law Enforcement, through the Area Director and Agency Superintendent, and shall forward a copy to the appropriate court and health care authority. The report shall address goals, objectives, population data, programs and services provided, budget, space and equipment needs and major developments.

(8) *Separation of adults and juveniles.* The administrator shall prohibit the confinement of juveniles under the age of eighteen within the facility unless in compliance with 42 U.S.C. 223(a)(13)(14) (the Juvenile Justice and Delinquency Prevention Act of 1974) as amended and 28 CFR Part 31.

(b) *Fiscal management*—(1) *Budgetary compliance.* If operated by the BIA, the facility shall comply with the directives of the Agency regarding budget preparation, submission, and administration. If operated by a tribe, the facility shall comply with the directives of the tribe regarding budget preparation, submission, and administration.

(2) *Accounting compliance.* If operated by the BIA, the facility shall comply with the Agency accounting directives. If operated by a Tribe, the facility shall comply with Tribal accounting directives.

(3) *Basis of budget.* The administrator shall document a direct relationship between the budget and planned operational, staffing and program needs.

(4) *Property management compliance.* If operated by the BIA, the facility shall comply with Agency property management directives. If operated by a Tribe, the facility shall comply with Tribal property management directives.

(5) *Federal acquisition regulation compliance.* If operated by the BIA, the facility shall comply with Agency directives for facility services, equipment and supply purchases. If operated by a tribe, the facility shall comply with tribal directives for facility

services, equipment and supply purchases.

(6) *Space and equipment needs and deficiencies.* The administrator shall report space and equipment needs and deficiencies annually to the Area Director through the Agency Superintendent.

(7) *Program needs and deficiencies.* The administrator shall report program needs and deficiencies, i.e., staffing, supplies, training and contract services, annually to the Chief, Division of Law Enforcement, through the Area Director and Agency Superintendent.

(8) *Cost of inmate board.* The facility shall charge all contract users at the same rate.

(9) *Fund accounts.* The administrator shall arrange for an independent audit of inmate fund accounts following standard accounting practices. The administrator shall use any profit or interest which accrues for the benefit of the inmates.

(c) *Personnel*—(1) *Personnel policy.* If operated by the BIA, the facility shall comply with Agency personnel management directives. If operated by a Tribe, the facility shall comply with Tribal personnel management directives.

(2) *Personnel manual.* The administrator shall make a copy of the applicable personnel manuals and regulations available to every employee.

(3) *Staffing requirements.* The administrator shall review employee workload annually to ensure that the legitimate safety and security needs of staff and inmates are addressed. The administrator shall develop and update the facility's shift relief factor annually.

(4) *Criminal record check.* The administrator or designee shall conduct a criminal record check of all new employees prior to employment to determine if there are criminal convictions that have a specific relationship to job performance.

(5) *Physical examination.* All employees who have direct contact with inmates shall have a pre-employment physical examination. There shall be provisions for re-examination.

(6) *Physical fitness.* Detention officers shall meet BIA or comparable tribal standards for physical fitness.

(7) *Code of ethics.* The facility shall have a written Code of Ethics that outlines the professional standards expected of all employees and recognizes that holding facility personnel may be held to a higher behavioral standard because of the nature of their duties.

(8) *Confidentiality.* Consultants, contract personnel, employees of other public and private agencies and volunteers who work with inmates shall agree to comply with the facility's policies on confidentiality of information.

(d) *Training and staff development*—(1) *Management of training programs.* The administrator shall identify, evaluate and update job related training needs annually.

(2) *Training curriculum approval.* The Chief, Division of Law Enforcement, in conjunction with the Indian Police Academy, shall approve training programs and curriculum required by these standards.

(3) *Outside resources.* The facility shall support the integration of IHS-approved training and other training with the approval of the administrator.

(4) *Cultural awareness.* Orientation training shall include a component on cultural issues relative to the local tribe(s).

(5) *Officer orientation training.* All new full or part-time officers assigned to the holding facility shall receive the number of hours of orientation training recommended by the Chief, Division of Law Enforcement, during their first year of employment. Employees shall complete forty of these hours prior to being independently assigned to work in the facility.

(6) *Officer in-service training.* All full or part-time officers assigned to the holding facility shall receive an additional forty hours of job-relevant training each subsequent year of employment.

(7) *Clerical and support staff orientation training.* All new clerical and support employees who have minimal inmate contact shall receive the number of hours of orientation training recommended by the Chief, Division of Law Enforcement, within their first year of employment.

(8) *Clerical and support staff in-service training.* All clerical and support persons shall receive an additional sixteen hours of job-relevant training each subsequent year of employment.

(9) *Administrative and managerial orientation training.* All new administrative and managerial staff shall receive at least the number of hours of training recommended by the Chief, Division of Law Enforcement, within their first year of employment in this position.

(10) *Administrative and managerial staff in-service training.* Administrative and managerial staff shall receive at least twenty-four hours of job-relevant training each subsequent year of employment.

(11) *Specialized training.* At least one officer assigned to the holding facility per shift shall receive specialized training in the management of inmates with health and behavioral problems, including substance abuse and suicide. At least one officer assigned to the holding facility per shift shall be certified as an emergency medical technician. All staff who have contact with inmates shall receive training in advanced first aid and CPR. The health authority shall identify health-related training needs.

(e) *Facility records*—(1) *Compliance.* The facility shall comply with 5 U.S.C. 552 (the Freedom of Information Act), 5 U.S.C. 552(a) (the Privacy Act of 1974), as amended, 43 CFR 2.79(a) and 16 BIAM (Records and Disposition Handbook) or comparable tribal regulations.

(2) *Records management.* The facility shall have a system for the management, dissemination, retrieval, storage, archiving and (when appropriate) destruction of information and detention records.

(3) *Law enforcement sensitive information.* Law enforcement sensitive records and information shall be marked privileged. The administrator or designee shall keep these records in a locked cabinet or file room.

(4) *Release of information and consent.* Inmates shall sign a Release of Information Consent Form in compliance with 5 U.S.C. 552(a) (the Privacy Act of 1974) as amended prior to the release of privileged information. The administrator or designee shall keep a copy of the signed release in the inmate's record.

(5) *Separation of record contents.* The administrator or designee shall identify and separate contents of inmate records according to an established format which, at a minimum, shall separate privileged from public information.

(6) *Access to information.* The administrator shall define clearly personnel who have access to inmate records.

(7) *Daily report.* The administrator or designee shall maintain a daily report and provide a copy of it to the appropriate court(s). The daily report shall identify:

(i) the names of inmates in custody, including inmates on temporary release or in other locations;

(ii) names of inmates admitted and released;

(iii) the legal status of each inmate; and

(iv) the number of days each inmate has been in custody.

(8) *Identification and location record.* The facility shall maintain a system that identifies all inmates in custody and their actual physical location.

(9) *Custody record.* The facility shall maintain custody records of all inmates held at the facility. The record shall include, but not be limited to:

(i) initial booking form;

(ii) documented legal authority to detain the inmate;

(iii) health and suicide screening forms;

(iv) dates of court appearances;

(v) signed release of information forms;

(vi) an on-going record of cash and valuables;

(vii) dates and times of temporary releases;

(viii) names of visitors and dates of visits;

(ix) facility rules and disciplinary policy signed by the inmate;

(x) classification interview and subsequent classification actions;

(xi) reports of major disciplinary actions, significant incidents or crimes committed while in custody;

(xii) records of program participation including work release or inmate work programs;

(xiii) good time accumulated (if applicable); and

(xiv) final release or transfer report.

(10) *Booking information.* The administrator or designee shall record booking information for every person admitted to the facility. The record shall include at least the following data:

(i) booking number;

(ii) name and known aliases;

(iii) current or last known address;

(iv) date and time of confinement;

(v) a copy of the court order or other legal basis for detention;

(vi) name, title, agency and signature of arresting officer;

(vii) charge or charges;

(viii) date and place of birth;

(ix) ethnic origin or tribal affiliation;

(x) present or last place of employment;

(xi) emergency contact name, relationship, address and phone number;

(xii) record of telephone calls made by arrestee at time of admission;

(xiii) driver's license and social security number;

(xiv) identifying information, including height, weight, gender and identifying marks, such as birthmarks, scars or tattoos;

(xv) photograph and fingerprints (optional);

(xvi) notation of cash and all property;

(xvii) initial classification and special needs;

(xviii) an indication that the health and suicide screening was completed;

(xix) name of legal representative if any; and

(xx) name of booking officer.

(11) *Conducting research.* All research conducted shall comply with federal and tribal regulations pertaining to conducting and disseminating research findings as well as professional and scientific ethics. The administrator, the Agency Superintendent and the Area Director shall approved all research prior to implementation.

§ 10.52 Physical plant.

(a) *Building and safety code compliance*—(1) *Building and safety code compliance.* If owned by the Bureau, the facility shall comply with 29 CFR Part 1910, Subparts D, E, G and L. If owned by a tribe, the facility shall comply with the National Fire Protection Association (NFPA) Life Safety Code 101 Chapters 2, 4 through 7, and 14 (if new holding occupancy) or 15 (if existing holding occupancy), or comparable tribal regulations.

(2) *Zoning.* The facility shall comply with applicable zoning and land use requirements.

(3) *Accessibility.* The facility shall comply with 25 U.S.C. 794 (the Rehabilitation Act of 1973) as amended, 41 CFR 101–19.6 (Uniform Federal Accessibility Standards), and 43 CFR Part 17.

(4) *OSHA compliance.* The facility shall comply with 29 CFR Part 1910, Subparts C through E, G, K, L and S (Occupational Health and Safety Standards) or comparable tribal regulations. If other activities governed by sections of 29 CFR Part 1910 not identified in this standard are carried out in the facility, the section(s) of 29 CFR Part 1910 governing that activity or comparable tribal regulations apply.

(5) *Health and safety inspection.* In compliance with 29 CFR Part 1960 Subparts B through D, the facility shall receive at least one inspection each year by a qualified safety and health inspector and Environmental Health Specialist and/or Sanitarian. Any request for inspection shall be directed to the Area Safety Manager or Officer through the Agency Superintendent.

(6) *Furnishings and equipment code compliance.* The administrator shall maintain documentation by an independent, qualified source that the interior furnishing materials in inmate living areas, exit areas and places of public assembly shall be in accordance with NFPA Life Safety Code Section 6–5 or comparable tribal regulations.

(b) *Facility organization*—(1) *Separation of adults and juveniles.* If the adult facility temporarily holds juveniles for periods of less than twenty-four hours, it shall comply with 42 U.S.C. 223(a)(ii) (the Juvenile Justice and Delinquency Prevention Act of 1974) as amended and 28 CFR Part 31.

(2) *Separation of inmates.* The facility shall be designed and constructed so that inmates can be separated according to the requirements identified in these standards.

(3) *Separation of males and females.* The facility shall provide for sight and sound separation of male and female inmates in their housing areas.

(4) *Continuously observable housing.* The facility shall provide a minimum of two single occupancy cells that can be continuously observed by staff and allow inmates to communicate with staff.

(5) *Rated capacity.* The number of inmates shall not exceed the facility's rated capacity with the exception of mass arrests.

(c) *Environmental conditions*—(1) *Artificial light levels.* Lighting levels in inmate cells or rooms shall be at least twenty footcandles at the desk and in the personal grooming areas. Lighting levels throughout the facility shall be appropriate to the tasks and activities carried out in its spaces. An independent, qualified source shall document lighting levels.

(2) *Noise levels.* Noise levels shall not exceed seventy decibels in the daytime and forty-five decibels at night. An independent, qualified source shall document noise levels.

(3) *Indoor air quality.* Air circulation shall be at least ten cubic feet of outside or recirculated filtered air per minute per occupant. An independent, qualified source shall document air circulations.

(4) *Use of tobacco.* The administrator shall regulate the use of tobacco in the facility by staff, inmates and the public.

(5) *Heating and cooling.* Temperatures shall be appropriate to the summer and winter comfort zones.

(d) *Security*—(1) *Control center.* The facility shall maintain a secure control center, which has a system for immediate communication with the inmate living areas. The control center shall monitor and coordinate the facility's security, life safety and communications systems.

(2) *Perimeter security.* The perimeter shall be secured in a way that inmates remain in the perimeter and that access by the general public is denied without proper authorization. There shall be security doors between inmate areas and areas to which the public has access.

(3) *Security equipment storage.* The facility shall provide space for the secure storage of chemical agents, restraining devices and related security equipment. The equipment shall be located outside inmate living and

activity areas in a place that is readily accessible to authorized persons only. The facility shall store firearms in a secure area or cabinet outside the security perimeter of the facility in a place that is accessible only to authorized persons.

(4) *Emergency exits.* In compliance with NFPA Code and OSHA regulations, designated exits in the facility shall permit prompt evacuation of inmates and staff members in an emergency. Facility exits shall be properly positioned, clear and distinctly and permanently marked.

(5) *Protective holding cells.* Other than as indicated in the mass arrest policy, single and multiple occupancy protective holding cells shall hold no more than eight persons and shall be used only for the temporary holding of persons during the booking process for periods of up to eight hours. Each room or cell shall have, at a minimum:

(i) sixty square feet of floor space;

(ii) toilet facilities that are located above floor level, provide some degree of privacy and are available for use without staff assistance twenty-four hours a day;

(iii) hot and cold running water; and

(iv) a bed or fixed bench at or above floor level.

(6) *Emergency equipment.* The facility shall have the equipment necessary to maintain essential lights, power, ventilation, power-operated doors or locks and communication in an emergency.

(7) *Visual surveillance equipment.* When visual electronic surveillance is used, it shall be located primarily in hallways, elevators, corridors, or at points on the security perimeter such as entrances and exits.

(e) *New facility planning process*—(1) *New facility planning requirement.* All new construction, renovation and expansion projects shall follow the Planning of New Institutions (PONI) process as required by 25 CFR Part 296.

(2) *Safety management review.* The design and specifications for all new construction, renovation and expansion projects shall be reviewed by the Bureau of Indian Affairs in compliance with 29 CFR 1960, Suparts B through D.

(f) *New construction, renovation and expansion*—(1) *Staff inmate interaction.* Physical plant design shall facilitate continuous personal contact and interaction between staff and inmates.

(2) *Continuous observation.* All general population and immediate segregation living areas shall be constructed to facilitate continuous staff observation; excluding electronic surveillance, of cell or room fronts and activity areas, such as dayrooms and recreation spaces.

(3) *Location.* The facility shall be conveniently located for criminal justice agencies, the health authority, community agencies and inmates' attorneys, families and friends.

(4) Single occupancy requirements (general population). Only one inmate shall occupy each cell or detention room designed for single occupancy. All single rooms or cells shall have at least sixty square feet of floor space, provided inmates spend no more than ten hours per day locked in. When confinement exceeds ten hours per day, there shall be at least seventy square feet of floor space. In general population, each room or cell shall have, at a minimum:

(i) natural light;

(ii) toilet facilities with some degree of privacy that are located above floor level and are available for use without staff assistance twenty-four hours a day;

(iii) a wash basin with hot and cold running water;

(iv) access to showers; and

(v) a bed above floor level, a desk or writing surface, safety-type hooks or closet space, and a chair or stool.

(5) *Single occupancy requirements (immediate segregation).* Only one inmate shall occupy each cell or detention room designed for single occupancy. The facility shall provide single cell occupancy for immediate segregation housing. At least one immediate segregation cell shall be vented directly to the exterior. In immediate segregation units, rooms shall provide living conditions that approximate those of the general inmate population; all exceptions shall be clearly documented. Each room or cell shall have, at a minimum:

(i) natural light;

(ii) a minimum of seventy square feet of floor space;

(iii) toilet facilities with some degree of privacy that are located above floor level and that are available for use without staff assistance twenty-four hours a day;

(iv) access to showers;

(v) hot and cold running water; and

(vi) a bed at or above floor level, a desk or writing surface, and a stool.

(6) *Multiple occupancy space requirements.* Where used, multiple occupancy rooms or cells shall house inmates, who have been screened for suitability to group living. The rooms shall provide:

(i) continuous observation by staff;

(ii) a minimum of fifty square feet of floor space per occupant in the sleeping area and a clear floor-to-ceiling height of not less than eight feet;

(iii) natural light;

(iv) a toilet(s), with some degree of privacy;

(v) an operable wash basin(s) with hot and cold running water;

(vi) access to showers; and

(vii) beds above floor level and a locker or container for each occupant's belongings.

(7) *Space, furnishings and conditions for dayrooms.* The facility shall provide separate dayroom space for each cellblock or detention room cluster. The dayroom shall provide:

(i) natural light;

(ii) a minimum of thirty-five square feet of space per inmate exclusive of lavatories;

(iii) showers and toilets with some degree of privacy; and

(iv) seating and writing surfaces, appropriate to the classification which uses this space, sufficient for the number of inmates who use the dayroom at one time.

(8) *Toilets.* The facility shall provide operable toilets at a minimum ratio of one for every twelve inmates in male facilities and one for every eight inmates in female facilities. Urinals may be substituted for up to one-half of the toilets in male facilities. All housing units with three or more inmates shall have two toilets.

(9) *Wash basins.* Inmates shall have access to operable wash basins with hot and cold running water in the housing units at a minimum ratio of one basin for every twelve occupants.

(10) *Showers.* Inmates shall have access to operable showers with temperature-controlled hot and cold running water at a minimum of one shower for every eight inmates. Water for showers shall be thermostatically controlled to temperatures ranging from one hundred degrees to one hundred-twenty degrees Fahrenheit.

(11) *Housing for the disabled.* Disabled inmates shall be housed in a manner that provides for their safety in compliance with 25 U.S.C. 794 (the Rehabilitation Act of 1973) as amended, 41 CFR 101–19.6 (Uniform Federal Accessibility Standards), and 43 CFR Part 17, yet prevents their being discriminated against in their use of the facility.

(12) *Interview room.* The facility shall provide a minimum of one accessible interview room.

(13) *Visiting spaces.* The facility shall provide a secure visiting room, which facilitates staff observation of visiting. The facility shall provide secure space outside the security perimeter for the storage of visitors' personal items.

(14) *Food service spaces.* When the facility provides for food preparation, it shall have adequate space for food

processing, storage, refrigeration and sanitation. Toilet and wash basin facilities shall be available to food service personnel and inmates in the vicinity of the food preparation area. The square footage of the kitchen shall be appropriate to the needs of the facility. If dining occurs outside the dayroom, the facility shall provide a minimum of fifteen square feet per occupant.

(15) *Storage spaces.* The facility shall provide the following storage spaces:

(i) a secure, well-ventilated janitor closet, which includes sink and adequate space for the storage of cleaning implements and supplies;

(ii) secure storage, located outside the secure area, for flammable, toxic and caustic items; and

(iii) storage space for inmate clothing, bedding, mattresses, personal hygiene items and facility supplies.

(16) *Laundry.* The facility shall provide access to laundry services or laundry space and equipment.

(17) *Booking.* The facility shall provide an intake/booking and release area which shall be located inside the security perimeter, but outside inmate living quarters. The booking area shall include:

(i) an intake/booking work area;

(ii) sallyport;

(iii) access to operable toilets, with some degree of privacy, wash basins, drinking water and showers;

(iv) space for alcohol and drug testing equipment;

(v) space for inmate identification equipment;

(vi) a secure, well-ventilated storage room for inmates' personal property;

(vii) telephone(s), which can be used by inmates;

(viii) private interview spaces;

(ix) temporary holding rooms or waiting spaces with sufficient fixed seating for all inmates at their rated capacities; and

(x) access to continuously observable protective holding cells for the safe holding of intoxicated individuals.

(18) *Staff toilets.* The facility shall provide staff toilets inside the secure area of the facility that inmates shall not use.

(19) *Public spaces.* The facility shall provide public restroom(s) and a public lobby with an adequate number of seats to accommodate anticipated visitors outside the secure perimeter.

(20) *Administration.* The facility shall provide adequate space for its administrative functions. This space shall include an office for the administrator, work space for clerical staff, duplication of copies and supply and equipment storage, space for storage of facility records and space for meetings.

(21) *Staff.* The facility shall provide adequate space for staff assigned to work in the facility. These spaces shall include an area in which they can store personal property, change clothes and shower and an area in which training, meetings, briefings and breaks can occur.

(22) *Mechanical.* The facility shall provide separate and adequate space for mechanical systems and equipment.

(g) *Existing construction*—(1) *Occupancy by one inmate.* Only one inmate shall occupy each cell or detention room designed for single occupancy. All general population and immediate segregation living areas shall be constructed to facilitate continuous staff observation, including electronic surveillance, of cell or room fronts and activity areas, such as dayrooms and recreation spaces.

(2) *Single occupancy space requirements.* All single rooms or cells shall have at least sixty square feet of floor space, provided inmates spend no more than ten hours per day locked in. When confinement exceeds ten hours per day, there shall be at least seventy square feet of floor space.

(3) *Multiple occupancy space requirements.* Where used, multiple occupancy rooms or cells shall house inmates, who have been screened for suitability for group living. The rooms shall provide:

(i) continuing observation by staff;

(ii) a minimum of fifty square feet of floor space per occupant in the sleeping area and a clear floor-to-ceiling height of not less than eight feet;

(iii) a toilet(s) with some degree of privacy;

(iv) an operable wash basin(s) with hot and cold running water;

(v) access to showers; and

(vi) beds above floor level and a locker or container for each occupant's belongings.

(4) *Single occupancy furnishings and conditions (general population).* Each room or cell shall have, at a minimum;

(i) toilet facilities with some degree of privacy that are located above floor level and that are available for use without staff assistance twenty-four hours a day;

(ii) a wash basin with hot and cold running water;

(iii) access to showers; and

(iv) a bed above floor level, a desk or writing surface, safety-type hooks or closet space, and a chair or stool.

(5) *Single occupancy furnishings and conditions (immediate segregation).* Segregation rooms shall provide living conditions that approximate those of the general inmate population; all exceptions shall be clearly documented. Each room or cell shall have, at a minimum:

(i) a minimum of seventy square feet of floor space;

(ii) toilet facilities with some degree of privacy that are located above floor level and are available for use without staff assistance twenty-four hours a day;

(iii) access to showers;

(iv) hot and cold running water; and

(v) a bed at or above floor level, desk or writing surface, and a stool.

(6) *Space, furnishing and conditions for dayrooms.* The facility shall provide separate dayroom space. The dayroom shall provide:

(i) a minimum of thirty-five square feet of space per inmate exclusive of lavatories;

(ii) showers and toilets with some degree of privacy; and

(iii) seating and writing surfaces, appropriate to the classification which uses this space, sufficient for the number of inmates who use the dayroom at one time.

(7) *Toilets.* The facility shall provide operable toilets at a minimum ratio of one for every twelve inmates in male facilities and one for every eight inmates in female facilities. Urinals may be substituted for up to one-half of the toilets in male facilities. All housing units with three or more inmates shall have two toilets.

(8) *Washbasins.* Inmates shall have access to operable washbasins with hot and cold running water in the housing units at a minimum ratio of one basin for every twelve occupants.

(9) *Showers.* Inmates shall have access to operable showers with temperature-controlled hot and cold running water at a minimum of one shower for every eight inmates. Water for showers shall be thermostatically controlled to temperatures ranging from one hundred to one hundred-twenty degrees Fahrenheit.

(10) *Housing for the disabled.* Disabled inmates shall be housed in a manner that provides for their safety in compliance with 25 U.S.C. 794 (the Rehabilitation Act of 1973) as amended, 41 CFR 101 19.6 (Uniform Federal Accessibility Standards), and 43 CFR Part 17, yet prevents their being discriminated against in their use of the facility.

(11) *Visiting spaces.* The facility shall provide a visiting room, which allows staff to observe visiting.

(12) *Dining.* If dining occurs outside the dayroom, the facility shall provide a minimum of fifteen square feet per occupant.

(13) *Food service spaces.* When the facility provides for food processing,

storage, refrigeration and sanitation. Toilet and washbasin facilities shall be available to food service personnel and inmates in the vicinity of the food preparation area. The square footage of the kitchen shall be appropriate to the needs of the facility.

(14) *Janitor closet.* The facility shall provide a secure, well-ventilated janitor closet, which includes sink and adequate space for the storage of cleaning implements and supplies.

(15) *Storage of toxic, flammable and caustic items.* The facility shall provide secure storage, outside the secure area, for flammable, toxic and caustic items.

(16) *Clothing and supply storage.* The facility shall provide storage space for inmate clothing, bedding, mattresses, personal hygiene items and facility supplies.

(17) *Laundry.* The facility shall provide access to laundry services or laundry space and equipment.

(18) *Booking.* The facility shall provide an intake/booking and release area which shall be located inside the security perimeter, but outside inmate living quarters. The booking area shall include:

(i) an intake/booking work area;

(ii) sallyport;

(iii) access to operable toilets, washbasins, drinking water and showers;

(iv) space for alcohol and drug testing equipment;

(v) space for inmate identification equipment;

(vi) a secure, well-ventilated storage room for inmates' personal property;

(vii) telephone(s), which can be used by inmates;

(viii) private interview spaces;

(ix) temporary holding rooms or waiting spaces with sufficient fixed seating for all inmates at their rated capacities; and

(x) access to continuously observable protective holding cells for the safe holding of intoxicated individuals.

(19) *Staff toilets.* The facility shall provide staff toilets that inmates shall not use.

(20) *Public spaces.* The facility shall provide public restroom(s) and a public lobby with an adequate number of seats to accommodate anticipated visitors outside the secure perimeter.

(21) *Administration.* The facility shall provide adequate space for its administrative functions.

(22) *Staff.* The facility shall provide adequate space for staff assigned to work in the facility.

(23) *Mechanical.* The facility shall provide separate and adequate space for mechanical systems and equipment.

§ 10.53 Institutional operations.

(a) *Security and control*—(1) *Perimeter access.* All security perimeter entrances and control center doors shall be kept locked, except when used for supervised entry or exit of employees, inmates, or visitors and in emergencies.

(2) *Staff posts.* Staff posts shall permit staff to hear and respond promptly to emergency situations.

(3) *Full coverage of staff posts.* Staff shall be provided for full, around-the-clock coverage of designated security posts, full surveillance of inmates and performance of other functions.

(4) *Supervision of high security areas.* A staff member shall enter a high security area only when another staff member is immediately available to provide assistance.

(5) *Supervision of coed activities.* Facility staff shall supervise male and female inmates in coed activities and spaces continuously and directly.

(6) *Male and female staff requirement.* When both males and females are housed in the facility, at least one male and female staff member shall be on duty during the times when both sexes are held in the facility.

(7) *Prohibited supervision.* No inmate or group of inmates shall be given control or authority over other inmates.

(8) *Cell checks.* An officer personally shall observe high and medium security inmates at least every thirty minutes, but on an irregular schedule. The administrator shall require observation every fifteen minutes for inmates who are mentally disordered or who demonstrate unusual or bizarre behavior and continuous observation of suicidal inmates.

(9) *Counts.* The facility shall have a system to physically count inmates that includes strict accountability for inmates assigned to work and education release and other approved temporary releases.

(10) *Movement.* Officers shall regulate all inmate movement.

(11) *Transportation of inmates.* The administrator shall govern the safe and secure transportation of inmates outside the facility.

(12) *Use of vehicles.* The administrator shall govern the use of departmental and personal vehicles for official purposes and shall prohibit the use of personal vehicles for transportation of inmates.

(13) *Shift activity log.* The facility shall maintain a written record of the following:

(i) personnel on duty;

(ii) inmate population at the beginning and end of each shift;

(iii) record of counts taken;

(iv) shift activities;

(v) entry and exit of professional and other visitors;

(vi) unusual occurrences or incidents;

(vii) hours of programs provided; and

(viii) clothing and linen exchange.

(14) *Weekly inspection.* The administrator or designee shall inspect all facility spaces and devices at least weekly, to determine the status of all security items and the sanitary condition of the facility. The administrator or designee shall document the inspection and shall initiate corrective action if needed.

(15) *Monthly inspection.* The administrator shall inspect all areas of the facility at least monthly to inventory security equipment to determine numbers, usefulness and expiration dates, to determine the status of all security and safety items and to determine the sanitary condition of the facility. The administrator shall document the inspection and shall initiate corrective action if needed.

(16) *Fire safety inspection.* A qualified fire protection specialist shall inspect the facility to test the fire suppression and detection system, equipment and facility training in compliance with 29 CFR 1910,.36(d), 1910.37(m), 1910.37(n), 1910.38, and 29 CFR 1960, Subpart D.

(17) *Use of restraints.* Staff shall use instruments of restraint only used as a precaution against escape during transfer, for medical reasons at the direction of the health authority and as a prevention against inmate self-injury, injury to others or property damage. Staff shall apply restraints only with the approval of the administrator or designee and only for the amount of time that is absolutely necessary.

(18) *Security equipment issue.* The administrator shall maintain a written record of routine and emergency distributions of security equipment.

(19) *Contraband control.* The administrator shall provide for searches of facilities and inmates to control contraband and to provide for its disposition. When a new crime is suspected, the administrator shall be notified. The administrator shall maintain and make available to the appropriate authorities all evidence.

(20) *Body cavity and visual inspections.* Manual or instrument inspection of inmate body cavities shall be conducted only by medical personnel, when there is reason to do so and when authorized by the administrator or designee. Trained staff shall conduct visual inspections of unclothed inmates only when there is a reasonable belief that the inmate is carrying contraband or other prohibited material. Medical personnel shall

conduct all manual or instrument inspections in private. Trained staff of the same sex as the inmate shall conduct all visual inspections in private.

(21) *Key and tool control.* The administrator shall govern the control, issuance, use and storage of keys, tools and culinary and medical equipment.

(22) *Use of force and firearms.* The facility shall comply with 25 CFR 11.304 with regard to the use of force, firearms, chemical agents, or any other weapon.

(b) *Safety and emergency procedures*—(1) *Fire prevention.* The administrator shall govern the storage and use of all flammable, toxic and caustic materials, the use of non-combustible receptacles for smoking materials, the amount of personal items, including reading materials, which inmates may keep in their living units and the amount and location of items stored in the facility.

(2) *Preventive maintenance.* The administrator or designee shall develop a written plan for preventive maintenance of the facility. The administrator shall review the plan annually and update it as needed. If tribally operated, the plan shall be supported by a Memorandum of Agreement between the tribe and the Agency.

(3) *Emergency generator testing.* In compliance with 29 CFR 1910.38, emergency power generators shall be inspected weekly and tested under load at intervals of not more than thirty days.

(4) *Evacuation plan.* The administrator shall develop a written evacuation plan prepared in case of fire or major emergency. The plan shall comply with 29 CFR 1910.38 or comparable tribal code. The applicable Safety Officer or designee shall review and approve the plan initially and annually. The administrator shall update and reissue the plan if necessary. The plan shall include:

(i) means of immediate release of inmates from locked areas;

(ii) location of floor plans;

(iii) use of exit signs and directional arrows for traffic flow;

(iv) location of a publicly posted plan;

(v) at least quarterly drills in all facility locations; and

(vi) coordination with the fire department which services the facility.

(5) *Emergency plans.* The administrator or designee shall develop written plans that specify procedures to be followed in emergency situations. The administrator shall make these plans available to applicable personnel and shall review and update them at least annually. All facility personnel shall be trained in the implementation of these plans. Emergency situations shall include but not be limited to:

(i) riots and disturbances;

(ii) hunger strikes;

(iii) hostage situations;

(iv) work stoppages;

(v) unattended deaths, including successful suicides;

(vi) attempted suicides;

(vii) escapes and unauthorized absences; and

(viii) other threats to the security of the facility.

(6) *Incident reporting.* The administrator shall require the immediate reporting of all incidents that result in physical harm to any person, threaten the safety of any person, result in the need for emergency care, result in damage to the facility or facility property, threaten the security of the facility, or involve the commission of a criminal offense. The administrator shall forward the reports to the Agency Superintendent through the appropriate chain of command.

(7) *Medical treatment (incident).* The administrator or designee shall ensure that all persons injured in an incident receive an immediate medical examination and treatment.

(8) *Notification of family.* The administrator shall provide for the notification of persons designated by the inmate in the event of serious illness, injury or death.

(c) *Rules and discipline*—(1) *Rules of conduct.* The administrator shall develop written rules of inmate conduct that specify acts prohibited within the facility and penalties that may be imposed for various degrees of violations. The administrator or designee shall provide these rules to all inmates and shall ensure that all inmates understand them. All personnel who deal with inmates shall receive sufficient training prior to working in the facility to be thoroughly familiar with the rules of inmate conduct, the sanctions available and the rationale for the rules. The administrator shall review the written rules of inmate conduct annually and update them, if necessary to ensure that they are consistent with constitutional and legal principles and BIA and tribal standards and codes.

(2) *Minor infractions.* The administrator shall provide guidelines for the informal resolution of minor inmate misbehavior.

(3) *Grievance procedure.* The administrator or designee shall make a written grievance procedure available to all inmates. The procedure shall include at least one level of appeal.

(4) *Criminal violations.* In instances in which an inmate is alleged to have committed a crime, the administrator or designee shall refer the case to the appropriate law enforcement officials for possible prosecution.

(d) *Immediate segregation*—(1) *Types.* The administrator of the facility or designee may order immediate segregation when it is necessary to protect the inmate or others. When immediate segregation occurs, the administrator shall govern the supervision of inmates in the following categories: administrative segregation, protective custody and medical segregation.

(2) *Medical/mental health segregation.* The administrator shall place inmates in immediate segregation for medical reasons only at the direction of the health authority.

(3) *Daily contact.* A supervisor and program staff, on request, shall make a daily visit to inmates in segregation.

(4) *Release from segregation.* A review process shall be used to release an inmate from segregation.

(5) *Supervision.* An officer shall personally observe all inmates in segregation at least every fifteen minutes on an irregular schedule. An officer shall personally observe inmates who are violent, mentally disordered, have medical conditions requiring a higher degree of supervision, or who demonstrate unusual or bizarre behavior more frequently. An officer shall continuously observe suicidal inmates. The facility shall maintain a permanent log of significant events and activities in the segregation unit.

(6) *Deprivation of activity or item.* Whenever an inmate in segregation is deprived of any usually authorized item or activity, the supervisor shall complete a report of the action and forward it to the administrator within one working day.

(e) *Inmate rights*—(1) *Access to courts, counsel and legal materials.* Inmates shall have the right to have access to attorneys, legal representatives, the courts and legal materials and to address uncensored communications to governmental authorities.

(2) *Freedom from discrimination.* Inmates shall have the right to be free from discrimination based on race, religion, national origin, tribal affiliation, sex, disability, political beliefs, favoritism or nepotism. Inmates shall have the right to equal access to services.

(3) *Equal access for women.* Male and female inmates shall have the right to equal access to services.

(4) *Right to communicate.* Inmates shall have the right to receive visits and to communicate or correspond with persons or organizations, subject only to the limitations necessary to maintain order and security.

(5) *Protection from harm.* Inmates shall have the right to protection from personal abuse, corporal punishment, personal injury, disease, property damage and harassment, by either staff or inmates.

(6) *Freedom of personal grooming.* Inmates shall have the right to determine the length and style of scalp or facial hair, unless health and safety reasons exist.

(7) *Treatment.* Inmates shall have the right to medical, dental, mental health and substance abuse treatment and rehabilitative services as directed by the health authority.

(f) *Booking* (1) *Booking process.* Written procedures for booking new inmates shall include, at a minimum:

(i) verification of court commitment papers or other legal documentation for detention;

(ii) complete search of the individual and possessions;

(iii) inventory and storage of clothing and personal property;

(iv) health screening, including tests for infectious diseases as required by the health authority;

(v) emergency health assessment, as required by law, regulations or policies of the health authority;

(vi) opportunity to make at least three local or collect long-distance telephone calls;

(vii) shower, hair care and treatment for ectoparasites if necessary;

(viii) issue of clean clothing and personal hygiene items;

(ix) completion of a booking form as required by these standards;

(x) suicide screening;

(xi) orientation, classification and assignment to a housing unit; and

(xii) photographing and/or fingerprinting (optional).

(2) *Mass arrests.* Written plans shall govern temporary space arrangements and procedures to be followed in the event of a mass arrest that exceeds the maximum capacity of the facility. The administrator or designee shall update the plans as needed and review them at least annually.

(3) *Suicide screening.* The administrator shall ensure that all inmates shall be screened for risk of suicide at the time of booking. When a risk is identified, detention staff shall make an emergency referral to the health authority for evaluation by a health care professional and shall monitor the inmate until the assessment has been completed.

(4) *Orientation.* All newly admitted inmates shall receive written or oral information in the language they understand. The admitting officer shall document completion of orientation by a statement that shall be signed and dated by the inmates. The orientation shall include, but is not limited to:

(i) inmate rules of conduct;

(ii) services available in the facility;

(iii) procedures for accessing health care services; and

(iv) inmate rights and privileges.

(5) *Personal property inventory.* The admitting officer shall complete a written, itemized inventory of all personal property of newly admitted inmates and shall store securely all inmate property, including money and other valuables. The admitting officer shall give the inmate a receipt for all property held until release.

(6) *Regulation of inmate property.* The administrator or designee shall identify personal property that inmates may receive or keep in their possession while in the facility, the sources from which these items may be obtained and how these items are received and inspected.

(g) *Security or custody level*— (1) *Security or custody level policy.* The administrator or designee shall provide for assignment to a security or custody level and housing unit. The administrator shall review these policies annually and update them as necessary. The written classification plan shall include:

(i) criteria and procedures for determining and changing the status of an inmate relative to custody; and

(ii) the separate management of the following categories of inmates: male and female, criminal and witnesses/civil, special needs inmates (substance abusers, disabled, etc.), juveniles (if detained if held in this facility in accordance with standards) and immediate segregation.

(2) *Prohibited segregations.* The administrator shall prohibit the segregation of inmates by race, color, creed, tribal affiliation, national origin, political beliefs, nepotism, favoritism or other prohibited criteria.

(h) *Food service*—(1) *Food service records.* At a minimum, the facility shall maintain records of the number of meals served to the inmate population, the expenditures for food supplies and menus (planned and as served).

(2) *Dietary allowances.* The facility shall document that a registered dietician reviews dietary allowances at least annually to ensure compliance with nationally recommended food allowances. A diet manual, approved by a registered dietician, shall guide dietary allowances, including special diets.

(3) *Menu planning.* The administrator or designee shall plan, date and make all menus available for review at least one week in advance. The administrator or designee shall make notations of any substitutions, which shall be of equal nutritional value, in the meals actually served. The administrator or designee shall consider Native American food preferences in menu planning. The administrator or designee shall direct that menu evaluations shall be conducted at least quarterly to verify adherence to the nationally recommended basic daily servings.

(4) *Medical special diets.* The administrator or designee shall provide for special diets that are prescribed by appropriate medical or dental personnel.

(5) *Religious preference special diets.* The administrator or designee shall provide for special diets for inmates whose beliefs require adherence to religious dietary laws.

(6) *Food discipline.* The administrator shall prohibit the use of food as a disciplinary measure.

(7) *Health protection.* Food service facilities and equipment shall meet health and safety standards; food service personnel and inmates working in the food service area shall comply with applicable health regulations. The administrator or designee shall document compliance with health and safety regulations, including, but not limited to, a pre-assignment medical examination.

(8) *Inspections of food products.* The appropriate government agency shall inspect and approve food products that are grown or produced within the system. The administrator or designee shall implement a distribution system that ensures prompt delivery of foodstuffs.

(9) *Inspection of food service area.* The administrator or designee shall conduct a weekly inspection of all food service areas and equipment to ensure that they are sanitary, that all food storage areas are temperature controlled, and that food service personnel have made daily checks of refrigerator and water temperatures.

(10) *Meal service.* The facility shall serve meals under the direct supervision of staff. The facility shall provide at least three meals, of which two shall be hot, served at regular meal times during each twenty-four hour period, with no more than fourteen hours between the evening meal and breakfast. Provided that basic nutritional goals are met, variations may be allowed based on

weekend and holiday food service demands.

(i) *Sanitation and hygiene*—(1) *Water supply.* The administrator shall maintain documentation that the entity which provides the facility's water source, supply, storage and distribution system meets the requirements of 42 U.S.C. 300g–6 (the Safe Drinking Water Act).

(2) *Sewage system.* The administrator shall maintain documentation that entity which provides the facility's sewage system complies with 33 U.S.C. 1251 *et seq.* (the Clean Water Act of 1977).

(3) *Sanitation plan.* The administrator or designee, in cooperation with the BIA or tribal maintenance program, shall develop a written housekeeping plan for all areas of the physical plant. The administrator or designee shall update the plan as needed and review it at least annually. The plan shall provide for daily housekeeping and regular maintenance by assigning specific duties to staff, inmates and BIA or tribal Facility Maintenance. The plan shall require that:

(i) facility floors be kept clean, dry and free of hazardous substances;

(ii) a qualified person conduct monthly inspections to control vermin and pests;

(iii) solid and liquid wastes be disposed of properly;

(iv) clean, suitable and presentable clothing, bedding, linens and towels be issued to new inmates and, if necessary, exchanged;

(v) necessary cleaning and storage of inmate personal clothing be provided;

(vi) articles needed for personal hygiene be furnished; and

(vii) sufficient facilities in the housing areas to permit inmates to shower or bathe on admission to the facility and daily thereafter.

(j) Health care—(1) *Written health care plan.* A written plan shall provide for the delivery of health care services, including applicable medical, dental, mental health and substance abuse treatment, under the control of a designated health authority. The plan shall include the participation of IHS and tribal health care providers. A Memorandum of Agreement between the administrator and the Director of the appropriate Indian Health Service (IHS) Service Unit or IHS contract health care provider shall document the health care plan. When this authority is other than a physician, final medical judgment shall rest with a single responsible physician, designated by the appropriate health authority, who shall meet the applicable licensure requirements.

(2) *Health program coordinator.* In facilities without full-time, qualified health personnel, a health-trained staff member shall coordinate the health care delivery system in the facility under the joint supervision of the responsible health authority and the administrator.

(3) *Annual review.* The administrator and the health authority shall update the plan as needed, review it annually to determine program needs including staffing, equipment and supplies and document its review by signature and date.

(4) *Medical/mental health judgment.* Medical, dental and mental health matters involving clinical judgments shall be the sole province of the responsible physician, dentist and/or psychiatrist or qualified psychologist.

(5) *Security regulations.* Security regulations applicable to facility personnel shall apply to health personnel.

(6) *Meetings with provider.* The health authority shall meet with the administrator or designee at least quarterly to review and evaluate the health care delivery system. The health authority shall provide an annual statistical report which documents the level and amount of health care services provided.

(7) *Review of health care policies.* The health authority and the administrator shall review and approve all policies and procedures relative to the health care plan prior to submission of these policies to the Chief, Division of Law Enforcement. Policies and procedures shall be reviewed at least annually and documented by signature and date.

(8) *Health training program.* The responsible health authority, in cooperation with the administrator, shall establish a health training program. The program shall provide instruction in the following areas:

(i) appropriate procedures to prevent the spread of communicable diseases;

(ii) the ability to respond to health-related situations within four minutes;

(iii) recognition of signs, symptoms and actions required in potential emergency situations;

(iv) recognition of chronic illness;

(v) administration of first aid and cardiopulmonary resuscitation (CPR);

(vi) methods of obtaining assistance from the health care provider;

(vii) recognition of signs and symptoms of and management of inmates with mental illness, retardation, emotional disturbance, chemical dependency and suicidal behavior; and

(viii) procedures for patient transfers to appropriate medical facilities or health care providers.

(9) *Unimpeded access to care.* The administrator or designee shall provide for the collection and referral of inmate requests for health care.

(10) *Twenty-four-hour emergency care.* The administrator and health authority shall develop a written plan for the provision of twenty-four hour emergency medical, dental and mental health care. The administrator and health authority shall update the plan as needed and review it at least annually. At a minimum, the plan shall include:

(i) emergency evacuation of the inmate from the facility;

(ii) emergency evaluation of the inmate for medical or mental health problems;

(iii) use of an emergency medical vehicle;

(iv) use of one or more designated hospital, clinic, emergency on-call physician, dentist, psychiatrist, qualified psychologist or otherwise qualified clinician; and

(v) security procedures that provide for the immediate transfer of inmates when appropriate.

(11) *Health care treatment.* Health care staff or health-trained officers shall perform treatment pursuant to written direct orders by personnel authorized by law to give such orders.

(12) *Medical/mental health management of inmates.* Qualified health care personnel, in conjunction with facility staff, shall develop a written plan for the management of inmates with medical, mental health and substance abuse problems, including suicide risks.

(13) *Licensure requirements.* The health authority shall comply with all applicable federal law, licensure requirements, rules, regulations and medical protocols in the delivery of health care services to the inmate population.

(14) *Traditional practitioners.* The facility shall allow inmates to participate in or receive traditional healing ceremonies and to use traditional healing methods, limited only to the degree necessary to preserve institutional security and order.

(15) *Prohibited use of detainees.* Inmates shall not perform duties in the health program.

(16) *Management of medications.* The administrator and health authority shall provide for the proper management of individual doses of medications that are kept in the facility. The administrator and the health authority shall review the policy annually and update it as needed.

(17) *Administration of medications.* The administrator or designee shall ensure that persons administering

medications have received training appropriate to their assignment. Employees shall administer medications according to direct or physician orders and shall record the administration of medications in a manner and on a form approved by the responsible physician.

(18) *Preliminary health care screening.* Health-trained staff shall perform medical screening of all inmates on arrival at the facility and record findings on a printed screening form approved by the health authority. The screening process shall include:

(i) inquiry into:

(A) current and chronic illness and health problems, including dental problems and suicidal thoughts;

(B) sexually transmitted diseases and other infectious diseases;

(C) medication taken and special health requirements;

(D) use of alcohol and other drugs, which includes types of drugs used, mode of use, amount used, frequency used, date or time of last use and history of problems that may have occurred after ceasing use (e.g., convulsions);

(E) past or present treatment or hospitalization for mental disturbance or suicide;

(F) other health problems designated by the responsible physician; and

(G) mental illness;

(ii) observation of:

(A) behavior, which includes state of consciousness, mental status, appearance, conduct, tremor or sweating; and

(B) body deformities, trauma markings, bruises, lesions, jaundice and ease of movements; and

(iii) disposition to:

(A) housing in general population;

(B) general population and referral to appropriate health care service or substance abuse treatment provider; and/or

(C) referral to appropriate health care service on an emergency basis.

(19) *First aid kits.* The administrator shall ensure that first aid kits are available in designated areas of the facility as determined by the Safety Officer during the annual inspection. The health care provider shall determine the appropriate content of first aid kits.

(20) *Serious and infectious disease.* The administrator and health authority shall develop a written plan for the management of inmates with serious and infectious disease. The administrator and health authority shall update the plan as needed and review it at least annually. The plan shall include, at a minimum:

(i) precautions taken to prevent the spread of disease;

(ii) special needs or requirements of the inmate; and

(iii) procedures for treatment, limiting activities, if appropriate, legally mandated reporting and medical pass-on as directed by the health authority.

(21) *Detoxification.* The administrator and health authority shall develop a written plan to guide the clinical management of chemically dependent inmates. The plan shall specify the process for involving the health authority and the substance abuse program on both a continuing and crisis-intervention basis. The plan shall include:

(i) assessment as warranted;

(ii) detoxification under clinically supervised conditions;

(iii) diagnosis of chemical dependency;

(iv) determination as to whether an individual requires non-pharmacologically or pharmacologically supported care; and

(v) the development of a written plan to refer chemically dependent inmates to existing community resources.

(22) *Informed consent.* The health authority shall observe informed consent standards of the community for all examinations, treatments and procedures affected by informed consent. In the case of minors, the informed consent of a parent, guardian or legal custodian shall apply when required by law. Health care shall be rendered against an inmate's will only in accordance with law.

(23) *Participation in research.* The health authority shall prohibit the use of inmates for medical, pharmaceutical, or cosmetic experiments. This standard shall not preclude individual treatment of an inmate based on need for a specific medical procedure that is not generally available.

(24) *Confidentiality of health records.* In compliance with the 5 U.S.C. 552(a) (the Privacy Act of 1974) as amended and 42 CFR Part 2 (Regulations on Confidentiality of Alcohol and Drug Abuse Patient Records), the health authority shall keep the health record confidential. The health authority shall require that, at a minimum:

(i) the active health record shall be maintained separately from the confinement record;

(ii) access to the health record shall be controlled by the health authority; and

(iii) the health authority shall with the administrator of the facility or designee information regarding an inmate's medical management, security and the ability to participate in programs.

(25) *Medical record contents.* The health authority shall approve the method of recording entries in the record and the form and format of the record. An inmate's medical/mental health record shall contain:

(i) copies of the completed intake screening form;

(ii) prescribed medications and their administration;

(iii) laboratory, x-ray and diagnostic studies, if applicable;

(iv) the signature and title of each documenter;

(v) consent and refusal forms;

(vi) release of information forms;

(vii) place, date and time of health encounters;

(viii) discharge summary of hospitalization (if applicable); and

(ix) health service reports (e.g., dental, psychiatric and other consultations).

(x) *Transfer of health information and records.* Summaries or copies of the health record shall be routinely sent to the health authority of any facility to which the inmate is transferred. The inmate shall authorize, in writing, the transfer of health records and information, unless otherwise provided by law or administrative regulation having the force and effect of law.

(k) *Release*—(1) *Court programs.* The facility shall cooperate with and assist in coordinating court intervention and diversion programs, pretrial release and probation services.

(2) *Final release.* Written procedures for final release of inmates shall include, but not be limited to:

(i) verification of identity and release authority;

(ii) completion of release arrangements, including person or agency to whom the inmate is to be released if applicable;

(iii) verification that all inmate property leaves with the inmate and that no facility property leaves the facility;

(iv) completion of any pending action, such as grievances or claims for damages or lost possessions;

(v) transfer of health information if appropriate; and

(vi) transportation arrangements, if required.

(3) *Detainers.* The presence of a detainer shall not automatically prevent the release of an inmate from the detention facility.

§ 10.54 Inmate programs and services.

(a) *Counseling, library and religious programming*—(1) *Counseling.* The administrator or designee shall provide for inmate counseling and crisis intervention services.

(2) *Library.* The administrator or designee shall develop a written plan to provide reading materials to inmates. The plan shall include the location where reading materials are kept and

the process by which inmates obtain and return these materials. The administrator shall update the plan as needed and review it at least annually.

(3) *Religious programs.* Inmates shall have the right to practice their religion, subject only to the limitations necessary to maintain institutional order and security.

(b) *Correspondence and telephone.*

(1) *Inmate correspondence.* The administrator shall regulate inmate correspondence and shall make this policy available to all staff and inmates. The administrator shall review this policy annually and update it as needed.

(2) *Limitations on inmate correspondence.* The administrator shall not limit the volume of lawful correspondence (e.g., letters, packages and publications) an inmate may send or receive and shall not restrict the length, language, content or source of the correspondence, except where there is clear and convincing evidence to justify the limitations for reasons of public safety, facility order or security.

(3) *Indigents' correspondence.* The administrator or designee shall provide indigent inmates with a system that enables them to send a minimum of two letters.

(4) *Inspection of letters and packages.* The administrator or designee may open inmate letters, both in-coming and out-going to inspect them for contraband. Letters shall not be read or rejected except where there is reliable information that there is a threat to order and security or that they are being used to further illegal activities. The administrator or designee shall notify inmates when in-coming or out-going letters are rejected. The administrator or designee shall deposit any cash, checks, or money orders in the inmate's account and shall issue a receipt to both the inmate and the sender. The administrator or designee shall forward any contraband found to the appropriate law enforcement authority. The supervisor shall forward all mail within twenty-four hours of receipt except for Saturdays, Sundays and holidays. Inmates shall be prohibited from carrying money.

(5) *Privileged correspondence.* The administrator shall permit inmates to send sealed letters to specified groups of persons and organizations including, but not limited to, courts, including probation staff, counsel, officials of the confining authority, administrators of grievance systems and the media. Mail to inmates from this specified class of persons and organizations shall be opened only to inspect for contraband and only in the presence of the inmate.

(6) *Holding and forwarding mail.* The administrator or designee shall forward or return first-class letters and packages for inmates after transfer or release.

(7) *Telephone.* The administrator shall provide for inmate access to telephones.

(c) *Visiting.*

(1) *Visiting rules.* The administrator shall establish rules for inmate visiting.

(2) *Number of visitors.* The administrator or designee shall limit the number of visitors an inmate may receive and the length of the visits only to the degree necessary in terms of facility schedules, space and personnel constraints except where there are substantial reasons to justify such limitations.

(3) *Sobriety statement.* Facility visitors shall sign a sobriety statement. The statement shall stipulate that:

(i) they are not under the influence of alcohol or illegal mood-altering substances;

(ii) they are not carrying such substances on their person or in their belongings; and

(iii) they consent to a breath test or non-invasive search as a condition of entry, if there is probable cause.

(4) *Searches (visiting).* The administrator or designee shall provide clear instructions to staff and inmates concerning inmate and visitor search procedures and the approval required for visual observations of unclothed inmates.

(5) *Special Visits.* The administrator or designee shall provide for special visits from persons who have travelled long distances, to hospitalized inmates and to inmates in immediate segregation.

(6) *Visitor Personal Property.* Visitors shall not bring personal property into the secure area of the facility.

(7) *Visitor Registration.* The administrator or designee shall provide for visitor registration and identification on entry into the facility.

Dated: May 19, 1994.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 94–18796 Filed 8–4–94; 8:45 am]

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Friday
August 5, 1994

Part III

Department of Housing and Urban Development

Office of the Secretary

24 CFR Parts 91, et al.
Community Planning and Development Programs; Consolidation; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 91, 92, 570, 574, 576, and 968

[Docket No. R–94–1731; FR–3611–P–01]

RIN 2501–AB72

Consolidated Submission for Community Planning and Development Programs

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the Department's existing regulations to completely replace the current regulations for Comprehensive Housing Affordability Strategies (CHAS) with a rule that consolidates into a single consolidated submission the planning and application aspects of the Department's Community Development Block Grant (CDBG), Emergency Shelter Grant (ESG), HOME Investment Partnerships (HOME), and Housing Opportunities for Persons With AIDS (HOPWA) formula programs with the requirements for the CHAS. This new consolidated submission will replace the current CHAS, the HOME program description, the Community Development plan and the CDBG final statement, and the ESG and HOPWA applications. The rule also consolidates the reporting requirements for these programs, replacing the general performance reports with one performance report.

Although this rule does not incorporate the public housing Comprehensive Grant (Comp Grant) process into the consolidated planning and application process, it proposes changes to regulations concerning Comp Grants to encourage this cooperation in the development of the Comp Grant plan and the consolidated plan. The changes are intended to ensure that the needs and resources of public housing authorities are included in a comprehensive planning effort to revitalize distressed neighborhoods and help low-income residents locally.

In addition, the rule proposes amendments to the separate regulations for the CDBG, HOME, ESG, and HOPWA programs to remove some duplicative provisions, cross-reference the new provisions, and to conform terminology to that used in the revised part 91.

DATES: Comment due date: October 4, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Office of General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title and to the specific sections in the notice. A copy of each communication submitted will be available for public inspection and copying during regular business hours at the above address. Copies of this proposed rule will be made available on tape or large print for those with impaired vision that request them. They may be obtained at the above address.

FOR FURTHER INFORMATION CONTACT: Joseph F. Smith, Director, Policy Coordination, Office of Community Planning and Development, 451 Seventh Street, SW, Washington, DC 20410–7000, telephone (202) 708–1283 (voice) or (202) 708–2565 (TDD). (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

I. Information Collections

The information collection requirements for the planning process, the application process, and the reporting process contained in this rule have been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1980 (42 U.S.C. 3501–3520). The estimated public reporting burden is expected to be significantly lower than the current combined burden imposed by the CHAS, CDBG, ESG, HOME, and HOPWA programs.

The estimated public reporting burden of these collections is stated under the Preamble heading Findings and Certifications. Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing the burden, to the Department of Housing and Urban Development, Rules Docket Clerk at the above address; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for HUD, Washington, DC 20503.

II. Background

A. Impetus for Change

To build and strengthen new partnerships with State and local governments and the private sector to make HUD's programs work to help them build strong communities, the Department has consulted with them on how to make the operation of Community Planning and Development programs more effective. In recognition of the fact that problems do not stop at jurisdictional boundaries, this rule encourages consultation with public and private agencies, including those outside a single jurisdiction, to identify shared needs and solutions to intra-jurisdictional problems. As a result of the Department's consultations, it has decided that the multitude of applications to obtain funding and the different funding cycles for various formula entitlement programs were symptomatic of a general problem. The general problem was that the easiest means for State and local governments to express their needs for federal funding (the CHAS) was hindered by HUD's procedures. Therefore, to eliminate duplication of effort and reduce the paperwork burden on these jurisdictions, the Department has decided to consolidate the program submission requirements to the greatest degree possible. This proposal will require all of the Community Planning and Development formula grant programs to use the same program year and will reduce the regulations concerning submission of planning/application/reporting documents virtually to the statutory minimum. This framework will give the States and local governments the flexibility to use existing plans and strategies to help citizens understand the jurisdiction's priority needs, and assess progress of those jurisdictions towards meeting identified goals and objectives through measurable indicators. The Department's goal is to encourage the development of comprehensive, easy to understand information on the jurisdiction's housing and community development needs that would promote meaningful citizen participation.

B. Statutory Framework

The various statutes that authorize the programs being consolidated are as follows:

—Comprehensive Housing Affordability Strategy (CHAS): title I of the Cranston-Gonzalez National Affordable Housing Act, 42 U.S.C. 12702–12711.
—Community Development Block Grants (CDBG): title I of the Housing and Community Development Act of 1974, 42 U.S.C. 5304–5320.
—Emergency Shelter Grants (ESG): title VI, subtitle B, of the Stewart B. McKinney Homeless Assistance Act, 42 U.S.C. 11371–11378.
—HOME Investment Partnerships (HOME): title II of the Cranston-Gonzalez National Affordable Housing Act, 42 U.S.C. 12741–12839.
—Housing Opportunities for Persons With AIDS (HOPWA): the AIDS

Housing Opportunity Act, 42 U.S.C. 12901–12912.

Also serving as a basis for determining requirements in this rule are the Fair Housing Act (42 U.S.C. 3601–3619), title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, title II of the Americans With Disabilities Act, and Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u).

The intent of this rule is to: (1) Promote citizen participation and the development of local priority needs and objectives by providing comprehensive information on the jurisdiction that is easy to understand; (2) coordinate these statutory requirements in such a manner as to minimize the federal intrusion into State and local planning activities and to simplify the process of requesting and obtaining federal funds available to the jurisdictions on a formula basis; (3) promote the development of an action plan that provides a basis for assessing performance; and (4) encourage consultation with public and private agencies, including those outside a single jurisdiction, to identify shared needs and solutions to intra-jurisdictional problems.

When a jurisdiction qualifies for one formula program but not another, its submission need only satisfy the requirements for the formula program for which it qualifies, as well as the planning requirements based on the Comprehensive Housing Affordability Strategy statute (Cranston-Gonzalez National Housing Affordability Act, or "NAHA") to cover other competitively funded programs. If a jurisdiction does not qualify for any of the formula programs but competes for funding under a program that is subject to the CHAS planning requirements of NAHA, it must follow the general provisions of this part, but not those that apply only to other programs. If a jurisdiction does not qualify for the HOPWA formula program but intends to apply for a competitively awarded HOPWA grant, it should satisfy the HOPWA planning requirements.

This rule is organized into several parts. First, there are the proposed revisions to part 91, which encompasses the new planning/application and reporting submissions. Second, since many of the requirements that are common to the formula programs are combined into part 91, there are proposed revisions to remove those requirements from the individual program regulations. In addition, since this new document is different from the Comprehensive Housing Affordability Strategy, the references to the CHAS found in the program regulations are proposed to be removed.

Part 91 is organized into seven subparts. With the exception of jurisdictions that submit an abbreviated consolidated plan, the first two subparts (General, and Citizen Participation and Consultation) and the last subpart (Other General Requirements) apply to all jurisdictions. Local governments that are not part of a HOME consortium are covered by their own subpart (subpart C). States also are covered by their own subpart (D). Local governments that are part of a consortium are covered by both the local government subpart and the consortium subpart (E). The subpart for insular areas has been reserved. Guam, the Northern Mariana Islands, American Samoa, the Virgin Islands, and Palau are eligible to receive program funds. However, only Palau is required by NAHA to submit a CHAS because it is included in the definition of "jurisdiction." The other entities are defined by NAHA as "insular areas" and are not required to prepare or submit a CHAS. The Department specifically invites comments on whether to consolidate the program submission requirements (and in the case of Palau, abbreviated CHAS requirements) for Guam, the Northern Mariana Islands, American Samoa, the Virgin Islands, and Palau.

Finally, the Department recognizes that there is a need for regulatory provisions dealing with the transition from the current application system to the new consolidated rule. The Department intends to grant an extension of the current CHAS to cover the time period between the end of fiscal year 1994 and the beginning of the jurisdiction's consolidated program year.

Findings and Certifications

Regulatory Review

This rule was reviewed by the Office of Management and Budget under Executive Order 12866, Regulatory Planning and Review. Any changes made to the rule as a result of that review are clearly identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, room 10276, 451 Seventh St., SW, Washington, DC.

Impact on the Environment

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m.) in the Office of the Rules Docket Clerk, room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule do not have significant impact on States or their political subdivisions since the requirements of the rule are limited to requirements imposed by the statutes being implemented. To the extent the rule has any significant impact, it is positive, in that duplication of effort by State and local governments is being eliminated and the burdens on them are reduced.

Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus is not subject to review under the Order. The rule merely carries out the mandate of federal statutes with respect to planning documents for housing and community development programs.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule will not have a significant impact on a substantial number of small entities, because it does not place major burdens on jurisdictions.

Regulatory Agenda

This rule was listed as sequence number 1523 in the Department's Semiannual Regulatory Agenda published on April 25, 1994 (59 FR 20424, 20433), under Executive Order 12286 and the Regulatory Flexibility Act.

Public Reporting Burden

The Department has estimated the public reporting burden involved in the information collections contained in the rule as shown below. The public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the

data needed, and completing and reviewing the collection of information.

ANNUAL REPORTING BURDEN—CONSOLIDATED PLAN

5 Year submission	Number of respondents	Response per respondent	Burden hours	Total hours
Localities	800	1	481	384,800
States	50	1	839	41,950
				426,750
Annual Submission:				
Localities	800	1	318	262,400
States	50	1	434	21,700
				284,100
Abbreviated Plan:				
Localities	100	1	100	10,000
				720,850

Catalog

The Catalog of Federal Domestic Assistance numbers for the programs affected by this rule are 14.218, 14.231, 14.239, and 14.241.

List of Subjects

24 CFR Part 91

Grant programs—Indians, Homeownership, Low and moderate income housing, Public housing.

24 CFR Part 92

Grant programs—housing and community development, Manufactured homes, Rent subsidies, Reporting and record keeping requirements.

24 CFR Part 570

Administrative practice and procedure, Grant programs—housing and community development, American Samoa, Northern Mariana Islands, Pacific Islands Trust Territory, Puerto Rico, Virgin Islands.

24 CFR Part 574

Community facilities, Disabled, Emergency shelter, Grant programs—health programs, Grant programs—housing and community development, Grant programs—social programs, HIV/AIDS, Homeless, Housing , Low and moderate income housing, Nonprofit organizations, Rent subsidies, Reporting and recordkeeping requirements, Technical assistance.

24 CFR Part 576

Community facilities, Emergency shelter grants, Grant programs—housing and community development, Grant programs—social programs, Homeless, Reporting and recordkeeping requirements.

24 CFR Part 968

Grant programs—housing and community development, Loan programs—housing and community development, Public housing, Reporting and recordkeeping requirements.

Accordingly, parts 91, 92, 570, 574, 576, and 968 of title 24 of the Code of Federal Regulations are proposed to be amended as follows:

1. Part 91 would be revised in its entirety to read as follows:

PART 91—CONSOLIDATED SUBMISSIONS FOR COMMUNITY PLANNING AND DEVELOPMENT PROGRAMS

Subpart A—General

Sec.

91.1 Purpose.
91.2 Applicability.
91.5 Definitions.
91.10 Consolidated program year.
91.15 Submission date.

Subpart B—Citizen Participation and Consultation

91.100 Consultation.
91.105 Citizen participation plan.

Subpart C—Local Governments: Contents of Consolidated Plan

91.200 Contents and format.
91.205 Housing and homeless needs assessment.
91.210 Housing market analysis.
91.215 Strategies, priority needs, and objectives.
91.220 Action plan.
91.225 Certifications.
91.230 Monitoring.
91.235 Special case—abbreviated consolidated plan.

Subpart D—State Governments: Contents of Consolidated Plan

91.300 Contents and format.
91.305 Housing and homeless needs assessment.
91.310 Housing market analysis.
91.315 Strategies, priority needs, and objectives.
91.320 Action plan.
91.325 Certifications.
91.330 Monitoring.

Subpart E—Consortia: Contents of Consolidated Plan

91.400 Applicability.
91.405 Consolidated program year.
91.410 Housing market analysis.
91.415 Housing and homeless needs assessment.
91.420 Strategies and priority needs.
91.425 Action plan.
91.430 Certifications.
91.435 Monitoring.

Subpart F—Other General Requirements

91.500 HUD approval action.
91.505 Amendments to the consolidated plan.
91.510 Consistency determinations.
91.515 Funding determinations by HUD.
91.520 Performance reports.
91.525 Performance review by HUD.

Subpart G—Insular Areas [Reserved]

Authority: 42 U.S.C. 3535(d), 3601–3619, 5301–5315, 11331–11388, 12701–12711, 12741–12756, and 12901–12912.

Subpart A—General

§ 91.1 Purpose.

(a) *Overall goals.* (1) The overall goals of the community development and planning programs covered by this part are to strengthen partnerships with jurisdictions to extend and strengthen partnerships among all levels of government and the private sector, including for-profit and nonprofit organizations, to enable them to provide decent housing, establish and maintain a suitable living environment, and expand economic opportunities for every American, particularly for very low-income and low-income persons.

(i) Decent housing includes assisting homeless persons to obtain appropriate housing and assisting persons at risk of becoming homeless; retention of the affordable housing stock; and increasing the availability of permanent housing in standard condition and affordable cost to low-income and very low-income families, particularly to members of disadvantaged minorities, without

discrimination on the basis of race, color, religion, sex, national origin, familial status, or disability. Decent housing also includes increasing the supply of supportive housing, which combines structural features and services needed to enable persons with special needs to live with dignity and independence.

(ii) A suitable living environment includes improving the safety and livability of neighborhoods; increasing access to quality public and private facilities and services; reducing the isolation of income groups within a community or geographical area through the spatial deconcentration of housing opportunities for persons of lower income and the revitalization of deteriorating or deteriorated neighborhoods; restoring and preserving properties of special historic, architectural, or aesthetic value; and conservation of energy resources.

(iii) Expanded economic opportunities includes the provision of jobs accessible to housing affordable to low income persons, including provision of jobs involved in carrying out activities under programs covered by this plan to low-income persons living in areas affected by those programs and activities; availability of mortgage financing for low income persons at reasonable rates using nondiscriminatory lending practices; access to capital and credit for development activities that promote the long-term economic and social viability of the community; and empowerment and self-sufficiency opportunities for low income persons to reduce generational poverty in federally assisted and public housing.

(2) The consolidated submission described in this part 91 requires the jurisdiction to state in one document its plan to pursue these goals for all the community planning and development programs, as well as for housing programs. It is these goals against which the plan and the jurisdiction's performance under the plan will be evaluated by HUD.

(b) *Functions of plan.* The consolidated plan serves the following functions:

(1) A planning document for the jurisdiction, which builds on a participatory process at the lowest levels;

(2) An application for federal funds under HUD's formula grant programs;

(3) A strategy to be followed in carrying out HUD programs; and

(4) An action plan that provides a basis for assessing performance.

§ 91.2 Applicability.

(a) The following formula grant programs are covered by the consolidated plan:

(1) The Community Development Block Grant (CDBG) programs (see part 570, Subparts D and I);

(2) The Emergency Shelter Grants (ESG) program (see part 576);

(3) The HOME Investment Partnerships (HOME) program (see part 92); and

(4) The Housing Opportunities for Persons With AIDS (HOPWA) program (see part 574).

(b) A jurisdiction must have a consolidated plan that is approved by HUD as a prerequisite to receiving funds from HUD under the following programs:

(1) The HOPE I Public Housing Homeownership (HOPE I) program (see 24 CFR subtitle A, appendix A);

(2) The HOPE II Homeownership of Multifamily Units (HOPE II) program (see 24 CFR subtitle A, appendix B);

(3) The HOPE III Homeownership of Single Family Homes (HOPE III) program (see 24 CFR part 572);

(4) The Low-Income Housing Preservation (prepayment avoidance incentives) program, when administered by a State agency (see 24 CFR 248.177);

(5) The Supportive Housing for the Elderly (Section 202) program (see part 889);

(6) The Supportive Housing for Persons with Disabilities program (see part 890);

(7) The Supportive Housing program (see part 583);

(8) The Single Room Occupancy Housing (SRO) program (see part 882, subpart H);

(9) The Shelter Plus Care program (see 24 CFR part 582);

(10) The Community Development Block Grant program—Small Cities and Insular Areas (see 24 CFR part 570, subparts E and F);

(11) HOME program reallocations;

(12) Revitalization of Severely Distressed Public Housing (section 24 of the United States Housing Act of 1937);

(13) Hope for Youth: Youthbuild (see part 585);

(14) The John Heinz Neighborhood Development program (see 24 CFR part 594);

(15) The Lead-Based Paint Hazard Reduction program (see 24 CFR part 35);

(16) Grants for Regulatory Barrier Removal Strategies and Implementation (section 1204, Housing and Community Development Act of 1992); and

(17) Competitive grants under the Housing Opportunities for Persons With AIDS (HOPWA) program (see part 574).

(c) Other programs do not require consistency with an approved consolidated plan. However, HUD funding allocations for the Section 8 Certificate and Voucher Programs are to be made in a way that enables participating jurisdictions to carry out their consolidated plans.

§ 91.5 Definitions.

Certification. A written assertion, based on supporting evidence, that must be kept available for inspection by HUD, by the Inspector General of HUD, and by the public. The assertion shall be deemed to be accurate unless HUD determines otherwise, after inspecting the evidence and providing due notice and opportunity for comment.

Consolidated plan (or "the plan"). The document that is submitted annually to HUD that serves as the planning documents (comprehensive housing affordability strategy and community development plan) of the jurisdiction and an application for funding under any of the Community Planning and Development formula grant programs (CDBG, ESG, HOME, or HOPWA), which is prepared in accordance with the process prescribed in this part.

Consortium. Geographically contiguous units of general local government that are acting as a single unit of general local government for purposes of the HOME program (see 24 CFR part 92). (A unit of general local government that is also part of a consortium for HOME program purposes must submit a plan that complies with subpart C of this part, as well as contributing to the consortium's plan that complies with subpart E of this part.)

Emergency shelter. Any facility with overnight sleeping accommodations, the primary purpose of which is to provide temporary shelter for the homeless in general or for specific populations of the homeless.

Extremely low-income households (or families). Households whose income is between 0 and 30 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 30 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

Homeless. An individual (not imprisoned or otherwise detained pursuant to an Act of Congress or a State law) or family who:

(1) Lacks a fixed, regular, and adequate nighttime residence; and

(2) Has a primary nighttime residence that is:

(i) A supervised publicly or privately operated shelter designed to provide temporary living accommodations (including welfare hotels, congregate shelters, and transitional housing for the mentally ill);

(ii) An institution that provides a temporary residence for individuals intended to be institutionalized: or

(iii) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings.

Homeless family. A family that includes at least one parent or guardian and one child under the age of 18; a pregnant woman; or a person in the process of securing legal custody of a person under the age of 18; who is homeless, as defined in this section.

Homeless individual. A youth (17 years or younger) not accompanied by an adult (18 years or older) or an adult without children, who is homeless, as defined in this section.

HUD. The United States Department of Housing and Urban Development.

Jurisdiction. A State, unit of general local government, or a consortium.

Lead-based paint hazards. Any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as established by the appropriate Federal agency.

Low-income families. Families whose incomes do not exceed 80 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 80 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes. (The CDBG program has used the terms "low-income" and "moderate-income" persons, which terms are derived from its statute. Those terms have the same meaning as the terms "very low-income" and "low-income" as used in NAHA and in the United States Housing Act of 1937 for the assisted housing programs administered under it. To make the usage uniform under this part, the terms "very low-income" and "low-income" are used here.)

Poverty level households (or families). Households with incomes below the poverty line, as defined by the Office of Management and Budget and revised annually.

State. Any State of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

Transitional housing. A project that is designed to provide housing and appropriate supportive services to homeless persons to facilitate movement to independent living within 24 months, or a longer period approved by HUD. For purposes of the HOME program, there is no HUD-approved time period for moving to independent living.

Unit of general local government. A city, town, township, county, parish, village, or other general purpose political subdivision of a State; an urban county; the Federated States of Micronesia and Palau, the Marshall Islands, or a general purpose political subdivision thereof; and a consortium of such political subdivisions recognized by HUD in accordance with the HOME program (part 92) or the CDBG program (part 570).

Urban county. See definition in § 570.3.

Very low-income families. Low-income families whose incomes do not exceed 50 percent of the median family income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 50 percent of the median for the area on the basis of HUD's findings that such variations are necessary because of prevailing levels of construction costs or fair market rents, or unusually high or low family incomes.

§ 91.10 Consolidated program year.

(a) Each of the following programs shall be administered by a jurisdiction on a single consolidated program year, established by the jurisdiction: CDBG, ESG, HOME, and HOPWA. Except as provided in paragraph (b) of this section, the program year shall run for a twelve month period and begin on the first calendar day of a month.

(b) Once a program year is established, the jurisdiction may either shorten or lengthen its program year to change the beginning date of the following program year, provided that it notifies HUD in writing at least two months before the date the program year would have ended if it had not been lengthened or at least two months before the end of a proposed shortened program year.

(c) See subpart E of this part for requirements concerning program year for units of general local government that are part of a consortium.

§ 91.15 Submission date.

(a) *General.* (1) In order to facilitate continuity in its program and to provide accountability to citizens, each jurisdiction should submit its consolidated plan to HUD at least 45 days before the start of its program year. (But see § 92.52(b) with respect to newly eligible jurisdictions under the HOME program.) With the exception of the August 16 date noted in paragraph (a)(2) of this section, HUD may grant a jurisdiction an extension of the submission deadline for good cause.

(2) In no event will HUD accept a submission earlier than November 15 or later than August 16 of the Federal fiscal year for which the grant funds are appropriated. (Failure to submit the plan by August 16 will automatically result in a loss of the CDBG funds to which the jurisdiction would otherwise be entitled.)

(b) *Annual submission.* The portions of the document that must be submitted on an annual basis are the action plan and the certifications.

Subpart B—Citizen Participation and Consultation

§ 91.100 Consultation.

(a) *General.* When preparing the plan, the jurisdiction shall consult with other public and private agencies that provide assisted housing, health services, and social services (including those focusing on services to children, elderly persons, persons with disabilities—including HIV/AIDS, homeless persons) during preparation of the plan. When preparing the portion of its plan concerning lead-based paint hazards, the jurisdiction shall consult with State or local health and child welfare agencies and examine health department data on the addresses of housing units in which children have been identified as lead poisoned. When preparing the description of priority nonhousing community development needs, a unit of general local government must notify adjacent units of general local government. The jurisdiction should also consult with adjacent units of general local government, particularly for problems and solutions that go beyond a single jurisdiction. When preparing its method of distribution of assistance under the CDBG program, a State must consult with local governments in nonentitlement areas of the State.

(b) *HOPWA.* The largest city in each metropolitan area that is eligible to receive a HOPWA formula allocation must consult broadly to develop a metropolitan-wide strategy for addressing the needs of persons with

HIV/AIDS and their families living throughout the metropolitan area.

(c) *Public housing.* The jurisdiction shall consult with the local public housing agency participating in an approved Comprehensive Grant program concerning consideration of public housing needs and planned Comprehensive Grant program activities. This consultation will help provide a better basis for the certification by the local Chief Executive Officer that the Comprehensive Grant Plan/annual statement is consistent with the local government's assessment of low-income housing needs (as evidenced in the housing and community development plan) and that the local government will cooperate in providing resident programs and services (as required by § 968.320(d) of the regulations for the Comprehensive Grant program). It will also help ensure that activities with regard to local drug elimination, neighborhood improvement programs, and resident programs and services, funded under the public housing program and those funded under a program covered by the consolidated plan are fully coordinated to achieve comprehensive community development goals.

§ 91.105 Citizen participation plan.

(a) *Applicability.* (1) The jurisdiction is required to adopt a citizen participation plan. (Where a jurisdiction, before the effectiveness of this rule, adopted a plan that complies with section 104(a)(3) of the Housing and Community Development Act of 1974 but will need to amend the plan to comply with provisions of this section, the plan shall be amended by the first day of the jurisdiction's program year that begins on or after 180 days following the effective date of this rule.)

(2) Although these requirements are designed especially to encourage participation by very low- and low-income persons, particularly those living in slum and blighted areas and in areas where CDBG funds are proposed to be used, jurisdictions are expected to take whatever actions are appropriate to encourage the participation of all its citizens, including minorities and non-English speaking persons, as well as persons with mobility, visual or hearing impairments.

(3) The jurisdiction shall encourage, in conjunction with consultation with public housing authorities, the participation of residents of public and assisted housing developments, in the process of developing and implementing the consolidated plan, along with other low-income residents of targeted revitalization areas in which the developments are located. The jurisdiction shall make an effort to provide information to the housing agency about housing and community development plan activities related to its developments and surrounding communities so that the housing agency can make this information available at the annual public hearing required under the Comprehensive Grant program.

(b) *Required elements of citizen participation (CP) plan.*—(1) *Encouragement of citizen participation.* The CP plan must encourage citizens to participate in the development of the consolidated plan, any amendments to the plan, and the performance report.

(2) *Information to be provided.* The CP plan must assure that citizens or, as appropriate, units of general local government, be furnished appropriate information.

(i) The CP plan must require that, before the jurisdiction adopts a consolidated plan, the jurisdiction will make available to citizens, public agencies, and other interested parties information that includes the amount of assistance the jurisdiction expects to receive and the range of activities that may be undertaken, including the amount that will benefit persons of very low- and low-income and the plans to minimize displacement of persons and to assist any persons displaced.

(ii) The CP plan must require the jurisdiction to publish the proposed consolidated plan for comment. The requirement for publishing may be met by publishing a summary of the proposed consolidated plan in one or more newspapers of general circulation, and by making copies of the proposed plan available at libraries, government offices, and public places. The summary must describe the contents and purpose of the consolidated plan, and must include a list of the locations where copies of the entire plan may be examined.

(iii) The CP plan must require the jurisdiction to notify citizens, or units of general local government, as appropriate, of the availability of the consolidated plan as adopted, any amendments, and its performance report, as these documents are developed, to afford citizens a reasonable opportunity to examine their contents.

(iv) The CP plan also must provide a period, not less than 30 days, to receive comments from citizens, or units of general local government, on the plan, amendments, or report that is to be submitted to HUD before its submission.

(3) *Access to records.* The CP plan must require the jurisdiction to provide citizens, public agencies, and other interested parties with reasonable and timely access to information and records relating to the jurisdiction's consolidated plan and the jurisdiction's use of assistance under the programs covered by this part during the preceding five years.

(4) *Technical assistance.* The CP plan also must provide for technical assistance to groups representative of persons of very low- and low-income that request such assistance in developing proposals for funding assistance under any of the programs covered by the consolidated plan, with the level and type of assistance determined by the jurisdiction.

(5) *Public hearings.* (i) The CP plan must provide for at least two public hearings per year to obtain citizens' views, to be conducted at a minimum of two different stages of the program year. Together, the hearings must address housing and community development needs, development of proposed activities, and review of program performance. To obtain the views of citizens on housing and community development needs, including priority nonhousing community development needs, the CP plan must provide that at least one of these hearings are held before the proposed consolidated plan is published for comment.

(ii) The CP plan must provide that adequate advance notice be given to citizens or, as appropriate, units of general local government of each hearing, with sufficient information published about the subject of the hearing to permit informed comment.

(iii) The CP plan must provide that hearings be held at times and locations convenient to potential and actual beneficiaries, and with accommodation for persons with disabilities.

(iv) The CP plan must identify how the needs of non-English speaking residents will be met in the case of public hearings where a significant number of non-English speaking residents can be reasonably expected to participate.

(6) *Comments and complaints.* (i) The CP plan shall require the jurisdiction to consider any comments or views of citizens (or units of general local government) received in writing, or orally at the public hearings, in preparing the final consolidated plan, amendment of the plan, or performance report. A summary of these comments or views, and a summary of any comments or views not accepted and the reasons therefor, shall be attached to

the final consolidated plan, amendment of the plan, or performance report.

(ii) The CP plan shall describe the jurisdiction's appropriate and practicable procedures to handle complaints from citizens related to the consolidated plan, amendments, and performance report. At a minimum, the CP plan shall require that the jurisdiction must provide a timely, substantive written response to every written citizen complaint, within an established period of time (within 15 working days, where practicable, if the jurisdiction is a CDBG grant recipient).

(7) *Criteria for amendment to plan.* The CP plan must specify the criteria the jurisdiction will use for determining what constitutes a substantial change in the jurisdiction's planned or actual activities that requires an amendment to the consolidated plan. (See § 91.505.) It must address such changes as changes in the use of CDBG funds from one eligible activity to another or changes in the method of distribution of such funds.

(c) *Adoption of CP plan.* The jurisdiction must provide citizens with a reasonable opportunity to comment on the original citizen participation (CP) plan and on any amendments to the CP plan, and must make the CP plan public. The CP plan must be in a format accessible to persons with disabilities.

(d) *Use of CP plan.* The jurisdiction must follow its citizen participation plan.

Subpart C—Local Governments: Contents of Consolidated Plan

§ 91.200 Contents and format.

The consolidated plan shall be submitted in such format as may be prescribed by HUD, including forms and narratives, or in such other format as jointly agreed upon by HUD and the jurisdiction. The content shall comply with the requirements of this part, including the requirement of § 91.105 to include a summary of public comments.

§ 91.205 Housing and homeless needs assessment.

(a) *General.* The plan must describe the jurisdiction's estimated housing needs and needs for supportive services projected for the ensuing five-year period. Housing data included in this portion of the plan shall be based on data available from the U.S. Census, as updated by any properly conducted local study, or any other reliable source that the jurisdiction clearly identifies and should reflect the consultation with social service agencies conducted in accordance with § 91.100 and the citizen participation process. For a jurisdiction seeking funding under the HOPWA program, the needs described for housing and supportive services must address the needs of persons with HIV/AIDS and their families throughout the metropolitan area.

(b) *Categories of persons affected.* (1) The plan must describe the jurisdiction's need for assistance for extremely low-income, very low-income, low-income, and moderate-income families, for renters and owners, for elderly persons, for large families, and for persons with disabilities. The description of housing needs shall include a discussion of the cost burden and severe cost burden, overcrowding (especially for large families), and substandard housing conditions being experienced by extremely low-income, very low-income, other low-income, and moderate-income renters and owners compared to the jurisdiction as a whole.

(2) For any of the categories enumerated in paragraph (b)(1) of this section, to the extent that any racial or ethnic group has disproportionately greater need in comparison to the needs of that category as a whole, assessment of that specific need shall be included. For this purpose, disproportionately greater need exists when the percentage of persons in a category of need who are members of a particular racial or ethnic group is at least 10 percentage points higher than the percentage of persons in the category as a whole.

(3) With respect to a jurisdiction seeking assistance under the HOPWA program, the plan must identify the size and characteristics of the population with HIV/AIDS and their families within the eligible metropolitan statistical area it will serve.

(c) *Homeless needs.* The plan must describe the nature and extent of homelessness, including rural homelessness, within the jurisdiction. The plan must include an estimate of the special needs of various categories of families and individuals who are homeless or threatened with homelessness (such as persons with mental illness or with substance abuse problems), in accordance with a table prescribed by HUD. The plan also should contain a narrative description of the nature and extent of homelessness by racial and ethnic group, to the extent information is available.

(d) *Lead-based paint hazards.* The plan must estimate the number of housing units within the jurisdiction that are occupied by low-income families or very low-income families that contain lead-based paint hazards, as defined in this part.

§ 91.210 Housing market analysis.

(a) *General characteristics.* Based on information available to the jurisdiction, the plan must describe the significant characteristics of the jurisdiction's housing market, including such aspects as the supply, demand, and condition and cost of housing and the housing stock available to serve persons with disabilities and to serve persons with HIV/AIDS and their families. The jurisdiction must identify and describe any areas within the jurisdiction with concentrations of racial/ethnic minorities and/or low-income families, stating how it defines the terms "area of low-income concentration" and "area of minority concentration" for this purpose. The locations and degree of these concentrations must be identified, either in a narrative or on one or more maps.

(b) *Public and assisted housing.* (1) The plan must describe the number of public housing units in the jurisdiction, the physical condition of such units, the restoration and revitalization needs, results from the Section 504 needs assessment (i.e., assessment of needs of tenants and applicants on waiting list for accessible units, as required by 24 CFR 8.25), and the public housing agency's strategy for improving the management and operation of such public housing and for improving the living environment of low- and very low-income families residing in public housing. The consolidated plan must identify the developments in the jurisdictions that are participating in an approved HUD Comprehensive Grant program. Activities covered by the consolidated plan that are being coordinated or jointly funded with the public housing Comprehensive Grant program must be identified by project and referenced to the approved Comprehensive Grant program. Examples of joint projects are efforts to revitalize neighborhoods surrounding public housing projects (either current or proposed); cooperation in provision of resident programs and services; coordination of local drug elimination or anti-crime strategies; upgrading of police, fire, schools, and other services; and economic development projects in or near public housing projects to tie in with self-sufficiency efforts for residents. The annual action plan of the consolidated plan shall make appropriate reference to the annual revisions of the action plan prepared for the Comprehensive Grant program.

(2) The jurisdiction shall include a description of the number and targeting (income level and type of household served) of units currently assisted by

local, state, or federally funded programs, and an assessment of whether any such units are expected to be lost from the assisted housing inventory for any reason.

(c) *Homeless facilities.* The plan must include a brief inventory of facilities and services that meet the emergency shelter, transitional housing, permanent supportive housing, and permanent housing needs of homeless persons within the jurisdiction.

(d) *Barriers to affordable housing.* The plan must explain whether the cost of housing or the incentives to develop, maintain, or improve affordable housing in the jurisdiction are affected by public policies, particularly by policies of the jurisdiction, including tax policies affecting land and other property, land use controls, zoning ordinances, building codes, fees and charges, growth limits, and policies that affect the return on residential investment.

(e) *Institutional structure.* The plan must explain the institutional structure, including private industry, nonprofit organizations, and public institutions, through which the jurisdiction will carry out its housing and community development plan, assessing the strengths and gaps in that delivery system.

(f) *Governmental coordination.* With respect to the public entities involved, the plan must describe the means of cooperation and coordination among the State and any units of general local government in the metropolitan area in the development and submission of its plan.

§ 91.215 Strategies, priority needs, and objectives.

(a) *General.* The Consolidated Plan must state for each of the jurisdiction's priority needs identified in the priority needs table prescribed by HUD and in local consultation:

(1) The reasons for the jurisdiction's choice of priority need, describing its choice in terms of housing need (e.g., income, tenure, and housing problems), and identifying obstacles to addressing underserved needs;

(2) The specific objectives. Each objective shall identify the key goals in quantitative terms along with numeric or other measurable indicators of progress and a target date for completion (in subsequent years, the plan may incorporate the objectives from a prior year's plan if they have not changed); and

(3) A description of the jurisdiction's resource allocation geographically within the jurisdiction (or within the metropolitan area for the HOPWA program) and among different activities.

(b) *Resources. (1) Federal resources.* The plan must describe the expected Federal resources to be available to address the needs identified in accordance with § 91.205.

(2) *Other resources.* The plan must indicate resources from private and non-Federal public sources that are reasonably expected to be made available to address the needs identified in the plan. The plan must explain how Federal funds will leverage those additional resources, including a description of how matching requirements of the HUD programs will be satisfied. Where the jurisdiction deems it appropriate, it may indicate publicly owned land or property located within the jurisdiction that may be used to carry out the purposes stated in § 91.1.

(c) *Affordable housing.* The plan must include the number of families to whom the jurisdiction will provide affordable housing, as defined in § 92.252 of this chapter for rental housing and § 92.254 of this chapter for homeownership, and must include the priority housing needs table prescribed by HUD. In addition, the strategy should cover any other types of affordable housing that would meet needs in the priority needs table. The plan shall describe the basis for assigning the relative priority given to a particular group's needs and indicate how the characteristics of the housing market will influence the use of funds made available for rental assistance, production of new units, rehabilitation of old units, or acquisition of existing units.

(d) *Homelessness.* The plan must include the priority homeless needs table prescribed by HUD and must describe the jurisdiction's strategy identifying resources used for the following:

(1) Helping low-income families avoid becoming homeless;

(2) Reaching out to homeless persons and assessing their individual needs;

(3) Addressing the emergency shelter and transitional housing needs of homeless persons; and

(4) Helping homeless persons make the transition to permanent housing and independent living.

(e) *Community development.* If the jurisdiction seeks assistance under the Community Development Block Grant program, the plan must describe the jurisdiction's priority non-housing community development needs eligible for assistance under HUD's community development programs by CDBG eligibility category, reflecting needs of persons or households, as appropriate, in terms of dollar amounts estimated to meet the priority need for the type of activity, in accordance with a table prescribed by HUD. This community development component of the plan must state the jurisdiction's long-term and short-term community development objectives, which must be developed in accordance with the statutory goals described in § 91.1. The jurisdiction shall describe the public housing Comprehensive Grant program strategies undertaken jointly with consolidated plan activities described in § 91.210(b), such as joint or coordinated neighborhood revitalization, improved public service, anti-drug or crime activities, related to the public housing developments concerned.

(f) *Barriers to affordable housing.* The plan must describe the jurisdiction's strategy to remove or ameliorate negative effects of public policies that serve as barriers to affordable housing, as identified in accordance with § 91.210(d), except that, if a State requires a unit of general local government to submit a regulatory barrier assessment that is substantially equivalent to the information required under this paragraph, as determined by the Secretary, the unit of general local government may submit its assessment submitted to the State to the Secretary and shall be considered to have complied with this requirement.

(g) *Public housing resident initiatives.* The plan must describe the jurisdiction's activities to encourage public housing residents to become more involved in management and participate in homeownership.

(h) *Lead-based paint hazards.* The plan must outline the actions proposed or being taken to evaluate and reduce lead-based paint hazards, and describe how the lead-based paint hazard reduction will be integrated into housing policies and programs.

(i) *Anti-poverty strategy.* The plan must describe the jurisdiction's goals, programs, and policies for reducing the number of poverty level households and how the jurisdiction's goals, programs, and policies for producing and preserving affordable housing will be coordinated with other programs and services for which the jurisdiction is responsible and the extent to which they will reduce (or assist in reducing) the number of households with incomes below the poverty line.

(j) *Institutional structure.* The plan must describe what the jurisdiction will do to overcome gaps in the institutional structure for carrying out its strategy for addressing its priority needs.

(k) *Coordination.* The plan must describe the jurisdiction's activities to enhance coordination between public and assisted housing providers and

private and governmental health, mental health, and service agencies. With respect to the public entities involved, the plan must describe the means of cooperation and coordination among the State and any units of general local government in the implementation of its strategy, including activities to encourage public housing residents to become more involved in management and participate in homeownership.

§ 91.220 Action plan.

The action plan must include the following:

(a) Standard Form 424;

(b) A description of the activities the jurisdiction will undertake during the next year to address priority needs and local objectives that were identified in § 91.215. This description shall identify the local objectives that will be addressed by the activities that are expected to be undertaken using formula grant funds, other HUD assistance, non-HUD sources of funds, and program income the jurisdiction expects to receive during the program year. This information is to be presented in the form of a table prescribed by HUD;

(c) Activities it plans to undertake during the next year to address emergency shelter and transitional housing needs of homeless individuals and families, to prevent low-income individuals and families with children (especially those with incomes below 30 percent of median) from becoming homeless, and to help homeless persons make the transition to permanent housing and independent living;

(d) Actions it plans to take during the next year to foster and maintain affordable housing, public housing improvements and resident initiatives, remove barriers to affordable housing, evaluate and reduce lead-based hazards, reduce the number of households with incomes below the poverty line, develop institutional structure, address obstacles to meeting underserved needs, and enhance coordination between public and private housing and social service agencies. (See § 91.215 (c), (g), (h), (i), (j), and (k).) For HOME funds, a participating jurisdiction shall describe other forms of investment that are not described in § 92.205(b) of this chapter.

§ 91.225 Certifications.

(a) *General.*—(1) *Citizen participation.* Each jurisdiction must certify that it is in full compliance and following a detailed citizen participation plan that satisfies the requirements of § 91.105.

(2) *Affirmatively furthering fair housing.* Each jurisdiction is required to submit a certification that it will affirmatively further fair housing. This certification includes conducting an analysis of impediments to fair housing choice and preparing a description of any steps taken to carry out the certification, and maintaining evidence to support the certification. (See 24 CFR 570.601(c) for a description of the responsibilities that a CDBG entitlement community must undertake to fulfill this certification.)

(3) *Anti-displacement and relocation plan.* Each jurisdiction is required to submit a certification that it has in effect and is following a residential antidisplacement and relocation assistance plan in connection with any activity assisted with funding under the CDBG or HOME programs.

(4) *Drug-free workplace.* The jurisdiction must submit a certification with regard to drug-free workplace required by 24 CFR part 24, subpart F.

(5) *Anti-lobbying.* The jurisdiction must submit a certification with regard to compliance with restrictions on lobbying required by 24 CFR part 87, together with disclosure forms, if required by that part.

(6) *Authority of jurisdiction.* The jurisdiction must submit a certification that the consolidated plan is authorized under State and local law (as applicable) and that the jurisdiction possesses the legal authority to carry out the programs for which it is seeking funding, in accordance with applicable HUD regulations.

(7) *Consistency with plan.* The housing activities to be undertaken with CDBG, HOME, ESG, and HOPWA funds are consistent with the plan.

(8) *Acquisition and relocation.* It will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and implementing regulations at 49 CFR part 24.

(9) *Section 3.* It will comply with section 3 of the Housing and Urban Development Act of 1968.

(b) *Community Development Block Grant program.* For jurisdictions that seek funding under CDBG, the following certifications are required:

(1) *Consultation by States.* In the case of a State, a certification that it has consulted with affected units of local government about the method of distribution of funding.

(2) *Community development plan.* A certification that this consolidated housing and community development plan identifies community development and housing needs and specifies both short-term and long-term community development objectives that have been developed in accordance with the primary objective of the statute authorizing the CDBG program, as described in § 570.2 of this title, and requirements of this part and part 570 of this title.

(3) *Strategy.* A certification that the jurisdiction is following a current consolidated plan (formerly Comprehensive Housing Affordability Strategy) that has been approved by HUD.

(4) *Use of funds.* A certification that the jurisdiction has complied with the following criteria:

(i) With respect to activities expected to be assisted with CDBG funds, the Action Plan has been developed so as to give the maximum feasible priority to activities that will benefit very low- and low-income families or aid in the prevention or elimination of slums or blight. The plan may also include CDBG-assisted activities that are certified to be designed to meet other community development needs having particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs;

(ii) The aggregate use of CDBG funds, including section 108 guaranteed loans, during a period specified by the jurisdiction, consisting of one, two, or three specific consecutive program years, shall principally benefit very low- and low-income families in a manner that ensures that at least 70 percent of the amount is expended for activities that benefit such persons during the designated period (see 24 CFR 570.200 for definition of "CDBG funds"); and

(iii) The jurisdiction will not attempt to recover any capital costs of public improvements assisted with CDBG funds, including Section 108 loan guarantees, by assessing any amount against properties owned and occupied by persons of very low- and low-income, including any fee charged or assessment made as a condition of obtaining access to such public improvements. However, if CDBG funds are used to pay the proportion of a fee or assessment attributable to the capital costs of public improvements (assisted in part with CDBG funds) financed from other revenue sources, an assessment or charge may be made against the property with respect to the public improvements financed by a source other than CDBG funds. In addition, with respect to properties owned and occupied by low-income (but not very low-income) families, an assessment or charge may be made against the property with respect to the public improvements financed by a source

other than CDBG funds if the jurisdiction certifies that it lacks CDBG funds to cover the assessment.

(5) A certification that the jurisdiction will comply with applicable laws.

(6) *Excessive force.* A certification that the jurisdiction has adopted and is enforcing:

(i) A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and

(ii) A policy of enforcing applicable State and local laws against physically barring entrance to or exit from, a facility or location that is the subject of such non-violent civil rights demonstrations within its jurisdiction.

(7) *Compliance with anti-discrimination laws.* The jurisdiction must submit a certification that the grant will be conducted and administered in compliance with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), the Fair Housing Act (42 U.S.C. 3601–3619), the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107), Executive Orders 11063, 11625, 12138, 12432, and 12892, Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and implementing regulations.

(c) *Emergency Shelter Grant program.* For jurisdictions that seek funding under the Emergency Shelter Grant program, a certification is required by the metropolitan city or urban county that it will comply, and by the State that it will ensure that its State recipients comply, with the following requirements:

(1) In the case of assistance involving major rehabilitation or conversion, maintain any building for which assistance is used under the ESG program as a shelter for homeless individuals and families for not less than a 10-year period;

(2) In the case of assistance involving rehabilitation less than that covered under paragraph (d)(1) of this section, maintain any building for which assistance is used under the ESG program as a shelter for homeless individuals and families for not less than a three-year period;

(3) In the case of assistance involving essential services (employment, health, drug abuse, or education) or maintenance, operation, insurance, utilities and furnishings, provide services or shelter to homeless individuals and families for the period during which the ESG assistance is provided, without regard to a particular site or structure as long as the same general population is served;

(4) Any renovation carried out with ESG assistance shall be sufficient to ensure that the building involved is safe and sanitary;

(5) It will assist homeless individuals in obtaining appropriate supportive services, including permanent housing, medical and mental health treatment, counseling, supervision, and other services essential for achieving independent living, and other Federal, State, local, and private assistance available for such individuals;

(6) Obtain matching amounts required under § 576.71 of this title;

(7) Develop and implement procedures to ensure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services under any project assisted under the ESG program, including protection against the release of the address or location of any family violence shelter project except with the written authorization of the person responsible for the operation of that shelter; and

(8) To the maximum extent practicable, it will involve, through employment, volunteer services, or otherwise, homeless individuals and families in constructing, renovating, maintaining, and operating facilities assisted under this program, in providing services assisted under the program, and in providing services for occupants of facilities assisted under the program.

(d) *HOME program.* Each participating jurisdiction must provide the following certifications:

(1) If it plans to use HOME funds for tenant-based rental assistance, a certification that rental-based assistance is an essential element of its consolidated plan;

(2) That it is using and will use HOME funds for eligible activities and costs, as described in §§ 92.205 and 92.209 of this chapter and that it is not using and will not use HOME funds for prohibited activities, as described in § 92.214 of this chapter;

(3) That before committing funds to a project, the participating jurisdiction will evaluate the project in accordance with guidelines that it adopts for this purpose and will not invest any more HOME funds in combination with other federal assistance than is necessary to provide affordable housing;

(e) *Housing Opportunities for Persons With AIDS.* For jurisdictions that seek funding under the Housing Opportunities for Persons With AIDS program, a certification is required by the jurisdiction that:

(1) Activities funded under the program will meet urgent needs that are not being met by available public and private sources; and

(2) Any property purchased, leased, rehabilitated, renovated, or converted with assistance under that program shall be operated for not less than 10 years for the purpose specified in the plan, or for a period of not less than three years in cases involving non-substantial rehabilitation or repair of a building or structure.

§ 91.230 Monitoring.

The plan must describe the standards and procedures that the jurisdiction will use to monitor activities carried out in furtherance of the plan and will use to ensure long-term compliance with requirements of the programs involved, including the comprehensive planning requirements.

§ 91.235 Special case—abbreviated consolidated plan.

(a) *Who may submit an abbreviated plan?* A jurisdiction that is not a CDBG entitlement community under 24 CFR part 570, subpart D, and is not expected to be a participating jurisdiction in the HOME program under 24 CFR part 92, may submit an abbreviated consolidated plan that is appropriate to the types and amounts of assistance sought from HUD.

(b) *When is an abbreviated plan necessary?*

(1) *Jurisdiction.* When a jurisdiction that is permitted to use an abbreviated plan applies to HUD for funds under a program that requires an approved consolidated plan (see § 91.2), it must obtain approval of an abbreviated plan and submit a certification that the housing activities are consistent with the plan.

(2) *Other applicants.* When an eligible applicant other than a jurisdiction (e.g., a public housing agency or nonprofit organization) seeks to apply for funding under a program requiring an approved consolidated plan, the jurisdiction—if it is permitted to use an abbreviated plan—may prepare an abbreviated plan appropriate to the project.

(3) *Limitation.* For the HOME program, an abbreviated consolidated plan is only permitted with respect to reallocations to other than participating jurisdictions (see part 92, subpart J of this chapter). For the CDBG program, an abbreviated plan may be submitted only for the HUD-administered Small Cities program and for the Insular Areas program (only Palau is subject to this requirement).

(c) *What is an abbreviated plan?* An abbreviated plan must contain sufficient information about needs, resources, and planned activities to address the needs to cover the type and amount of

assistance anticipated to be funded by HUD.

(d) *Citizen participation.* Prior to submission of the consolidated plan to HUD for funding, the applicant must conduct a citizen participation process as provided in section 107 of the Cranston-Gonzalez National Affordable Housing Act.

Subpart D—State Governments: Contents of Consolidated Plan

§ 91.300 Contents and format.

The consolidated plan shall be submitted in such format as may be prescribed by HUD, including forms and narratives, or in such other format as jointly agreed upon by HUD and the State. The content shall comply with the requirements of this part, including the requirement of § 91.105 to include a summary of public comments.

§ 91.305 Housing and homeless needs assessment.

(a) *General.* The plan must describe the State's estimated housing needs projected for the ensuing five-year period. Housing data included in this portion of the plan shall be based on data available from the U.S. Census, as updated by any properly conducted local study, or any other reliable source that the jurisdiction clearly identifies and should reflect the consultation with social service agencies conducted in accordance with § 91.100 and the citizen participation process.

(b) *Categories of persons affected.* The plan must describe the jurisdiction's need for assistance for extremely low income, very low-income, low-income, and moderate income families, for renters and owners, for elderly persons, for large families, and for persons with disabilities. The description of housing needs shall include a discussion of the cost burden and severe cost burden, overcrowding (especially for large families), and substandard housing conditions being experienced by extremely low-income, very low-income, other low-income, and moderate-income renters and owners compared to the jurisdiction as a whole. For any of these categories, to the extent that any racial or ethnic group has disproportionately greater need in comparison to the needs of that category as a whole, assessment of that specific need shall be included. For this purpose, disproportionately greater need exists when the percentage of persons in a category of need who are members of a particular racial or ethnic group is at least 10 percentage points higher than the percentage of persons in the category as a whole. With respect to a jurisdiction seeking assistance under the HOPWA program, the plan must identify the size and characteristics of the population with acquired immunodeficiency syndrome, related diseases, and their families within the metropolitan area to be served.

(c) *Homeless needs.* The plan must describe the nature and extent of homelessness, including rural homelessness, within the jurisdiction. The plan must include an estimate of the special needs of various categories of families and individuals who are homeless or threatened with homelessness (such as persons with mental illness or with substance abuse problems), in accordance with a table prescribed by HUD. The plan also should contain a narrative description of the nature and extent of homelessness by racial and ethnic group, to the extent information is available.

(d) *Lead-based paint hazards.* The plan must estimate the number of housing units within the State that are occupied by low-income families or very low-income families that contain lead-based paint hazards, as defined in this part.

§ 91.310 Housing market analysis.

(a) *General characteristics.* Based on data available to the State, the plan must describe the significant characteristics of the State's housing markets (including such aspects as the supply, demand, and condition and cost of housing).

(b) *Low-income tax credit use.* The plan must describe the strategy to coordinate the Low-income Tax Credit with development of housing that is affordable to very low-income and low-income families.

(c) *Homeless facilities.* The plan must include a brief inventory of facilities and services that meet the needs for emergency shelter and transitional housing needs of homeless persons within the State.

(d) *Barriers to affordable housing.* The plan must explain whether the cost of housing or the incentives to develop, maintain, or improve affordable housing in the State are affected by its policies, including tax policies affecting land and other property, land use controls, zoning ordinances, building codes, fees and charges, growth limits, and policies that affect the return on residential investment.

(e) *Institutional structure.* The plan must explain the institutional structure, including private industry, nonprofit organizations, and public institutions, through which the State will carry out its housing and community development plan, assessing the strengths and gaps in that delivery system.

(f) *Governmental coordination.* With respect to the public entities involved, the plan must describe the means of cooperation and coordination among the State and any units of general local government in the development and submission of the State's plan.

§ 91.315 Strategies, priority needs, and objectives.

(a) *General.* The consolidated plan must state for each of the State's priority needs identified in the priority needs table prescribed by HUD and in local consultation:

(1) The reasons for the State's choice of priority need, describing its choice in terms of housing need (e.g., income, tenure, and housing problems), and identifying obstacles to addressing underserved needs;

(2) The specific objectives. Each objective shall identify the key goals in quantitative terms along with numeric or other measurable indicators of progress and a target date for completion (in subsequent years, the plans may incorporate the objectives from a prior year's plan if they have not changed); and

(3) A description of the State's resource allocation geographically within the State (or for the HOPWA program, outside metropolitan areas receiving HOPWA grants) and among different activities.

(b) *Resources*—(1) *Federal resources.* The plan must describe the expected Federal resources to be available to address the needs identified in accordance with § 91.305.

(2) *Other resources.* The plan must indicate resources from private and non-Federal public sources that are reasonably expected to be made available to address the needs identified in the plan. The plan must explain how Federal funds will leverage those additional resources, including a description of how matching requirements of the HUD programs will be satisfied. Where the State deems it appropriate, it may indicate publicly owned land or property located within the jurisdiction that may be used to carry out the purposes stated in § 91.1.

(c) *Affordable housing.* The plan must include the number of families to whom the State will provide affordable housing, as defined in § 92.252 of this chapter for rental housing and § 92.254 of this chapter for homeownership, and must include the priority housing needs table prescribed by HUD. The plan must indicate how those characteristics will influence the use of funds made available for rental assistance,

production of new units, rehabilitation of old units, or acquisition of existing units.

(d) *Homelessness.* The plan must include the priority homeless needs table prescribed by HUD and must describe the jurisdiction's strategy for the following:

(1) Helping low-income families avoid becoming homeless;

(2) Reaching out to homeless persons and assessing their individual needs;

(3) Addressing the emergency shelter and transitional housing needs of homeless persons; and

(4) Helping homeless persons make the transition to permanent housing and independent living.

(e) *Community development.* If the State seeks assistance under the Community Development Block Grant program, the plan must describe the State's priority nonhousing community development needs that affect more than one unit of general local government and involve activities typically funded by the State under the CDBG program. These priority needs must be described by CDBG eligibility category, reflecting the needs of persons or households, as appropriate, for each type of activity. This community development component of the plan must state the State's long-term and short-term community development objectives, which must be developed in accordance with the statutory goals described in § 91.1.

(f) *Barriers to affordable housing.* The plan must describe the State's strategy to remove or ameliorate negative effects of its policies that serve as barriers to affordable housing, as identified in accordance with § 91.310.

(g) *Public housing resident initiatives.* For a State that has a State housing agency, the plan must describe the State's activities to encourage public housing residents to become more involved in management and participate in homeownership.

(h) *Lead-based paint hazards.* The plan must outline the actions proposed or being taken to evaluate and reduce lead-based paint hazards, and describe how the lead-based paint hazard reduction will be integrated into housing policies and programs.

(i) *Anti-poverty strategy.* The plan must describe the State's goals, programs, and policies for reducing the number of poverty level households and how the State's goals, programs, and policies for producing and preserving affordable housing will be coordinated with other programs and services for which the State is responsible and the extent to which they will reduce (or assist in reducing) the number of households with incomes below the poverty line.

(j) *Institutional structure.* The plan must describe what the State will do to overcome gaps in the institutional structure for carrying out its strategy for addressing its priority needs.

(k) *Coordination.* The plan must describe the State's activities to enhance coordination between public and assisted housing providers and private and governmental health, mental health, and service agencies. With respect to the public entities involved, the plan must describe the means of cooperation and coordination among the State and any units of general local government in the implementation of its strategy, including activities to encourage public housing residents to become more involved in management and participate in homeownership.

§ 91.320 Action plan.

(a) *General.* The action plan must describe the state's method for distributing funds to local governments to carry out activities, or the activities to be undertaken by the state, using funds that are expected to be received under formula allocations (and related program income) and other HUD assistance during the program year. These funds are expected to be made available to address housing and related needs and non-housing community development needs described in the consolidated plan, in accordance with § 91.315. With respect to the District of Columbia, the action plan must be in accordance with the provisions of § 91.220.

(b) *Specific information.* The action plan must include the following:

(1) For HOME funds, the state will describe the general priorities for allocating investments geographically within the state and among different activities and housing needs.

(2) For CDBG funds, a statement of the criteria used to select applications for funding, including the relative importance of the criteria. The action plan must include a description of how all CDBG resources will be allocated among all funding categories and the threshold factors and grant size limits that are to be applied. If the State intends to aid nonentitlement units of general local government in applying for guaranteed loan funds under part 570, Subpart M of this title, it must describe available guarantee amounts and how applications will be selected for assistance. (The statement of the method of distribution must provide sufficient information so that units of general local government will be able to understand and comment on it, and be able to prepare responsive applications.)

(3) For ESG funds, a statement of the process for awarding grants to State recipients and a description of how it intends to make its allocation available to units of local government and nonprofit organizations.

§ 91.325 Certifications.

(a) *General.*—(1) *Citizen participation.* A certification that the State and each unit of general local government that is receiving assistance from the State, is following a detailed citizen participation plan that satisfies the requirements of § 91.105.

(2) *Affirmatively furthering fair housing.* Each State is required to submit a certification that it will affirmatively further fair housing. This certification includes conducting an analysis of impediments to fair housing choice and preparing a description of any steps taken to carry out the certification, and maintaining evidence to support the certification. (See § 570.487(b)(2)(ii) of this title for a description of the responsibilities that a State must undertake to fulfill this certification.)

(3) *Anti-displacement and relocation plan.* The State is required to submit a certification that it has in effect and is following a residential antidisplacement and relocation assistance plan in connection with any activity assisted with funding under the CDBG or HOME programs.

(4) *Drug-free workplace.* The State must submit a certification with regard to drug-free workplace required by 24 CFR part 24, subpart F.

(5) *Anti-lobbying.* The State must submit a certification with regard to compliance with restrictions on lobbying required by 24 CFR part 87, together with disclosure forms, if required by that part.

(6) *Authority of State.* The State must submit a certification that the consolidated plan is authorized under State law and that the State possesses the legal authority to carry out the programs for which it is seeking funding, in accordance with applicable HUD regulations.

(7) *Consistency with plan.* The housing activities to be undertaken with CDBG, HOME, ESG, and HOPWA funds are consistent with the plan.

(8) *Acquisition and relocation.* It will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and implementing regulations at 49 CFR part 24.

(9) *Section 3.* It will comply with section 3 of the Housing and Urban Development Act of 1968.

(b) *Community Development Block Grant program.* For States that seek funding under CDBG, the following certifications are required:

(1) *Consultation by States.* A certification that it has consulted with affected units of local government about the method of distribution of funding.

(2) *Community development plan.* A certification that this consolidated plan identifies community development and housing needs and specifies both short-term and long-term community development objectives that have been developed in accordance with the primary objective of the statute authorizing the CDBG program, as described in § 570.2 of this title, and requirements of this part and part 570 of this title.

(3) *Use of funds.* A certification that the State has complied with the following criteria:

(i) With respect to activities expected to be assisted with CDBG funds, the Action plan has been developed so as to give the maximum feasible priority to activities that will benefit very low- and low-income families or aid in the prevention or elimination of slums or blight. The plan may also include CDBG-assisted activities that are certified to be designed to meet other community development needs having particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs;

(ii) The aggregate use of CDBG funds, including section 108 guaranteed loans, during a period specified by the State, consisting of one, two, or three specific consecutive program years, shall principally benefit very low- and low-income families in a manner that ensures that at least 70 percent of the amount is expended for activities that benefit such persons during the designated period (see 24 CFR 570.200 for definition of "CDBG funds"); and

(iii) The State will not attempt to recover any capital costs of public improvements assisted with CDBG funds, including Section 108 loan guarantees, by assessing any amount against properties owned and occupied by persons of very low- and low-income, including any fee charged or assessment made as a condition of obtaining access to such public improvements. However, if CDBG funds are used to pay the proportion of a fee or assessment attributable to the capital costs of public improvements (assisted in part with CDBG funds) financed from other revenue sources, an assessment or charge may be made against the property with respect to the public improvements financed by a source other than with CDBG funds. In addition, with respect to properties owned and occupied by low-income (but not very low-income) families, an assessment or charge may be made against the property with respect to the public improvements financed by a source other than CDBG funds if the jurisdiction certifies that it lacks CDBG funds to cover the assessment;

(4) *Compliance with laws.* The State will comply with applicable laws.

(5) *Excessive force.* A certification that the State has adopted and is enforcing:

(i) A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and

(ii) A policy of enforcing applicable State and local laws against physically barring entrance to or exit from, a facility or location that is the subject of such non-violent civil rights demonstrations within its jurisdiction.

(6) *Compliance with anti-discrimination laws.* The State must submit a certification that the grant will be conducted and administered in compliance with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), the Fair Housing Act (42 U.S.C. 3601–3619), the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107), Executive Orders 11063, 11625, 12138, 12432, and 12892, Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and implementing regulations.

(7) *Certifications.* The State must meet the certification requirements contained in sections 106(d)(2)(C) and (D).

(c) *Emergency Shelter Grant program.* For States that seek funding under the Emergency Shelter Grant program, a certification is required by the State that it will ensure that its State recipients comply with the following criteria:

(1) In the case of assistance involving major rehabilitation or conversion, maintain any building for which assistance is used under the ESG program as a shelter for homeless individuals and families for not less than a 10-year period;

(2) In the case of assistance involving rehabilitation less than that covered under paragraph (d)(1) of this section, maintain any building for which assistance is used under the ESG program as a shelter for homeless individuals and families for not less than a three-year period;

(3) In the case of assistance involving essential services (employment, health, drug abuse, or education) or maintenance, operation, insurance, utilities and furnishings, provide services or shelter to homeless individuals and families for the period during which the ESG assistance is provided, without regard to a particular site or structure as long as the same general population is served;

(4) Any renovation carried out with ESG assistance shall be sufficient to ensure that the building involved is safe and sanitary;

(5) It will assist homeless individuals in obtaining appropriate supportive services, including permanent housing, medical and mental health treatment, counseling, supervision, and other services essential for achieving independent living, and other Federal, State, local, and private assistance available for such individuals;

(6) Obtain matching amounts required under § 576.71 of this title;

(7) Develop and implement procedures to ensure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services under any project assisted under the ESG program, including protection against the release of the address or location of any family violence shelter project except with the written authorization of the person responsible for the operation of that shelter; and

(8) To the maximum extent practicable, it will involve, through employment, volunteer services, or otherwise, homeless individuals and families in constructing, renovating, maintaining, and operating facilities assisted under this program, in providing services assisted under the program, and in providing services for occupants of facilities assisted under the program.

(d) *HOME program.* Each participating jurisdiction must provide the following certifications:

(1) If it plans to use program funds for tenant-based rental assistance, a certification that rental-based assistance is an essential element of its consolidated plan;

(2) That it is using and will use HOME funds for eligible activities and costs, as described in §§ 92.205 and 92.209 of this chapter and that it is not using and will not use HOME funds for prohibited activities, as described in § 92.214 of this chapter;

(3) That before committing funds to a project, the participating jurisdiction will evaluate the project in accordance with guidelines that it adopts for this purpose and will not invest any more HOME funds in combination with other

federal assistance than is necessary to provide affordable housing;

(e) *Housing Opportunities for Persons With AIDS.* For States that seek funding under the Housing Opportunities for Persons With AIDS program, a certification is required by the State that:

(1) Activities funded under the program will meet urgent needs that are not being met by available public and private sources; and

(2) Any property purchased, leased, rehabilitated, renovated, or converted with assistance under that program shall be operated for not less than 10 years specified in the plan, or for a period of not less than three years in cases involving non-substantial rehabilitation or repair of a building or structure.

§ 91.330 Monitoring.

The consolidated plan must describe the standards and procedures that the State will use to monitor activities carried out in furtherance of the plan and will use to ensure long-term compliance with requirements of the programs involved, including the comprehensive planning requirements.

Subpart E—Consortia: Contents of Consolidated Plan

§ 91.400 Applicability.

This subpart applies to HOME program consortia, as defined in § 91.5 (see 24 CFR part 92). Units of local government that participate in a consortium must participate in submission of a consolidated plan for the consortium, prepared in accordance with this subpart, as well as submitting their own consolidated plans, prepared in accordance with subpart C of this part, to cover all programs other than HOME.

§ 91.405 Consolidated program year.

(a) *Same program year for consortia members.* All units of general local government that are members of a consortium must be on the same program year.

(b)(1) Notwithstanding the requirement of paragraph (a) of this section, consortia in existence on [*the effective date of this rule*] will be allowed a transition period during the balance of their current consortium agreement or, if their agreement ends in Fiscal Year 1994, during their 3-year agreement renewed in Fiscal Year 1995, to align their program years.

(2) During any such transition period, the lead agency (if it is a CDBG entitlement community) must submit, as its consolidated plan, a plan that complies with this subpart for the consortium, plus the Community Development Plan component (in accordance with § 91.215) and Action Plan for funds other than HOME funds (in accordance with § 91.220) for its own jurisdiction. All other communities in the consortium may submit their respective Community Development Plan and Action Plans for funds other than HOME funds separately, in accordance with their individual program years.

§ 91.410 Housing market analysis.

Housing market analysis must be described in the plan in accordance with the provisions of § 91.210; however, it must be described for the entire consortium.

§ 91.415 Housing and homeless needs assessment.

Housing and homeless needs must be described in the plan in accordance with the provisions of § 91.205; however, they must be described for the entire consortium.

§ 91.420 Strategies and priority needs.

Strategies and priority needs must be described in the plan in accordance with the provisions of § 91.215; however, they must be described for the entire consortium. The consortium must set forth its priorities for allocating resources geographically within the jurisdiction for the HOME program, describing how the plan will address the needs identified (in accordance with § 91.405), describing the reasons for the consortium's allocation priorities, and identifying any obstacles there are to addressing underserved needs.

§ 91.425 Action plan.

The action plan must describe the projects and activities to be undertaken with formula grant funds and program income expected to be received during the program year and the actions the consortium expects to take during the program year to pursue its strategy.

§ 91.430 Certifications.

(a) General.—(1) *Citizen participation.* Each jurisdiction must certify that it is in full compliance and following a detailed citizen participation plan that satisfies the requirements of § 91.105.

(2) *Affirmatively furthering fair housing.* Each jurisdiction is required to submit a certification that it will affirmatively further fair housing and is required to maintain evidence to support the certification, including its analysis of impediments to fair housing choice and a description of any steps taken to carry out the certification. (See 24 CFR 570.601(c) for a description of the responsibilities that a CDBG entitlement community must undertake to fulfill this certification.)

(3) *Anti-displacement and relocation plan.* Each jurisdiction is required to submit a certification that it has in effect and is following a residential antidisplacement and relocation assistance plan in connection with any activity assisted with funding under the CDBG or HOME programs.

(4) *Drug-free workplace.* The jurisdiction must submit a certification with regard to drug-free workplace required by 24 CFR part 24, subpart F.

(5) *Anti-lobbying.* The jurisdiction must submit a certification with regard to compliance with restrictions on lobbying required by 24 CFR part 87, together with disclosure forms, if required by that part.

(6) *Authority of jurisdiction.* The jurisdiction must submit a certification that the consolidated plan is authorized under State and local law (as applicable) and that the jurisdiction possesses the legal authority to carry out the programs for which it is seeking funding, in accordance with applicable HUD regulations.

(7) *Consistency with plan.* The housing activities to be undertaken with CDBG, HOME, ESG, and HOPWA funds are consistent with the plan.

(8) *Acquisition and relocation.* It will comply with the acquisition and relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, and implementing regulations at 49 CFR part 24.

(9) *Section 3.* It will comply with section 3 of the Housing and Urban Development Act of 1968.

(b) *Community Development Block Grant program.* For jurisdictions that seek funding under CDBG, the following certifications are required:

(1) *Consultation by States.* In the case of a State, a certification that it has consulted with affected units of local government about the method of distribution of funding.

(2) *Community development plan.* A certification that this consolidated housing and community development plan identifies community development and housing needs and specifies both short-term and long-term community development objectives that have been developed in accordance with the primary objective of the statute authorizing the CDBG program, as described in § 570.2 of this title, and requirements of this part and part 570 of this title.

(3) *Strategy.* A certification that the jurisdiction is following a current consolidated plan (formerly Comprehensive Housing Affordability

Strategy) that has been approved by HUD.

(4) *Use of funds.* A certification that the jurisdiction has complied with the following criteria:

(i) With respect to activities expected to be assisted with CDBG funds, the Action Plan has been developed so as to give the maximum feasible priority to activities that will benefit very low- and low-income families or aid in the prevention or elimination of slums or blight. The plan may also include CDBG-assisted activities that are certified to be designed to meet other community development needs having particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs;

(ii) The aggregate use of CDBG funds, including section 108 guaranteed loans, during a period specified by the jurisdiction, consisting of one, two, or three specific consecutive program years, shall principally benefit very low- and low-income families in a manner that ensures that at least 70 percent of the amount is expended for activities that benefit such persons during the designated period (see 24 CFR 570.200 for definition of "CDBG funds");

(iii) The jurisdiction will not attempt to recover any capital costs of public improvements assisted with CDBG funds, including Section 108 loan guarantees, by assessing any amount against properties owned and occupied by persons of very low- and low-income, including any fee charged or assessment made as a condition of obtaining access to such public improvements. However, if CDBG funds are used to pay the proportion of a fee or assessment attributable to the capital costs of public improvements (assisted in part with CDBG funds) financed from other revenue sources, an assessment or charge may be made against the property with respect to the public improvements financed by a source other than CDBG funds. In addition, with respect to properties owned and occupied by low-income (but not very low-income) families, an assessment or charge may be made against the property with respect to the public improvements financed by a source other than CDBG funds if the jurisdiction certifies that it lacks CDBG funds to cover the assessment; and

(5) A certification that the jurisdiction will comply with applicable laws.

(6) *Excessive force.* A certification that the jurisdiction has adopted and is enforcing:

(i) A policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in non-violent civil rights demonstrations; and

(ii) A policy of enforcing applicable State and local laws against physically barring entrance to or exit from, a facility or location that is the subject of such non-violent civil rights demonstrations within its jurisdiction.

(7) *Compliance with anti-discrimination laws.* The jurisdiction must submit a certification that the grant will be conducted and administered in compliance with title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), the Fair Housing Act (42 U.S.C. 3601–3619), the Age Discrimination Act of 1975 (42 U.S.C. 6101–6107), Executive Orders 11063, 11625, 12138, 12432, and 12892, Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and implementing regulations.

(c) *Emergency Shelter Grant program.* For jurisdictions that seek funding under the Emergency Shelter Grant program, a certification is required by the metropolitan city or urban county that it will comply, and by the State that it will ensure that its State recipients comply, with the following requirements:

(1) In the case of assistance involving major rehabilitation or conversion, maintain any building for which assistance is used under the ESG program as a shelter for homeless individuals and families for not less than a 10-year period;

(2) In the case of assistance involving rehabilitation less than that covered under paragraph (d)(1) of this section, maintain any building for which assistance is used under the ESG program as a shelter for homeless individuals and families for not less than a three-year period;

(3) In the case of assistance involving essential services (employment, health, drug abuse, or education) or maintenance, operation, insurance, utilities and furnishings, provide services or shelter to homeless individuals and families for the period during which the ESG assistance is provided, without regard to a particular site or structure as long as the same general population is served;

(4) Any renovation carried out with ESG assistance shall be sufficient to ensure that the building involved is safe and sanitary;

(5) It will assist homeless individuals in obtaining appropriate supportive services, including permanent housing, medical and mental health treatment, counseling, supervision, and other services essential for achieving independent living, and other Federal, State, local, and private assistance available for such individuals;

(6) Obtain matching amounts required under § 576.71 of this title;

(7) Develop and implement procedures to ensure the confidentiality of records pertaining to any individual provided family violence prevention or treatment services under any project assisted under the ESG program, including protection against the release of the address or location of any family violence shelter project except with the written authorization of the person responsible for the operation of that shelter; and

(8) To the maximum extent practicable, it will involve, through employment, volunteer services, or otherwise, homeless individuals and families in constructing, renovating, maintaining, and operating facilities assisted under this program, in providing services assisted under the program, and in providing services for occupants of facilities assisted under the program.

(d) *HOME program.* Each participating jurisdiction must provide the following certifications:

(1) If it plans to use HOME funds for tenant-based rental assistance, a certification that rental-based assistance is an essential element of its consolidated plan;

(2) That it is using and will use HOME funds for eligible activities and costs, as described in §§ 92.205 and 92.209 of this chapter and that is not using and will not use HOME funds for prohibited activities, as described in § 92.214 of this chapter;

(3) That before committing funds to a project, the participating jurisdiction will evaluate the project in accordance with guidelines that it adopts for this purpose and will not invest any more HOME funds in combination with other federal assistance than is necessary to provide affordable housing;

(e) *Housing Opportunities for Persons With AIDS.* For jurisdictions that seek funding under the Housing Opportunities for Persons With AIDS program, a certification is required by the jurisdiction that:

(1) Activities funded under the program will meet urgent needs that are not being met by available public and private sources; and

(2) Any property purchased, leased, rehabilitated, renovated, or converted with assistance under that program shall be operated for not less than 10 years for the purpose specified in the plan, or for a period of not less than three years in cases involving non-substantial

rehabilitation or repair of a building or structure.

§ 91.435 Monitoring.

The plan must describe the standards and procedures that the consortium will use to monitor activities carried out in furtherance of the plan and will use to ensure long-term compliance with requirements of the programs involved including the comprehensive planning requirements.

Subpart F—Other General Requirements

§ 91.500 HUD approval action.

(a) *General.* HUD will review the plan upon receipt. The plan will be deemed approved 60 days after HUD receives the plan, unless before that date the Department has notified the jurisdiction that the plan is disapproved.

(b) *Standard of review.* HUD may disapprove a plan or a portion of a plan if it is inconsistent with the purposes of the Cranston-Gonzalez National Affordable Housing Act or if it is substantially incomplete. A plan is substantially incomplete, among other things, if HUD has determined, after inspecting the evidence and providing due notice and opportunity to the jurisdiction for comment, that the plan fails to address all the required elements in the regulations. Disapproval of a plan with respect to one program does not affect assistance distributed on the basis of a formula under other programs.

(c) *Written notice of disapproval.* Within 15 days after HUD notifies a jurisdiction that it is disapproving its plan, it must inform the jurisdiction in writing of the reasons for disapproval and actions that the jurisdiction could take to meet the criteria for approval.

(d) *Revisions and resubmission.* The jurisdiction may revise or resubmit a plan within 45 days after the first notification of disapproval. HUD must respond to approve or disapprove the plan within 30 days of receiving the revisions or resubmission.

§ 91.505 Amendments to the consolidated plan.

(a) *Amendments to the plan.* The jurisdiction shall amend its approved plan whenever it makes one of the following decisions:

(1) To make a substantial change in its allocation priorities or a substantial change in the method of distribution of funds;

(2) To carry out an activity, using funds from any program covered by the consolidated plan (including program income), not previously described in the action plan; or

(3) To substantially change the purpose, scope, location, or beneficiaries of an activity.

(b) *Criteria for substantial change.* The jurisdiction shall identify in its citizen participation plan the criteria it will use for determining what constitutes a substantial change for this purpose.

(c) *Submission to HUD.* The amendment must be made public and submitted to HUD before it implements changes embodied in the amendment. See § 91.105 for the public notice procedures applicable to any amendment. For any amendment affecting the HOPWA program that would involve acquisition, rehabilitation, conversion, lease, repair or construction of properties to provide housing, an environmental review of the revised proposed use of funds must be completed by HUD in accordance with 24 CFR 574.510.

(d) *Citizen participation.* When a jurisdiction decides to make a change that requires an amendment of the plan, in accordance with § 91.105, it shall provide citizens or, as appropriate, units of general local government, with reasonable notice of the change and an opportunity to comment on it. The jurisdiction must consider the comments received and must make the amendment available to the public at the time it is submitted to HUD.

§ 91.510 Consistency determinations.

A jurisdiction's certification that an application is consistent with its consolidated plan means the jurisdiction's plan shows need, the proposed activities are consistent with the jurisdiction's strategy, and the location of the proposed activities is consistent with the geographic areas specified in the plan. The jurisdiction shall provide the reasons for the denial when it fails to grant a certification of consistency. To receive funding from HUD that is based on a formula allocation, a certification of consistency of the proposed activities with this consolidated plan shall be necessary.

§ 91.515 Funding determinations by HUD.

(a) *Formula funding.* The action plan submitted by the jurisdiction will be considered as the application for the CDBG, HOME, ESG, and HOPWA formula grants to which the jurisdiction may be entitled under applicable program regulations. A single form SF–424 shall be included for this purpose in the submission to HUD. The Department will make its funding award determination after reviewing the plan submission in accordance with § 91.500.

(b) *Other funding.* For other funding, the jurisdiction must still respond to Notices of Funding Availability for the individual programs in order to receive funding.

§ 91.520 Performance reports.

(a) *General.* Each jurisdiction that has a consolidated plan shall annually review and report, in a form acceptable to HUD, on the progress it has made in carrying out its plan. This performance report shall be submitted to HUD within 90 days after the close of the jurisdiction's program year.

(b) *Affordable housing.* The report shall include an evaluation of the jurisdiction's progress in meeting its short-term objective of providing affordable housing, including the number and types of households served. This element of the report must include the number of extremely low, very low-income, and low- and moderate-income persons served and the racial and ethnic status of persons assisted with funds made available.

(c) *CDBG.* For CDBG recipients, the report shall include a description of the use of CDBG funds during the program year and an assessment by the jurisdiction of the relationship of that use to the objectives identified in the plan, giving special attention to the highest priority activities that were identified. This element of the report must evaluate the extent to which its funds were used for activities that benefited extremely low, very low-income and low-income persons. It must also indicate the nature of and reasons for changes in its program objectives over the year and what changes it expects to make in its programs as a result of its experiences.

(d) *HOME.* For HOME participating jurisdictions, the report shall include the results of on-site inspections of affordable rental housing assisted under the program to determine compliance with housing codes and other applicable regulations.

(e) *HOPWA.* For jurisdictions receiving funding under the Housing Opportunities for Persons With AIDS program, the report must include the number of individuals assisted and the types of assistance provided.

(f) *Evaluation by HUD.* HUD shall review the performance report and determine whether it is satisfactory. If a satisfactory report is not submitted in a timely manner, the Department may suspend funding until a satisfactory report is submitted, or may withdraw and reallocate funding if the Department determines, after notice and opportunity for a hearing, that the jurisdiction will not submit a satisfactory report.

§ 91.525 Performance review by HUD.

(a) *General.* HUD shall review the performance of each jurisdiction covered by this part at least annually, including site visits by employees—insofar as practicable, assessing the following:

(1) Management of funds made available under programs administered by HUD;

(2) Compliance with the consolidated plan;

(3) Accuracy in the preparation of performance reports;

(4) Extent to which the jurisdiction made progress towards the statutory goals identified in § 91.1; and

(5) Efforts to ensure that housing assisted under programs administered by HUD is in compliance with contractual agreements and the requirements of law.

(b) *Report by HUD.* HUD shall report on the performance review in writing, stating the length of time the jurisdiction has to review and comment on the report, which will be at least 30 days. HUD may revise the report after considering the jurisdiction's views, and shall make the report, the jurisdiction's comments, and any revisions available to the public within 30 days after receipt of the jurisdiction's comments.

Subpart G—Insular Areas [Reserved]

PART 92—HOME INVESTMENT PARTNERSHIPS PROGRAM

2. The authority citation for part 92 would continue to read as follows:

Authority: 42 U.S.C. 3535(d) and 12701–12839.

3. In § 92.2, the definition of "housing strategy" would be removed and a definition of "consolidated plan" would be added, to read as follows:

§ 92.2 Definitions.

* * * * *

Consolidated plan. The plan prepared in accordance with part 91 of this chapter, which describes needs, resources, priorities and proposed activities to be undertaken with respect to HUD programs, including the HOME program. An approved consolidated plan means a consolidated plan that has been approved by HUD in accordance with part 91 of this chapter.

* * * * *

4. Section 92.52 would be amended to revise the heading, redesignate the existing text as paragraph (a), add a heading and a sentence at the beginning of newly redesignated paragraph (a), and to add a new paragraph (b), to read as follows:

§ 92.52 Formula allocations.

(a) *Notification of allocation.* HUD will notify each participating jurisdiction of its HOME formula allocation amount. * * *

(b) *New participating jurisdictions.* HUD will notify each jurisdiction that has not previously participated in the HOME program of its formula allocation. Within 30 days of that notice, a newly eligible jurisdiction must notify HUD of its intent to become a participating jurisdiction. Within 90 days of the jurisdiction's submission of the notice of intent, it must submit a new or revised consolidated plan, which must be approved by HUD before funding is forthcoming. The plan shall identify the jurisdiction's program year starting date.

§§ 92.61–92.63 [Removed]

5. Sections 92.61, 92.62, and 92.63 would be removed.

6. Section 92.150 would be revised to read as follows:

§ 92.150 Submission requirements.

In order to receive its HOME allocation, a participating jurisdiction must submit a consolidated plan in accordance with 24 CFR part 91. That part includes requirements for the content of the plan, for the process of developing the plan, including citizen participation provisions, for the submission date, for HUD approval, and for the amendment process.

§ 92.151 [Removed]

7. Section 92.151 would be removed.

§ 92.152 [Removed]

8. Section 92.152 would be removed.

§ 92.204 [Amended]

9. Section 92.204 would be amended by removing from paragraph (c) the phrase, "subpart D (Program Description),".

§ 92.211 [Amended]

10. Section 92.211 would be amended by adding, to paragraph (a)(1) after the word "certifies", the phrase "(see § 91.605)".

§ 92.451 [Amended]

11. Section 92.451 would be amended by removing from paragraph (a)(1)(iii), the phrase "housing strategy in accordance with § 92.104" and by adding in its place, the phrase "consolidated plan, in accordance with part 91 of this title"; and by removing from paragraph (a)(2) the word "§ 91.70" and by adding in its place, the phrase "part 91 of this chapter".

§ 92.453 [Amended]

12. Section 92.453 would be amended by removing from paragraph (b)(2)(ii) the phrase "housing strategy" in the three places where it occurs, and by adding for it in those three places, the phrase "consolidated plan".

§§ 92.505–92.506 [Removed]

13. Sections 92.505 and 92.506 would be removed.

14. Section 92.509 would be revised to read as follows:

§ 92.509 Performance reports.

For annual performance report requirements, see part 91 of this title

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

15. The authority citation for part 570 would continue to read as follows:

Authority: 42 U.S.C. 3535(d) and 5300–5320

16. In § 570.3, the definition of "Comprehensive Housing Affordability Strategy (CHAS)" would be removed, and the definition of "consolidated plan" would be added, to read as follows:

§ 570.3 Definitions.

* * * * *

Consolidated plan. The plan prepared in accordance with part 91 of this title, which describes needs, resources, priorities and proposed activities to be undertaken with respect to HUD programs, including the HOME program. An approved consolidated plan means a consolidated plan that has been approved by HUD in accordance with part 91 of this title.

* * * * *

§ 570.205 [Amended]

17. In § 570.205, paragraph (a)(3)(i) would be amended by removing the term "Comprehensive Housing Affordability Strategy", and inserting in its place the term "consolidated plan".

§ 570.301 [Removed]

18. Section 570.301 would be removed.

19. Section 570.302 would be revised to read as follows:

§ 570.302 Submission requirements.

In order to receive its annual CDBG entitlement grant, a jurisdiction must submit a consolidated plan in accordance with 24 CFR part 91. That part includes requirements for the content of the plan, for the process of developing the plan, including citizen participation provisions, for the submission date, for HUD approval, and for the amendment process.

20. Section 570.303 would be revised to read as follows:

§ 570.303 Certifications.

The jurisdiction must make the certifications that are set forth in 24 CFR part 91 as part of the consolidated plan.

21. In § 570.304, paragraph (a) would be revised to read as follows:

§ 570.304 Making of grants.

(a) *Approval of grant.* HUD will approve a grant if the jurisdiction's submission in accordance with 24 CFR part 91 is approved, in accordance with § 91.25, and was received within the time period required (see § 91.20).

* * * * *

§ 570.305 [Removed]

22. Section 570.305 would be removed.

§ 570.306 [Removed]

23. Section 570.306 would be removed.

§ 570.308 [Amended]

24. In § 570.308, paragraph (d) would be amended by removing the words, "this subpart", and inserting in their place the words, "part 91 of this title".

25. In § 570.485, paragraphs (b), (c), and (e) would be removed; paragraph (d) would be redesignated as paragraph (b); and paragraph (a) would be revised to read as follows:

§ 570.485 State submissions and State citizen participation requirements.

(a) *Required submissions.* In order to receive its annual CDBG grant under this subpart, a State must submit a consolidated plan in accordance with 24 CFR part 91. That part includes requirements for the content of the plan, for the process of developing the plan, including citizen participation provisions, for the submission date, for HUD approval, and for the amendment process.

* * * * *

26. In § 570.486, paragraph (a) would be revised to read as follows:

§ 570.486 Local government requirements.

(a) *Citizen participation requirements for a unit of general local government.* Each unit of general local government receiving a grant from a State under this part shall meet the citizen participation requirements specified in 24 CFR 91.105–91.115.

* * * * *

§ 570.487 [Amended]

27. Section 570.487 would be amended by adding the following material at the end of paragraph (b)(1):

"For each state receiving a grant under section 106(b) of the Act, the certification that the grantee will affirmatively further fair housing shall specifically require the grantee to assume the responsibility of fair housing planning by conducting an analysis to identify impediments to fair housing choice within its jurisdiction, taking appropriate actions to overcome the effects of any impediments identified through that analysis, and maintaining records reflecting the analysis and actions in this regard."

§ 570.491 [Removed]

28. Section 570.491 would be removed.

29. In § 570.507, paragraph (a) would be revised to read as follows:

§ 570.507 Reports.

(a) *Performance and evaluation report.* The annual performance and evaluation report shall be submitted in accordance with part 91 of this title.

* * * * *

§ 570.509 [Amended]

30. Section 570.509 would be amended by removing from paragraph (b) the word, "§ 570.507" and adding in its place the words, "part 91 of this title"; and by removing from paragraph (d) the phrases, "comprehensive housing affordability strategy", "Comprehensive Housing Affordability Strategy (CHAS)", and "fiscal year", and adding, in their place, the phrases, "consolidated plan", "Consolidated Plan", and "program year", respectively.

§ 570.601 [Amended]

31. Section 570.601 would be amended by adding the following material at the end of paragraph (b):

"For each community receiving a grant under section 106(b) of the Act, the certification that the grantee will affirmatively further fair housing shall specifically require the grantee to assume the responsibility of fair housing planning by conducting an analysis to identify impediments to fair housing choice within its jurisdiction, taking appropriate actions to overcome the effects of any impediments identified through that analysis, and maintaining records reflecting the analysis and actions in this regard."

§ 570.605 [Amended]

32. Section 570.605 would be amended by removing the phrase, "final statement pursuant to § 570.302", and by adding, in its place, the phrase, "consolidated plan, in accordance with 24 CFR part 91"

§ 570.901 [Amended]

33. Section 570.901 would be amended by removing from paragraph (d) the phrase, "presubmission requirements at § 570.301, the amendment requirements at § 570.305", and adding in its place the phrase, submission requirements of 24 CFR part 91".

§ 570.910 [Amended]

34. Section 570.910 would be amended by removing from paragraph (b)(2)(iii) the phrase, "subpart D", and adding in its place the phrase, "24 CFR part 91".

PART 574—HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS

35. The authority citation for part 574 would continue to read as follows:

Authority: 42 U.S.C. 12901–12912.

36. Section 574.2 would be revised to read as follows:

§ 574.2 Overview.

(a) *Available funds.* The Department awards funds appropriated for any fiscal year for the program through a formula allocation and a competitive grant process. Ninety percent of funds appropriated for this program are distributed by formula entitlement. The remaining ten percent is awarded through the competitive process.

(b) *Formula entitlements.* The formula grants are awarded upon submission and approval of a consolidated plan, pursuant to 24 CFR part 91, that covers the assistance to be provided under this part. Certain States and cities that are the most populous unit of general local government in eligible metropolitan statistical areas will receive formula allocations based on their State or metropolitan population and proportionate number of cases of persons with AIDS. They will receive funds under this part (providing they comply with 24 CFR part 91) for eligible activities that address the housing needs of persons with AIDS or related diseases and their families (see § 574.130(b)).

(c) *Competitive grants.* The competitive grants are awarded based on applications submitted in response to a Notice of Funds Availability published in the **Federal Register**, as described in subpart C of this part. All States and units of general local government and nonprofit organizations are eligible to apply for competitive grants to fund projects of national significance. Only those States and units of general local government that do not qualify for formula allocations are

eligible to apply for competitive grants to fund other projects.

37. In § 574.3, the definitions for "Eligible State" and "Qualifying city" would be revised to read as follows:

§ 574.3 Definitions.

* * * * *

Eligible State means a State that has

(1) More than 1,500 cumulative cases of AIDS in those areas of the State outside of eligible metropolitan statistical areas that are eligible to be funded through a qualifying city; and

(2) A consolidated plan prepared, submitted, and approved in accordance with 24 CFR part 91 that covers the assistance to be provided under this part.

* * * * *

Qualifying city means a city that is the most populous unit of general local government in an eligible metropolitan statistical area (EMSA) and that has a consolidated plan prepared, submitted, and approved in accordance with 24 CFR part 91 that covers the assistance to be provided under this part.

* * * * *

38. In § 574.100, a new paragraph (b) would be added, and the existing material would be designated as paragraph (a), to read as follows:

§ 574.100 Eligible applicants.

* * * * *

(b) HUD will notify eligible States and qualifying cities of their status annually.

39. Section 574.120 would be revised to read as follows:

§ 574.120 Responsibility of applicant to serve EMSA.

The EMSA's applicant shall serve eligible persons who live anywhere within the EMSA, except that housing assistance shall be provided only in localities within the EMSA that have a consolidated plan prepared, submitted, and approved in accordance with 24 CFR part 91 that covers the assistance to be provided under this part. In allocating grant amounts among eligible activities, the EMSA's applicant shall address needs of eligible persons who reside within the metropolitan statistical area, including those not within the jurisdiction of the applicant.

§ 574.160 [Removed]

40. Section 574.160 would be removed.

§ 574.170 [Removed]

41. Section 574.170 would be removed.

§ 574.180 [Removed]

42. Section 574.180 would be removed.

43. In § 574.190, the first sentence would be revised to read as follows:

§ 574.190 Reallocation of grant amounts.

If an eligible State or qualifying city does not submit a consolidated plan in a timely fashion, in accordance with 24 CFR part 91, that provides for use of its allocation of funding under this part, the funds allocated to that jurisdiction will be added to the funds available for formula allocations to other jurisdictions in the current fiscal year.

* * *

§ 574.240 [Amended]

44. In § 574.240, paragraph (c)(11) would be amended by removing the phrase, "CHAS approved by HUD (see § 574.160(a))" and by adding in its place the phrase, "consolidated plan approved by HUD in accordance with 24 CFR part 91".

45. Section 574.520 would be revised to read as follows:

§ 574.520 Performance reports.

(a) *Formula grants.* For a formula grant recipient, the performance reporting requirements are specified in 24 CFR part 91.

(b) *Competitive grants.* A grantee shall submit to HUD annually a report describing the use of the amounts received, including the number of individuals assisted, the types of assistance provided, and any other information that HUD may require. Annual reports are required until all grant funds are expended.

PART 576—EMERGENCY SHELTER GRANTS PROGRAM: STEWART B McKINNEY HOMELESS ASSISTANCE ACT

46. The authority citation for part 576 would continue to read as follows:

Authority: 42 U.S.C. 3535(d) and 11376.

47. In § 576.3, the definition of "Comprehensive Housing Affordability Strategy" would be removed and a definition of "Consolidated plan" would be added, to read as follows:

§ 576.3 Definitions.

* * * * *

Consolidated plan. The plan prepared in accordance with part 91 of this title, which describes needs, resources, priorities and proposed activities to be undertaken with respect to HUD programs, including the HOME program. An approved consolidated plan means a consolidated plan that has been approved by HUD in accordance with part 91 of this title.

* * * * *

§ 576.31 Subpart C—[Removed and Reserved]

48. Subpart C consisting of § 576.31 would be removed and reserved.

49–50. Section 576.51 would be revised to read as follows:

§ 576.51 Application requirements.

In order to receive a grant under this part, a State or formula city or county must submit a consolidated plan in accordance with 24 CFR part 91 that includes activities to be funded under this part. Part 91 includes requirements for the content of the plan, for the process of developing the plan, including citizen participation provisions, for the submission date, for HUD approval, and for the amendment process. This plan serves as the jurisdiction's application for funding under this program.

51. In § 576.53, paragraphs (a) and (b) would be removed; paragraphs (c), (d), and (e) would be redesignated as paragraphs (a), (b), and (c); and newly redesignated paragraph (c) would be revised to read as follows:

§ 576.53 Review and approval of applications.

* * * * *

(c) *Reallocation amounts.* Any emergency shelter grant allocation that is not used will be reallocated in accordance with § 576.67.

52. In § 576.61, the heading of the section and paragraph (a) would be revised to read as follows:

§ 576.61 Reallocation of grant amounts—formula cities and counties.

(a) *Applicability.* This section applies where a formula city or county fails to submit or obtain HUD approval of its consolidated plan within 90 days of the date upon which amounts under this part first become available for allocation in any fiscal year.

* * * * *

53. In § 576.63, the heading of the section, paragraph (a), paragraph (d), introductory text, and paragraph (d)(1) would be revised, to read as follows:

§ 576.63 Reallocation of grant amounts—States and Territories.

(a) *Applicability.* This section applies where a State or Territory fails to submit or obtain HUD approval of its consolidated plan by the deadline specified in § 576.61(a), or grant amounts cannot be reallocated to a State under § 576.61.

* * * * *

(d) *Eligibility for reallocation amounts.* In order to receive reallocation amounts under this section, the formula city or county, or State or Territory, must:

(1) Submit an amendment, in accordance with 24 CFR part 91, to its consolidated plan for that program year to cover activities for the reallocation amount it wishes to receive; and

* * * * *

54. In § 576.67, paragraphs (c)(5) and (f)(1) would be revised to read as follows:

§ 576.67 Reallocation of grant amounts; returned or unused amounts.

* * * * *

(c) * * *

(5) The responsible HUD field office will announce the availability of returned grant amounts. The announcement will establish deadlines for submitting applications, and will set out other terms and conditions relating to grant awards, consistent with this part. The announcement will specify the application documents to be submitted.

* * * * *

(f) * * *

(1) For purposes of this section, emergency shelter grant amounts are considered "returned" when they become available for reallocation because a jurisdiction does not execute a grant agreement with HUD for them.

* * * * *

§ 576.85 [Removed]

55. Section 576.85 would be removed.

PART 968—PUBLIC HOUSING MODERNIZATION

56. The authority citation for part 968 would continue to read as follows:

Authority: 42 U.S.C. 1437d, 1437l, 3535(d).

57. In § 968.320, the first sentence of paragraph (c) would be revised; paragraphs (d), (e), and (f) would be redesignated as paragraphs (e), (f), and (g), respectively; a new paragraph (d) would be added; the newly redesignated paragraph (e) would be amended by adding three new sentences after the third sentence of the introductory language, by adding a phrase to the end of paragraph (e)(4)(i) before the semicolon, and by removing from paragraph (e)(6)(ii) the phrase "Comprehensive Housing Affordability Strategy" and adding in its place the phrase "consolidated plan"; to read as follows:

§ 968.320 Comprehensive plan (including action plan).

* * * * *

(c) Local government participation. A PHA shall consult with and provide information to appropriate local government officials with respect to the development of a comprehensive plan and to ensure that there is coordination between the actions taken under the consolidated plan (see 24 CFR part 91) for project and neighborhood improvements where public housing units are located or proposed for construction and/or modernization and improvement; and for meeting public and human service needs of the public and assisted housing projects and their residents. Among the areas with high potential for coordination for undertaking joint projects are anti-crime and anti-drug efforts, creation of micro-businesses in or near public housing projects, neighborhood improvements, carrying out Family Self-Sufficiency or other programs, and complying with site and neighborhood standards policies.

* * *

(d) *Participation in coordinating entities.* To the extent that coordinating entities are set up to plan and implement the consolidated plans (under 24 CFR part 91), the PHA shall participate in these entities to ensure coordination with broader community development strategies.

(e) * * * Where long-term physical and social viability of the development is dependent upon revitalization of the surrounding neighborhood in the provision of or coordination of public services, or the consolidation or coordination of drug prevention and other human service initiatives, the PHA shall identify these needs and strategies. In addition, the PHA shall identify the funds or other resources in the consolidated plan that are to be used to help address these needs and strategies and the degree to which the activities in the comprehensive plan contribute to a broader consolidated plan. These activities shall be described in the Cooperation Agreement with the city. * * *

(4) * * *

(i) * * * and taking into account broader efforts to revitalize the neighborhoods in which the development is located;

Dated: July 6, 1994.

Henry G. Cisneros,

Secretary.

[FR Doc. 94–18705 Filed 8–4–94; 8:45 am]

BILLING CODE 4210–32–P

federal register

Friday
August 5, 1994

Part IV

Department of Health and Human Services

National Institutes of Health

Recombinant DNA Research: Actions Under the Guidelines; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Recombinant DNA Research: Actions Under the Guidelines

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice of Actions Under the NIH Guidelines for Research Involving Recombinant DNA Molecules.

SUMMARY: This notice sets forth three actions to be taken by the Director, National Institutes of Health (NIH), under the NIH Guidelines for Research Involving Recombinant DNA Molecules (**Federal Register**, July 5, 1994, Part IV).

FOR FURTHER INFORMATION CONTACT: Additional information can be obtained from Dr. Nelson A. Wivel, Director, Office of Recombinant DNA Activities (ORDA), Office of Science Policy and Technology Transfer, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, (301) 496–9838.

SUPPLEMENTARY INFORMATION: Today three actions are being promulgated under the NIH Guidelines for Research Involving Recombinant DNA Molecules. These three proposed actions were published for comment in the **Federal Register** of May 11, 1994 (59 FR 24618), and reviewed and recommended for approval by the NIH Recombinant DNA Advisory Committee (RAC) at its meeting on June 9–10, 1994.

I. Background Information and Decisions on Actions Under the NIH Guidelines

A. Amendment to Appendix M–I–D of the NIH Guidelines Regarding Informed Consent for Human Gene Transfer Protocols

During the December 2–3, 1993, Recombinant DNA Advisory Committee meeting, Dr. Gary Ellis, Director of the Office for Protection from Research Risks (OPRR), NIH, Bethesda, Maryland, responded to the written comments submitted by Dr. Zallen, Chair of the Working Group on Informed Consent Issues. Dr. Ellis noted the Recombinant DNA Advisory Committee's concern regarding specific issues that should be addressed in human gene transfer protocol Informed Consent documents, i.e., request for autopsy, recommendations for male/female contraception, separate Informed Consent documents when the gene therapy aspects of the protocols are independent of an ongoing clinical protocol, commitment to long-term patient follow-up, and financial responsibility of the institution for all research-related costs. During his presentation, Dr. Ellis provided the Recombinant DNA Advisory Committee with background information regarding the roles of both OPRR and local Institutional Review Boards (IRB) in the review of research proposals involving human subjects. Dr. Ellis recommended that the Recombinant DNA Advisory Committee draft a letter outlining its specific recommendations to OPRR for distribution and consideration by the local IRBs.

In a memorandum dated December 23, 1993, Dr. Ellis further clarified the avenues that should be pursued by the Recombinant DNA Advisory Committee with regard to translating its concern about the "quality and content of informed consent documents into constructive changes in the informed consent process," specifically in relation to human gene transfer. Dr. Ellis recommended that the NIH Guidelines should be amended to introduce consistency in Informed Consent document language.

During the March 3–4, 1994, Recombinant DNA Advisory Committee meeting, Dr. Doris Zallen, Chair of the Working Group on Informed Consent, provided a summary of the proposed amendments to Appendix M–I–D, Informed Consent. Two versions of revised Appendix M–I–D were presented: (1) the version drafted by the working group, and (2) a modified version incorporating the modifications suggested by Mr. Alex Capron. The Recombinant DNA Advisory Committee recommended that the working group should develop a consolidated version of Appendix M–I–D which includes language from both proposed documents. The Recombinant DNA Advisory Committee suggested that questions should be prefaced with an explanation as to the necessity for the requested information.

On April 27, 1994, Dr. Zallen submitted revised amendments to Appendix M–I– D, Informed Consent, in response to the specific comments posed by the Recombinant DNA Advisory Committee at its March 3–4, 1994, meeting. The proposed amendments were reviewed by the Recombinant DNA Advisory Committee during the June 9–10, 1994, meeting. The Recombinant DNA Advisory Committee approved a motion to accept the proposed amendments with minor editorial changes to Appendix M–I–D, Informed Consent, by a vote of 13 in favor, 0 opposed, and no abstentions.

The amended version of Appendix M–I–D, Informed Consent, reads:

Appendix M–I–D. Informed Consent

In accordance with the requirements of DHHS regulations for the Protection of Human Subjects (45 CFR Part 46), investigators should indicate how subjects will be informed about the proposed study and the manner in which their consent will be solicited. They should also indicate how the Informed Consent document makes clear the special requirements of gene transfer research.

Appendix M–I–D–1. Communication About the Study to Potential Participants

Appendix M–I–D–1–a.

Which members of the research group and/or institution will be responsible for contacting potential participants and for describing the study to them? What procedures will be used to avoid possible conflicts of interest if the investigator is also providing medical care to potential subjects?

Appendix M–I–D–1–b.

How will the major points covered in Appendices M–I–A through M–I–C be disclosed to potential participants and/or their parents or guardians in language that is understandable to them?

Appendix M–I–D–1–c.

What is the length of time that potential participants will have to make a decision about their participation in the study?

Appendix M–I–D–1–d.

If the study involves pediatric or mentally handicapped subjects, how will the assent of each person be obtained?

Appendix M–I–D–2. Informed Consent Document

"Investigators submitting human gene transfer proposals for Recombinant DNA Advisory Committee review must include the Informed Consent document as approved by the local Institutional Review Boards. A separate Informed Consent document should be used for the gene transfer portion of a research project when gene transfer is used as an adjunct in the study of another technique, e.g., when a gene is used as a 'marker' or to enhance the power of immunotherapy for cancer.

"Because of the relative novelty of the procedures that are used, the potentially irreversible consequences of the procedures performed, and the fact that many of the potential risks remain undefined, the Informed Consent process should include the following specific information in addition to any requirements of the DHHS regulations for the Protection of Human Subjects (45 CFR 46). Indicate if each of the specified items appears in the Informed Consent document or, if not included in the Informed Consent document, how those items will be presented to potential subjects. Include an explanation if any of the following items are omitted from the consent process or the Informed Consent document.

Appendix M–I–D–2–a. General Requirements of Human Subjects Research

Appendix M–I–D–2–a–(1). Description/purpose of the study. "The subjects should be provided with a detailed explanation in non-

technical language of the purpose of the study and the procedures associated with the conduct of the proposed study, including a description of the gene transfer component.

Appendix M–I–D–2–a–(2). Alternatives. "The Informed Consent document should indicate the availability of therapies and the possibility of other investigational interventions and approaches.

Appendix M–I–D–2–a–(3). Voluntary participation. "The subjects should be informed that participation in the study is voluntary and that failure to participate in the study or withdrawal of consent will not result in any penalty or loss of benefits to which the subjects are otherwise entitled.

Appendix M–I–D–2–a–(4). Benefits. "The subjects should be provided with an accurate description of the possible benefits, if any, of participating in the proposed study. For studies that are not reasonably expected to provide a therapeutic benefit to subjects, the Informed Consent document should clearly state that no direct clinical benefit to subjects is expected to occur as a result of participation in the study, although knowledge may be gained that may benefit others.

Appendix M–I–D–2–a–(5). Possible risks, discomforts, and side effects. "There should be clear itemization in the Informed Consent document of types of adverse experiences, their relative severity, and their expected frequencies. For consistency, the following definitions are suggested: side effects that are listed as mild should be ones which do not require a therapeutic intervention; moderate side effects require an intervention; and severe side effects are potentially fatal or life-threatening, disabling, or require prolonged hospitalization.

"If verbal descriptors (e.g., 'rare,' 'uncommon,' or 'frequent') are used to express quantitative information regarding risk, these terms should be explained.

"The Informed Consent document should provide information regarding the approximate number of people who have previously received the genetic material under study. It is necessary to warn potential subjects that, for genetic materials previously used in relatively few or no humans, unforeseen risks are possible, including ones that could be severe.

"The Informed Consent document should indicate any possible adverse medical consequences that may occur if the subjects withdraw from the study once the study has started.

Appendix M–I–D–2–a–(6). Costs. "The subjects should be provided with specific information about any financial costs associated with their participation in the protocol and in the long-term follow-up to the protocol that are not covered by the investigators or the institution involved.

"Subjects should be provided an explanation about the extent to which they will be responsible for any costs for medical treatment required as a result of research-related injury.

Appendix M–I–D–2–b. Specific Requirements of Gene Transfer Research

Appendix M–I–D–2–b–(1). Reproductive considerations. "To avoid the possibility that any of the reagents employed in the gene transfer research could cause harm to a fetus/child, subjects should be given information concerning possible risks and the need for contraception by males and females during the active phase of the study. The period of time for the use of contraception should be specified.

"The inclusion of pregnant or lactating women should be addressed.

Appendix M–I–D–2–b–(2). Long-term follow-up. "To permit evaluation of long-term safety and efficacy of gene transfer, the prospective subjects should be informed that they are expected to cooperate in long-term follow-up that extends beyond the active phase of the study. The Informed Consent document should include a list of persons who can be contacted in the event that questions arise during the follow-up period. The principal investigator should request that subjects continue to provide a current address and telephone number.

"The subjects should be informed that any significant findings resulting from the study will be made known in a timely manner to them and/or their parent or guardian including new information about the experimental procedure, the harms and benefits experienced by other individuals involved in the study, and any long-term effects that have been observed.

Appendix M–I–D–2–b–(3). Request for autopsy. "To obtain vital information about the safety and efficacy of gene transfer, autopsies are to be performed, if feasible. Subjects should be informed that at the time of death, no matter what the cause, permission for any autopsy will be requested of their families. Subjects should be asked to advise their families of the request and of its scientific and medical importance.

Appendix M–I–D–2–b–(4). Interest of the media and others in the research. "To alert subjects that others may have an interest in the innovative character of the protocol and in the status of the treated subjects, the subjects should be informed of the following: (i) that the institution and investigators will make efforts to provide protection from the media in an effort to protect the participants' privacy, and (ii) that representatives of applicable Federal agencies (e.g., the National Institutes of Health and the Food and Drug Administration), representatives of collaborating institutions, vector suppliers, etc., will have access to the subjects' medical records."

I accept this recommendation, and Appendix M–I–D, Informed Consent, of the NIH Guidelines will be added accordingly.

B. Amendment to Appendix M–VI of the NIH Guidelines Regarding Procedures to be Followed for Expedited Review of Single Patient Human Gene Transfer Experiments

On April 29, 1994, Dr. Nelson Wivel of the Office of Recombinant DNA Activities, National Institutes of Health, Bethesda, Maryland, requested that Appendix M–VI, Procedures to be Followed for Expedited Review of Single Patient Human Gene Transfer Experiments, be amended to clarify submission requirements.

The Procedures to be Followed for Expedited Review of Single Patient Human Gene Transfer Experiments currently reads:

"Appendix M–VI–D. Regardless of the method of review, the Points to Consider is the standard of review for all gene transfer protocols."

The proposed amendment reads:

"Appendix M–VI–D. Regardless of the method of review, the Points to Consider is the standard of review for all gene transfer protocols; therefore, submission of the response to the Points to Consider is required."

The proposed amendment was reviewed by the Recombinant DNA Advisory Committee during the June 9–10, 1994, meeting. The Recombinant DNA Advisory Committee approved a motion to accept the proposed amendment to Appendix M–VI, Procedures to be Followed for Expedited Review of Single Patient Human Gene Transfer Experiments, by a vote of 13 in favor, 0 opposed, and no abstentions.

I accept this recommendation, and Appendix M–VI, Procedures to be Followed for Expedited Review of Single Patient Human Gene Transfer Experiments, of the NIH Guidelines will be amended accordingly.

C. Deletion of Appendix L of the NIH Guidelines Regarding Release into the Environment

On April 29, 1994, Dr. Nelson Wivel of the Office of Recombinant DNA Activities, National Institutes of Health, Bethesda, Maryland, requested that Appendix L, Release into the Environment of Certain Plants, be deleted from the NIH Guidelines based on the following: (1) Section I of the NIH Guidelines allows experiments to proceed that are reviewed and approved by another Federal agency that has jurisdiction for review and approval without the necessity for NIH review or approval (52 FR 31849); (2) the Recombinant DNA Advisory Committee has not reviewed any deliberate release experiment involving recombinant DNA since 1984; (3) at its May 30–31, 1991, meeting, the Recombinant DNA Advisory Committee recommended that Section III–A–2 be deleted from the NIH Guidelines; and (4) experiments involving deliberate release into the environment are currently reviewed within the framework of existing Federal regulations, as administered by the Environmental Protection Agency and the U.S. Department of Agriculture.

Section I of the NIH Guidelines was amended on August 24, 1987, such that any recombinant DNA experiment (other than human gene transfer) may

proceed without Recombinant DNA Advisory Committee and NIH approval if it has been reviewed and approved by another Federal agency that has jurisdiction over such a proposal. The amended version (52 FR 31849) of Section I reads as follows:

Section I–A. Purpose

"* * *Any recombinant DNA experiment, which according to the NIH Guidelines requires approval by the NIH, must be submitted to the NIH or to another Federal agency that has jurisdiction for review and approval. Once approval, or other applicable clearances, have been obtained from a Federal agency other than the NIH (whether the experiment is referred to that agency by the NIH or sent directly there by the submitter), the experiment may proceed without the necessity for NIH review or approval* * *."

On December 6, 1990, the Recombinant DNA Advisory Committee Planning Subcommittee recommended that the requirement for Recombinant DNA Advisory Committee review of experiments involving deliberate environmental release of organisms containing recombinant DNA be eliminated from the NIH Guidelines. This recommendation reflected the fact that the Federal regulatory agencies, the U.S. Department of Agriculture and the Environmental Protection Agency, are responsible for the review and approval of environmental release experiments. The Recombinant DNA Advisory Committee reviewed the request and recommended that the following sections be deleted from the NIH Guidelines (Actions Under the Guidelines, **Federal Register**, July 5, Part III):

Section III–A–2.

Deliberate release into the environment of any organism containing recombinant DNA except those listed below. The term "deliberate release" is defined as a planned introduction of recombinant DNA-containing microorganisms, plants, or animals into the environment.

Section III–A–2–a. Introductions conducted under conditions considered to be accepted scientific practices in which there is adequate evidence of biological and/or physical control of the recombinant DNA-containing organisms. The nature of such evidence is described in Appendix L.

Section III–A–2–b. Deletion derivatives and single base changes not otherwise covered by the NIH Guidelines.

Section III–A–2–c. For extrachromosomal elements and microorganisms (including viruses), rearrangements and amplifications within a single genome. Rearrangements involving the introduction of DNA from different strains of the same species would not be covered by this exemption."

Based on these amendments to the NIH Guidelines, that have previously been recommended by the Recombinant DNA Advisory Committee, and the fact that the principles of planned introduction are now in place which provide a risk-assessment method by other Federal regulatory agencies, the Office of Recombinant DNA Activities requests that Appendix L be deleted from the NIH Guidelines.

Appendix L will be deleted as follows:

Appendix L. Release into the Environment of Certain Plants

Appendix L–I. General Information

Appendix L specifies conditions under which certain plants as specified below, may be approved for release into the environment. Experiments in this category cannot be initiated without submission of relevant information on the proposed experiment to NIH, review by the RAC Plant Subcommittee, and specific approval by the NIH Director. Such experiments also require the approval of the Institutional Biosafety Committee before initiation.

Appendix L–II. Criteria Allowing Review by the RAC Plant Subcommittee Without the Requirement for Full RAC Review

"In consultation with the RAC Plant Subcommittee and without the requirement for full RAC review (Institutional Biosafety Committee review and approval is necessary), NIH/ORDA may approve the growing of plants containing recombinant DNA in the field under the following conditions: (i) the plant species is a cultivated crop of a genus that has no species known to be a noxious weed; (ii) the introduced DNA consists of well-characterized genes containing no sequences harmful to humans, animals, or plants; (iii) the vector consists of DNA from exempt host-vector systems (see Appendix C), from plants of the same or closely related species, from nonpathogenic prokaryotes or nonpathogenic lower eukaryotic plants, from plant pathogens only if sequences resulting in production of disease symptoms have been deleted, or chimeric vectors constructed from sequences of exempt host-vector systems (see Appendix C) or from sequences from plant pathogens in which the disease symptoms have been deleted. The DNA may be introduced by any suitable method. If sequences resulting in production of disease symptoms are retained for purposes of introducing the DNA into the plant, greenhouse-grown plants must be shown to be free of such sequences before such plants, their derivatives, or seed can be used in field tests; (iv) plants are grown in controlled access fields under specified conditions appropriate for the plant under study and the geographical location. Such conditions should include provisions for using good cultural and pest control practices, for physical isolation from plants of the same species outside of the experimental plot in accordance with pollination characteristics of the species, and the prevention of plants containing recombinant DNA from becoming established in the environment. Review by the Institutional Biosafety Committee should include an appraisal by scientists knowledgeable of the crop, its production practices, and the local geographical conditions. Procedures for assessing alterations in and the spread of organisms containing recombinant DNA must be developed. The results of the outlined tests must be submitted for review and approval by the Institutional Biosafety Committee. Copies of such results must be submitted to the Office of Recombinant DNA Activities, National Institutes of Health, Building 31, Room 4B11, Bethesda, Maryland 20892, (301) 496–9838."

The proposed amendment was reviewed by the Recombinant DNA Advisory Committee during its June 9–10, 1994, meeting. The Recombinant DNA Advisory Committee approved a motion to accept the deletion of Appendix L, Regarding Release into the Environment, by a vote of 13 in favor, 0 opposed, and no abstentions.

I accept this recommendation, and Appendix L, Regarding Release into the Environment, of the NIH Guidelines will be deleted accordingly.

II. Summary of Actions

A. Amendment to Appendix M–I–D of the NIH Guidelines Regarding Informed Consent for Human Gene Transfer Protocols

Appendix M–I–D will read as follows:

Appendix M–I–D. Informed Consent

In accordance with the requirements of DHHS regulations for the Protection of Human Subjects (45 CFR Part 46), investigators should indicate how subjects will be informed about the proposed study and the manner in which their consent will be solicited. They should also indicate how the Informed Consent document makes clear the special requirements of gene transfer research.

Appendix M–I–D–1. Communication About the Study to Potential Participants

Appendix M–I–D–1–a

Which members of the research group and/or institution will be responsible for contacting potential participants and for describing the study to them? What procedures will be used to avoid possible conflicts of interest if the investigator is also providing medical care to potential subjects?

Appendix M–I–D–1–b

How will the major points covered in Appendices M–I–A through M–I–C be disclosed to potential participants and/or their parents or guardians in language that is understandable to them?

Appendix M–I–D–1–c

What is the length of time that potential participants will have to make a decision about their participation in the study?

Appendix M–I–D–1–d

If the study involves pediatric or mentally handicapped subjects, how will the assent of each person be obtained?

Appendix M–I–D–2. Informed Consent Document

"Investigators submitting human gene transfer proposals for Recombinant DNA Advisory Committee review must include the Informed Consent document as approved by the local Institutional Review Boards. A separate Informed Consent document should be used for the gene transfer portion of a research project when gene transfer is used as an adjunct in the study of another technique, e.g., when a gene is used as a 'marker' or to enhance the power of immunotherapy for cancer.

"Because of the relative novelty of the procedures that are used, the potentially irreversible consequences of the procedures performed, and the fact that many of the potential risks remain undefined, the Informed Consent document should include the following specific information in addition to any requirements of the DHHS regulations for the Protection of Human Subjects (45 CFR 46). Indicate if each of the specified items appears in the Informed Consent document or, if not included in the Informed Consent document, how those items will be presented to potential subjects. Include an explanation if any of the following items are omitted from the consent process or the Informed Consent document.

Appendix M–I–D–2–a. General Requirements of Human Subjects Research

Appendix M–I–D–2–a–(1). Description/ Purpose of the Study

"The subjects should be provided with a detailed explanation in non-technical language of the purpose of the study and the procedures associated with the conduct of the proposed study, including a description of the gene transfer component.

Appendix M–I–D–2–a–(2). Alternatives

"The Informed Consent document should indicate the availability of therapies and the possibility of other investigational interventions and approaches.

Appendix M–I–D–2–a–(3). Voluntary Participation

"The subjects should be informed that participation in the study is voluntary and that failure to participate in the study or withdrawal of consent will not result in any penalty or loss of benefits to which the subjects are otherwise entitled.

Appendix M–I–D–2–a–(4). Benefits

"The subjects should be provided with an accurate description of the possible benefits, if any, of participating in the proposed study. For studies that are not reasonably expected to provide a therapeutic benefit to subjects, the Informed Consent document should clearly state that no direct clinical benefit to subjects is expected to occur as a result of participation in the study, although knowledge may be gained that may benefit others.

Appendix M–I–D–2–a–(5). Possible Risks, Discomforts, and Side Effects

"There should be clear itemization in the Informed Consent document of types of adverse experiences, their relative severity, and their expected frequencies. For consistency, the following definitions are suggested: side effects that are listed as mild should be ones which do not require a therapeutic intervention; moderate side effects require an intervention; and severe side effects are potentially fatal or life-threatening, disabling, or require prolonged hospitalization.

"If verbal descriptors (e.g., 'rare,' 'uncommon,' or 'frequent') are used to express quantitative information regarding risk, these terms should be explained.

"The Informed Consent document should provide information regarding the approximate number of people who have previously received the genetic material under study. It is necessary to warn potential subjects that, for genetic materials previously used in relatively few or no humans, unforeseen risks are possible, including ones that could be severe.

"The Informed Consent document should indicate any possible adverse medical consequences that may occur if the subjects withdraw from the study once the study has started.

Appendix M–I–D–2–a–(6). Costs

"The subjects should be provided with specific information about any financial costs associated with their participation in the protocol and in the long-term follow-up to the protocol that are not covered by the investigators or the institution involved.

"Subjects should be provided an explanation about the extent to which they will be responsible for any costs for medical treatment required as a result of research-related injury.

Appendix M–I–D–2–b. Specific Requirements of Gene Transfer Research

Appendix M–I–D–2–b–(1). Reproductive Considerations

"To avoid the possibility that any of the reagents employed in the gene transfer research could cause harm to a fetus/child, subjects should be given information concerning possible risks and the need for contraception by males and females during the active phase of the study. The period of time for the use of contraception should be specified.

"The inclusion of pregnant or lactating women should be addressed.

Appendix M–I–D–2–b–(2). Long-Term Follow-Up

"To permit evaluation of long-term safety and efficacy of gene transfer, the prospective subjects should be informed that they are expected to cooperate in long-term follow-up that extends beyond the active phase of the study. The Informed Consent document should include a list of persons who can be contacted in the event that questions arise during the follow-up period. The principal investigator should request that subjects continue to provide a current address and telephone number.

"The subjects should be informed that any significant findings resulting from the study will be made known in a timely manner to them and/or their parent or guardian including new information about the experimental procedure, the harms and benefits experienced by other individuals involved in the study, and any long-term effects that have been observed.

Appendix M–I–D–2–b–(3). Request for Autopsy

"To obtain vital information about the safety and efficacy of gene transfer, subjects should be informed that at the time of death, no matter what the cause, permission for an autopsy will be requested of their families. Subjects should be asked to advise their families of the request and of its scientific and medical importance.

Appendix M–I–D–2–b–(4). Interest of the Media and Others in the Research

"To alert subjects that others may have an interest in the innovative character of the protocol and in the status of the treated subjects, the subjects should be informed of the following: (i) that the institution and investigators will make efforts to provide protection from the media in an effort to protect the participants' privacy, and (ii) that representatives of applicable Federal agencies (e.g., the National Institutes of Health and the Food and Drug Administration), representatives of collaborating institutions, vector suppliers, etc., will have access to the subjects' medical records."

B. Amendment to Appendix M–VI of the NIH Guidelines Regarding Procedures to be Followed for Expedited Review of Single Patient Human Gene Transfer Experiments

Appendix M–VI, Procedures to be Followed for Expedited Review of Single Patient Human Gene Transfer Experiments, will read as follows:

"Appendix M–VI–D. Regardless of the method of review, the Points to Consider is the standard of review for all gene transfer protocols; therefore, submission of the Points to Consider is required."

C. Deletion of Appendix L of the NIH Guidelines Regarding Release into the Environment

Appendix L, Release into the Environment of Certain Plants, be deleted in full: To see the full text of Appendix L, reference the background information and decisions on actions under the NIH Guidelines (Section I–C).

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists

in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers not only virtually every NIH program but also essentially every Federal research program in which DNA recombinant molecule techniques could be used, it has been determined to be not cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

EFFECTIVE DATE: July 28, 1994.

Harold Varmus,

Director, National Institutes of Health.

[FR Doc. 94–19078 Filed 8–4–94; 8:45 am]

BILLING CODE 4140–01–P

federal register

Friday
August 5, 1994

Part V

Department of Education

34 CFR Part 388

State Vocational Rehabilitation Unit In-Service Training; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 388

RIN 1820–AB24

State Vocational Rehabilitation Unit In-Service Training

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations governing the State Vocational Rehabilitation Unit In-Service Training program. The regulations are needed to implement changes made by the Rehabilitation Act Amendments of 1992. These final regulations incorporate new statutory requirements, reference changes in Education Department General Administrative Regulations, incorporate new phraseology from the Act, limit eligibility to designated State agencies, and provide funding allocation information.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Richard Melia, U.S. Department of Education, 400 Maryland Avenue, S.W., Room 3422 Switzer Building, Washington, D.C. 20202–2649. Telephone (202) 205–9400. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: These regulations implement changes to the State Vocational Rehabilitation Unit In-Service Training program made to the Rehabilitation Act of 1973 (the Act) by the Rehabilitation Act Amendments of 1992 (the Amendments), Pub. L. 102–569, enacted October 29, 1992.

This program supports the National Education Goal that, by the year 2000, every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. The Department supports a variety of training activities for vocational rehabilitation personnel so that they may assist individuals with disabilities in gaining the knowledge and skills to obtain employment and compete in a global economy.

On May 9, 1994, the Secretary published a notice of proposed rulemaking (NPRM) for the State Vocational Rehabilitation Unit In-Service Training program in the **Federal Register** (59 FR 24000). The major issues related to this program are discussed in the preamble to the NPRM. Significant changes resulting from public comment since publication of the NPRM include— (1) eliminating the separate minimum share for Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau; (2) removing the requirement for an annual comprehensive needs assessment; (3) deleting the requirement that distance learning be in connection with a training course; and (4) deleting the requirement that distance education for rehabilitation workers occur at individual job sites.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 16 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Major issues are grouped according to subject, with appropriate sections of the regulations referenced in parentheses. Other substantive issues are discussed under the section of the regulations to which they pertain. Technical and other minor changes are not addressed.

Minimum Share and Matching Considerations (§§ 388.21(a) and 388.30)

Comments: Five commenters suggested deleting § 388.21(a)(4), which provides a minimum share of not less than one-eighth of one percent of the amounts made available for in-service training to Guam, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau. The commenters believe agencies in the territories, some of which have as many employees as small designated State agencies, should receive the same minimum share of not less than one-third of one percent of the amounts made available for the fiscal year as provided in § 388.21(a)(3) to small agencies.

Discussion: The Secretary agrees that the same minimum share provided to small designated State agencies is appropriate for the specified territories. The Secretary also notes that the territories are eligible to compete for the remaining funds to be allocated based on the quality of the application as determined by competitive reviews conducted by the Department using the selection criteria in § 388.20 and the priorities in § 388.22.

Changes: A revision has been made to § 388.21(a) by deleting paragraph (4) so that all grant recipients receive the same minimum share of the sums made available for in-service training for the fiscal year. A revision of § 388.30, deleting paragraph (c), which provides special matching considerations for the territories, also has been made in the final regulations.

Program Purpose (§ 388.1)

Comments: Two commenters requested definitions for the terms "succession planning" and "capacity building" used in § 388.1.

Discussion: The Secretary notes that these terms are found in the statute, but are optional for State agencies to address in their in-service training. There are alternative ways to address these concepts, and the Secretary prefers not to define them, thus leaving the widest possible discretion to State agencies.

Changes: None.

Comment: A commenter observed that § 388.1 should be revised, and the regulations changed throughout, to emphasize human resource development in place of training. Peer reviewers should be oriented to human resource development prior to their service as reviewers.

Discussion: The Secretary agrees that the term human resource development is descriptive of many appropriate activities under this program. However, the Rehabilitation Act of 1973, as amended, uses the term "in-service training," so that term is used in the regulations.

Changes: None.

Annual Needs Assessment (§ 388.20(a)(2)(iii))

Comments: Three commenters addressed the requirement in § 388.20(a)(2)(iii) for an annual needs assessment of in-service training needs. The commenters believe an annual assessment is not necessary and recommend a comprehensive needs assessment every three years and a less comprehensive review annually.

Discussion: Although an assessment must be conducted during the course of the project period, the Secretary agrees that a comprehensive assessment is not needed annually.

Changes: A revision, deleting the word "annual," has been made to § 388.20(a)(2)(iii) in the final regulations.

Project Length

Comments: Three commenters noted that the regulations do not specify the length of projects. Recommendations of project periods of 36 and 60 months were made.

Discussion: The Secretary notes that regulations usually do not specify project duration and instead leave flexibility for the Secretary to determine an appropriate project period each time a competition is announced.

Changes: None.

Allowable Costs (§ 388.31(d))

Comment: A commenter asked that the phrase "in connection with a distance learning training course" be dropped from the description of allowable telecommunications and technology fees in § 388.31(d).

Discussion: The Secretary agrees that distance learning may include valuable in-service training activities, such as a lecture or technology demonstration, that are not part of a training course.

Changes: Section 388.31(d) has been revised by deleting the words "in connection with a distance learning training course."

Distance Education Priority (§ 388.22(b)(2))

Comment: A commenter noted that it was an unnecessary limitation to require that distance education for rehabilitation workers be at their job sites as stated in § 388.22(b)(2). The commenter noted that it may be necessary or efficient for an agency to gather a group of employees at a central location removed from individual offices for distance education.

Discussion: The Secretary agrees that there is no compelling reason to require in this priority that training occur at an individual job site.

Changes: Section 388.22(b)(2) has been revised by deleting the words "at their job sites."

Comment: A commenter recommended dropping the priority in § 388.22(b)(2) for distance education on the grounds that there is no evidence that distance education produces better results at less cost.

Discussion: The Secretary believes that distance education is needed in some States and wants to ensure that a mechanism exists to demonstrate innovative approaches to learning.

Changes: None.

Enhanced Employment Outcomes for Specific Populations Priority (§ 388.22(b)(3))

Comment: A commenter requested clarification of the heading for § 388.22(b)(3), which refers to "specific populations" although the text that follows refers to "all individuals or specified groups."

Discussion: The Secretary believes that it is up to the State agency to determine whether in-service training to improve employment outcomes will be targeted narrowly or broadly. Activities directed to improving employment outcomes for all population groups or for a specific target group are permitted under this priority.

Changes: None.

General

Comment: A commenter observed that the NPRM retains most of the language in the current regulations and does not accurately reflect the Rehabilitation Act Amendments of 1992 (the 1992 Amendments), particularly provisions related to State and strategic plans.

Discussion: The Secretary believes that extensive changes have been proposed in the current regulations and is confident that all requirements in the 1992 Amendments have been implemented.

Changes: None.

Priorities (§ 388.22)

Comments: Two commenters supported reserving a portion of funds for priorities, but believe this reserve should be divided between priorities based on need and priorities based on responsiveness or quality of the application and innovative approaches.

Discussion: The Secretary believes that the three priorities listed in the proposed regulations address significant needs of State agencies and that no further division of the priorities into categories is needed.

Changes: None.

Comment: Regarding § 388.22, which sets the Secretary's priorities, a commenter asked if an application that addresses issues or activities other than the three priorities listed can be eligible for quality funds.

Discussion: The Secretary responds that only applications that respond to the priorities already identified by the Secretary in the regulations for this program or priorities established through future rulemaking will be considered when allocating the quality funds.

Changes: None.

Basic State Agency Award Formula (§ 388.21)

Comments: Four commenters objected to the proposed formula in § 388.21 whereby 80 percent of the funds available would be distributed based on the number of staff and 20 percent of the funds available would be distributed based on quality. They believe that the split penalizes States with small populations with limited capacity to write grants. In the commenters' view, the distribution does not take into account extra travel costs in a State with a large geographic area, and a commenter suggested increasing the small State agency minimum share.

Discussion: The Secretary believes that the proposed formula maximizes the amount of funds available for basic awards while ensuring that a reasonable amount is available for small agencies and for the Secretary's priorities.

Changes: None.

Comment: A commenter noted that § 388.21 does not state what the minimum score is that an applicant must receive in order for its application to be approved by the Secretary or how it is to be computed.

Discussion: In order to make funding decisions, the Secretary sets a minimum score for each competition after all applications have been reviewed. The minimum score will be computed through an analysis of all reviewed applications to determine those that are in the fundable range.

Changes: None.

Selection Criteria (§ 388.20)

Comments: Two commenters recommended deleting § 388.20(f)(1)(ii) of the evaluation selection criteria that would judge in-service training outcomes by the extent to which training results in improved individual competency through licensure, certification, or award of academic degrees or certificates. The commenters believe in-service training to be short-term and job-based; therefore, reference to improved individual competency through degree-based programs should be dropped.

Discussion: The Secretary believes that, in response to the need to increase the number of qualified rehabilitation personnel, academic outcomes must be included among the measures of in-service training programs.

Changes: None.

Reviewers' Qualifications

Comments: Three commenters observed that reviewers for in-service proposals should be well qualified, represent diverse populations, and be identified by name and program affiliation after the review is completed. They commented that all applicants should receive reviewer comments.

Discussion: The Secretary agrees that reviewers must be qualified and representative of the diverse populations and agencies assisted through in-service training. The

Secretary does make summary information available on characteristics of reviewers but believes the specific reviewers of proposals should remain anonymous. All applicants are provided with the reviewer comments on their applications when the review is completed.

Changes: None.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

List of Subjects in 34 CFR Part 388

Grant programs—education, In-service training, Reporting and recordkeeping requirements, Vocational rehabilitation.

(Catalog of Federal Domestic Assistance Number 84.265, State Vocational Rehabilitation Unit In-Service Training)

Dated: August 2, 1994.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

The Secretary amends Title 34 of the Code of Federal Regulations by revising Part 388 to read as follows:

PART 388—STATE VOCATIONAL REHABILITATION UNIT IN-SERVICE TRAINING

Subpart A—General

Sec.

388.1 What is the State Vocational Rehabilitation Unit In-Service Training program?
388.2 Who is eligible for an award?
388.3 What types of projects are authorized?
388.4 What activities may the Secretary fund?
388.5 What regulations apply?
388.6 What definitions apply?

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

388.20 What selection criteria does the Secretary use?
388.21 How does the Secretary determine the amount of a basic State award?
388.22 What priorities does the Secretary consider in making an award?

Subpart D—What Conditions Must be Met After an Award?

388.30 What are the matching requirements?
388.31 What are the allowable costs?

Authority: 29 U.S.C. 711(c) and 774, unless otherwise noted.

Subpart A—General

§ 388.1 What is the State Vocational Rehabilitation Unit In-Service Training program?

This program is designed to support projects for training State vocational rehabilitation unit personnel in program areas essential to the effective management of the unit's program of vocational rehabilitation services or in skill areas that will enable staff personnel to improve their ability to provide vocational rehabilitation services leading to employment outcomes for individuals with disabilities. The State Vocational Rehabilitation Unit In-Service Training program responds to needs identified in the comprehensive system of personnel development in section 101(a)(7) of the Act. The program may include training designed—

(a) To address recruitment and retention of qualified rehabilitation professionals;

(b) To provide for succession planning;

(c) To provide for leadership development and capacity building; and

(d) For fiscal year 1994, to provide training on the amendments to the Rehabilitation Act of 1973 made by the Rehabilitation Act Amendments of 1992.

(Authority: 29 U.S.C. 771a(g)(3))

§ 388.2 Who is eligible for an award?

Each designated State agency is eligible to receive an award under the basic State award program described in § 388.21. If a designated State agency does not apply for an award during an announced competition, no funds may be made available for in-service training of the staff of that designated State agency under this program until there is a new competition for funding. At least 15 percent of the sums appropriated to carry out section 302 of the Act must be allocated to designated State agencies to be used, directly or indirectly, for projects for in-service training of rehabilitation personnel.

(Authority: 29 U.S.C. 771a(g)(3))

§ 388.3 What types of projects are authorized?

State vocational rehabilitation unit in-service training projects are concerned with the staff development and training of State vocational rehabilitation unit personnel in order to ensure an improved level of competence in serving State unit clients and to assist in expanding and improving vocational rehabilitation services for individuals with disabilities, especially those with severe disabilities, to ensure employment outcomes.

(Authority: 29 U.S.C. 770 and 771a)

§ 388.4 What activities may the Secretary fund?

(a) Training activities supported under a State vocational rehabilitation unit in-service training grant focus primarily on program areas that are essential to the State unit's operation or on skill areas that will enable staff personnel to improve their ability to function on their job, or prepare for positions of greater responsibility within the unit, or to correct deficiencies identified in the State program. Projects may—

(1) Address recruitment and retention of qualified rehabilitation professionals;

(2) Provide for succession planning;

(3) Provide for leadership development and capacity building; and

(4) For fiscal year 1994, provide training on the amendments to the Rehabilitation Act of 1973 made by the Rehabilitation Act Amendments of 1992.

(b) Training methods may include—

(1) The development of State unit training institutes related to the specific aspects of State unit administration or service provision;

(2) Group employee training at courses conducted in cooperation with or by an educational institution;

(3) Individualized directed study in priority areas of State unit service or practice;

(4) Employee access to current agency instructional resources for books, films, videos, tapes, and other human resource development resources;

(5) Distance learning through telecommunications; and

(6) Dissemination and information sharing with other designated State agencies.

(Authority: 29 U.S.C. 770 and 771a)

§ 388.5 What regulations apply?

The following regulations apply to the State Vocational Rehabilitation Unit In-Service Training program:

(a) The regulations in this Part 388.

(b) The regulations in 34 CFR Part 385.

(Authority: 29 U.S.C. 770 and 771a)

§ 388.6 What definitions apply?

The definitions in 34 CFR Part 385 apply to this program.

(Authority: 29 U.S.C. 711(c) and 771(a)(g)(3))

Subpart B—[Reserved]

Subpart C—How Does the Secretary Make an Award?

§ 388.20 What selection criteria does the Secretary use?

The Secretary uses the following criteria to evaluate an application:

(a) *Evidence of need.* (20 points) (1) The Secretary reviews each application for information that shows that the need for the in-service training has been adequately justified.

(2) The Secretary looks for information that shows—

(i) The need for the in-service training project has been adequately justified and relates to the mission of the State-Federal rehabilitation service program and can be expected to improve the competence of all State vocational rehabilitation personnel in providing vocational rehabilitation services to individuals with disabilities that will result in employment outcomes or otherwise contribute to more effective management of the State unit program;

(ii) The State unit in-service training plan responds to needs identified in the training needs assessment and the proposed training relates to the unit's State plan, particularly the requirements in section 101(a)(7) of the Act for each designated State unit to develop a comprehensive system of personnel development; and

(iii) The State has conducted a needs assessment of the in-service training needs for all of the State unit employees.

(b) *Nature and scope of training program.* (20 points) (1) The Secretary reviews each application for information that demonstrates the adequacy and scope of the proposed training program content.

(2) The Secretary looks for information that shows—

(i) The objectives to be achieved by the project will address the needs as determined by the assessment;

(ii) The scope and nature of the training activities will accomplish the project objectives;

(iii) The training conducted can be measured and evaluated as to how it accomplished the project objectives; and

(iv) The program primarily includes an integrated sequence of—

(A) Workshops, seminars, distance education, and other special courses for new counselors and other classes of State unit personnel concerned with State unit procedures and policies;

(B) Concentrated training activities focusing on improving State unit staff skills in working with specific groups of individuals with disabilities; and

(C) Directed individualized or group staff development activities designed to enable selected staff to acquire special skills.

(c) *Plan of operation.* (25 points) (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) A clear description of how the project will achieve each objective;

(ii) The way the applicant plans to use its resources and personnel to achieve each objective;

(iii) An effective plan of management that ensures proper and efficient administration of the project;

(iv) A clear description of how the applicant will provide equal access and treatment for State agency personnel who are members of groups that have been traditionally underrepresented, such as individuals with disabilities, the elderly, women, and members of racial or ethnic minority groups; and

(v) For FY 1994, a clear description of how the applicant will provide training regarding the 1992 amendments to the Rehabilitation Act of 1973.

(d) *Quality of key personnel.* (10 points) (1) The Secretary reviews each application for information that shows the quality of key personnel proposed for the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director;

(ii) The qualifications of each of the other key personnel, including consultants, to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(2)(i) and (ii) of this section will commit to the project; and

(iv) The applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as individuals with disabilities, the elderly, women, and members of minority groups.

(e) *Budget and cost effectiveness.* (10 points) (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities;

(ii) Costs are reasonable in relation to the objectives of the project; and

(iii) The budget clearly identifies activities to be conducted under § 388.21(a), as well as activities conducted under § 388.21(b), if applicable.

(f) *Evaluation.* (15 points) (1) The Secretary reviews each application to determine the usefulness of the proposed project training in improving services to individuals with disabilities to ensure employment outcomes, including—

(i) The extent to which training outcomes are objective; and

(ii) The extent to which the training will result in improved individual competency recognized through licensure, certification, or award of academic degrees or certificates.

(2) The Secretary looks for qualitative and quantitative measures that show training methods and materials are appropriate for the project and, to the extent possible, will be useful in determining how in-service training improves the impact and effectiveness of services to individuals with disabilities assisted under the Rehabilitation Act to ensure employment outcomes.

(Approved by the Office of Management and Budget under control number 1820–0018.)

(Authority: 29 U.S.C. 711(c), 770, and 771a)

§ 388.21 How does the Secretary determine the amount of a basic State award?

(a) The Secretary distributes no more than 80 percent of the funds available for these awards as follows:

(1) For each competition the Secretary will determine a minimum score based upon the selection criteria in § 388.20 that an applicant must receive in order for its application to be approved by the Secretary.

(2) Each designated State agency that submits an approved application receives an amount based upon a formula that provides each approved project an amount equal to the percentage that the designated State agency's staff, as reported by total person years to the Secretary on Form RSA–2, represents of all staff of all designated State agencies, as reported to the Secretary on Form RSA–2 for the most recent reporting period. A copy of Form RSA–2 may be obtained from the Department of Education, 400 Maryland Avenue, S.W., 3211 Switzer Building, Washington, D.C. 22204–2735.

(3) No designated State agency with an approved project receives less than one-third of one percent of the sums made available for the fiscal year.

(b) After determining a designated State agency's award under paragraph (a) of this section, the Secretary reserves

the remaining funds to be allocated based on the quality of the application as determined by competitive reviews conducted by the Department using the criteria in § 388.20 and the priorities in § 388.22.

(c) Prior to award, negotiations may be conducted with applicants to resolve any problems or weaknesses in the application identified by the review process.

(Authority: 29 U.S.C. 711(c), 770, and 771a)

§ 388.22 What priorities does the Secretary consider in making an award?

(a) The Secretary reserves funds to support some or all of the proposals that have been awarded a rating of 80 points or more under the criteria described in § 388.20.

(b) In making a final selection of proposals to support under this program, the Secretary considers the extent to which proposals have exceeded a rating of 80 points and address one or more of the following priorities announced in the application notice:

(1) *Development and dissemination of model in-service training materials and practices.* The proposed project demonstrates an effective plan to develop and disseminate information on its State Vocational Rehabilitation In-Service Training program, including the identification of training approaches and successful practices, in order to permit the replication of these programs by other State vocational rehabilitation units.

(2) *Distance education.* The proposed project demonstrates innovative strategies for training State vocational rehabilitation unit personnel through distance education methods, such as interactive audio, video, computer technologies, or existing telecommunications networks.

(3) *Enhanced employment outcomes for specific populations.* The proposed project supports specialized training in the provision of vocational rehabilitation or related services to individuals with disabilities to increase the rehabilitation rate into competitive employment for all individuals or specified target groups.

(Authority: 29 U.S.C. 711(c), 770, and 771a)

Subpart D—What Conditions Must be Met After an Award?

§ 388.30 What are the matching requirements?

(a) The Secretary may make grants for paying part of the costs of projects under this program. Except as provided for in paragraphs (b) and (c) of this section, the grantee shall provide at least 10 percent of the total costs of the project.

(b) Grantees designated in § 388.21(a)(3) to receive a minimum share of one third of one percent of the sums made available for the fiscal year shall provide at least four percent of the total costs of the project.

(Authority: 29 U.S.C. 711(c), 770, and 771a)

§ 388.31 What are the allowable costs?

In addition to those allowable costs established in 34 CFR 75.530 through 75.562 (Education Department General Administrative Regulations), the following items are allowable under State vocational rehabilitation unit in-service training projects:

(a) Trainee per diem costs.

(b) Trainee travel in connection with a training course.

(c) Trainee tuition and fees.

(d) Telecommunications and technology fees.

(Authority: 29 U.S.C. 711(c), 770, and 771a)

[FR Doc. 94–19155 Filed 8–4–94; 8:45 am]
BILLING CODE 4000–01–P

federal register

Friday
August 5, 1994

Part VI

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 20
Tribal Consultation on Proposed Social Services Regulations; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 20

Tribal Consultation on Proposed Social Services Regulations

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Tribal Consultation Meeting.

SUMMARY: Notice is hereby given that the Bureau of Indian Affairs (BIA), Division of Social Services will conduct a consultation meeting with Indian tribes to obtain oral comments concerning proposed social services regulations (25 CFR Part 20) that were published for written comment on April 7, 1994. The deadline for submitting written comments on the proposed regulations was June 6, 1994. All oral comments presented at the tribal consultation meeting will be recorded, transcribed and taken into consideration by the agency in the development of the final regulations.

DATES: August 30, 1994. The meeting is scheduled to commence at 8:30 a.m. and will conclude at 5:00 p.m.

ADDRESSES: The Saddleback Inn, 4300 SW 3rd, Oklahoma City, OK. The telephone number for the hotel is (405) 947–7000.

FOR FURTHER INFORMATION CONTACT: David L. Hickman, Chief, Division of Social Services, (202) 208–2721.

SUPPLEMENTARY INFORMATION: The purpose of the consultation is to provide Indian tribes, tribal and BIA social services program personnel and Indian social services consumers an opportunity to present oral comment on proposed amendments to 25 CFR Part 20, Financial Assistance and Social Services Programs.

The proposed amendments include changes at 25 CFR 20.1, Definitions; 20.2 Purpose; 20.3 Policy; 20.20 General and 20.23 Miscellaneous Assistance. Additionally, BIA has proposed to add the following new sections: 20.15, Reporting requirements for all social services programs; 20.16, Staffing requirements; 20.26 Adult care assistance program; 20.27, Work experience program and 20.35, Quality assurance reviews.

Following the consultation on 25 CFR Part 20, the BIA will consult on draft regulations (25 CFR Part 63) implementing the Indian Child Protection and Family Violence Prevention Act (Public Law 101–630). This consultation will be announced by notice in the **Federal Register**.

Dated: August 1, 1994.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 94–19168 Filed 8–4–94; 8:45 am]

BILLING CODE 4310–02–P

federal register

Friday
August 5, 1994

Part VII

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 63
Indian Child Protection and Family Violence Prevention Act; Proposed Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 63

Indian Child Protection and Family Violence Prevention Act

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Tribal Consultation Meeting.

SUMMARY: Notice is hereby given that the Bureau of Indian Affairs (BIA), Office of Tribal Services will conduct a consultation meeting with Indian tribes to obtain oral comments concerning draft child protection regulations (25 CFR Part 63). All oral comments presented at the tribal consultation meeting will be recorded, transcribed and taken into consideration by the agency as the draft regulations are prepared for publication.

DATES: August 31 and September 1, 1994. The meetings are scheduled to commence at 8:30 a.m. and will conclude at 5:00 p.m. The primary subjects for consultation on August 31, 1994, will be caseload standards and the funding formula. The primary subject for consultation on September 1, 1994, will be minimum standards of character. Written comments concerning the draft regulations may be submitted to be received by October 14, 1994.

ADDRESSES: The consultation meetings will be held at The Saddleback Inn, 4300 S.W. 3rd, Oklahoma City, OK 73108. The telephone number for the hotel is (405) 947–7000. Written comments concerning the draft regulations may be submitted to Judy A. Baggett, Child Protection Coordinator, Office of Tribal Services, Bureau of Indian Affairs, MS4603–MIB, 1849 C Street, NW, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Judy A. Baggett, Child Protection Coordinator, (202)208–3463.

SUPPLEMENTARY INFORMATION: The purpose of the consultation is to provide Indian tribes, tribal and BIA social services and law enforcement program personnel an opportunity to present oral comments on draft regulations for P.L. 101–630, Title IV, the Indian Child Protection and Family Violence Prevention Act. The Bureau of Indian Affairs, Office of Tribal Services, is proposing Federal Regulations to 1) prescribe minimum standards of character for employees or prospective employees whose duties and responsibilities involve regular contact with, or control over, Indian children, 2) set caseload standards and staffing requirements for child protection programs, and 3) establish a formula to establish base support funding for Indian Child Protection and Family Violence Prevention programs. Copies of these draft regulations will be provided to each Area Office of the BIA. Area Directors will be instructed to distribute these draft regulations to every tribe within their service area.

Immediately preceding the consultation on 25 CFR Part 63, the BIA will consult on proposed Social Service regulations, 25 CFR Part 20. Consultation on the proposed Social Service regulations is being announced separately, by notice, in the **Federal Register**.

Dated: August 1, 1994.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 94–19169 Filed 8–4–94; 8:45 am]

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federal register

Friday
August 5, 1994

Part VIII

Department of Transportation

Coast Guard

33 CFR Parts 157 and 160

Emergency Lightering Equipment and Advanced Notice of Arrival Requirements for Existing Tank Vessels Without Double Hulls; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 157 and 160

[CGD 91–045]

RIN 2115–AE01

Emergency Lightering Equipment and Advanced Notice of Arrival Requirements for Existing Tank Vessels Without Double Hulls

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard establishes regulations that require the owners or operators of existing tank vessels of 5,000 gross tons (GT) or more that do not have double hulls to carry certain emergency lightering equipment on board and foreign flag vessel owners or operators to provide the vessels' International Maritime Organization (IMO) international numbers in the advance notice of arrival report. The purpose of the regulations is to reduce damage to the environment by facilitating response and salvage efforts for a vessel in the case of a collision or grounding. The regulations represent the Coast Guard's first step in designating structural and operational measures for existing tank vessels without double hulls as required by the Oil Pollution Act of 1990 (OPA 90).

DATES: This rule is effective on November 3, 1994. Comments must be received by November 3, 1994.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA/3406), U.S. Coast Guard Headquarters, 2100 Second Street, SW., room 3406, Washington DC 20593–0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Randall N. Crenwelge, Project Manager, OPA 90 Staff, (202) 267–6220.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in drafting this document are Randall N. Crenwelge, Project Manager, Oil Pollution Act Staff, and Jacqueline L. Sullivan, Project Counsel, OPA 90 Staff.

Regulatory History

On November 1, 1991, the Coast Guard published an advance notice of proposed rulemaking (ANPRM) (56 FR 56284) which discussed structural and operational measures which are intended to meet the requirements of section 4115(b) of OPA 90. The ANPRM included a request for date on the technical and economic feasibility of those measures for use on vessels covered by section 4115(b). A total of 88 comment letters were received by the close of the extended comment period, which ended on January 30, 1992 (57 FR 1243).

After reviewing the comments, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled, "Structural and Operational Measures to Reduce Oil Spills from Existing Tank Vessels Without Double Hulls" (Existing Vessels) on October 22, 1993 (58 FR 54870). The Coast Guard issued two subsequent correction notices on November 19, 1993 (58 FR 61143), and December 14, 1993 (58 FR 65298), which made technical corrections to the NPRM. In response to several comments received on the NPRM, the Coast Guard published, on December 16, 1993, a notice of public meeting and extension of comment period (58 FR 65863).

The Coast Guard held a public meeting on January 20, 1994, to obtain information from the public on the proposed regulations. Topics addressed by speakers included applicability, differences between tank barges and tankships, exemptions, and economic and technical feasibility of the proposed regulations. Some of the basic assumptions of the proposed regulations were also discussed, particularly their reliance on Regulation 13G of Annex I of the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 (MARPOL 73/78). Information on the public meeting is available for public review at the address under "**ADDRESSES.**"

In light of the comments received at the public meeting and in response to the written comments received concerning the NPRM, the Coast Guard is reviewing the proposed regulations. The Coast Guard, however, is committed to implementing all the provisions of section 4115(b) in a timely manner. To expedite the implementation of section 4115(b) of OPA 90, the Coast Guard has developed a three-pronged approach which encompasses three separate rulemaking projects. The Coast Guard intends to: (1) Issue this final rule implementing the requirements to carry emergency lightering equipment and to include the International Maritime Organization (IMO) international number in the advance notice of arrival report; (2) in the near future, issue a supplemental notice of proposed rulemaking (SNPRM) regarding additional operational measures for tankships and tank barges; and (3) review comments on the NPRM for major measures and revise the Regulatory Assessment (RA) before issuing a supplemental notice of proposed rulemaking (SNPRM) regarding structural measures for tankships and tank barges.

Background and Purpose

Section 4115 of the Oil Pollution Act of 1990 (OPA 90) (Pub. L. 101–380) mandates regulations to provide improved protection from oil spills in waters subject to jurisdiction of the United States due to collisions and groundings of tank vessels that are constructed or adapted to carry, or that carry oil in bulk as cargo or cargo residue. Section 4115(b) (which appears as a statutory note following 46 U.S.C. 3703a) directs the Coast Guard to develop structural or operational requirements for tank vessels of 5,000 gross tons (GT) or more to serve as regulations until 2015, when all tank vessels operating in U.S. waters are required to have double hulls under section 4115(a) of OPA 90 (46 U.S.C. 3703a). Regulations issued under the authority of section 4115(b) must provide as substantial protection to the environment as is economically and technologically feasible.

Discussion of Comments and Changes

Background information on structural and operational measures for existing vessels without double hulls is provided in the preambles to the ANPRM and the NPRM.

The Coast Guard received a total of 132 comments concerning the NPRM; however, only 8 comments addressed the provisions on emergency lightering equipment, and there were no comments on the advance notice of arrival requirements for foreign vessels. The Coast Guard also received two comments on the applicability of the regulations.

Emergency Lightering Equipment

The NPRM proposed requirements for vessels covered by the regulations to be equipped with lightering equipment, including certain size reducers, bolts, washers, nuts, gaskets, and appropriate quantities of spares. The onboard emergency lightering equipment is intended to facilitate rapid transfer of oil from a vessel in the case of a collision or grounding. Although, normally, lightering operations should not commence until salvage experts and the vessel's master have assessed the condition of the vessel, under some circumstances immediate action may be

required. If oil cargo is improperly lightered from a vessel or if oil cargo is lightered from the wrong tanks, additional damage to the vessel could occur, crew safety could be jeopardized, and additional oil cargo could be discharged into the marine environment. Even if lightering is not initiated until after a full assessment of its suitability, having the required equipment on board ensures that lightering will not be delayed.

Eight comments on the NPRM expressed general support for the Coast Guard's requirement for emergency lightering equipment. In addition, four of these comments proposed modifications.

Three comments agreed with the requirement to store emergency lightering equipment near the cargo manifold as long as the equipment is stored in such a manner that it is protected from the weather. The Coast Guard agrees and is requiring all emergency lightering equipment to be stored in one separate and marked location, in a space such as the cargo control room, pump room, or forecastle locker, and as convenient to the cargo manifold, as practicable.

One comment disagreed with the specific pieces of equipment required by the NPRM and suggested that any requirement for emergency lightering equipment be considered as a total package along with other lightering and salvage equipment. The equipment required by this rule is in addition to the requirements for lightering equipment found in the Vessel Response Plans (VRP) IFR (58 FR 43434). This equipment is independent of all other lightering equipment; it is not to be viewed as part of a larger package of lightering equipment found in the VRP IFR. Additionally, it must be stored separately from all other lightering equipment for the purposes of easy identification and quick access.

The Coast Guard has determined that the emergency lightering equipment required by this regulation is necessary to ensure that the vessel owner or operator has lightering equipment available immediately to use the vessel's cargo pumps to discharge through its manifold to another vessel alongside. This requirement will increase rather than decrease compatibility with other parts of an overall lightering or salvage system.

Another comment suggested that the Coast Guard require two extra sets of bolts, washers, nuts and gaskets per reducer set instead of just one extra set. Although carriage of additional spares is encouraged, the Coast Guard has opted to establish a minimum requirement.

One comment stated that foreign flag vessels should be exempt from the requirement to have equipment that meets the material standards referenced in the proposed regulations (46 CFR 56.25). The comment claimed that some of the material standards referenced would not be appropriate for foreign flag vessels because their standards are established by other classification societies or by other foreign standards. The comment did state, however, that foreign flag vessels should be held to the dimensional requirements in the proposed § 157.420 of the NPRM.

The Coast Guard finds that no change in response to this comment is appropriate. Foreign flag vessels operating in U.S. waters must be prepared to conduct emergency lightering operations in coordination with vessels operating under Coast Guard standards. The Coast Guard will accept equipment that complies with other standards that it determines to be equivalent, or it may accept specific pieces of equipment as being equivalent. All lightering equipment, regardless of which standards are used, must facilitate safe lightering operations.

One comment indicated that the Coast Guard should consider requiring onboard emergency rapid transfer systems (ERTS) in conjunction with the requirement for emergency lightering equipment. Without full-scale development and testing of the ERTS, the Coast Guard does not wish to mandate the use of this system because its effectiveness is unproven; however, the Coast Guard may consider the use of such a system in the future if it determines that such an arrangement provides as substantial protection to the environment as is economically and technologically feasible and meets the general safety considerations.

Adapters have been added to the equipment required by § 157.410 to ensure equipment size compatibility. Adapters are required to adapt components with dimensions in English units to metric units. The vessel owner or operator must provide any other adapters that are necessary to ensure connection to the specified hose sizes for lightering purposes.

Initially, the NPRM for this rulemaking proposed a 3-year phase-in period for structural and operational measures. This period would give the vessel owner or operator sufficient time to conveniently drydock a tank vessel. The lightering equipment required by this final rule does not require drydocking for installation and is most likely available from manufacturers' stock inventory. Therefore, a phase-in period of 1 year is granted to allow for convenient installation aboard a tank vessel.

Advance Notice of Arrival

The NPRM proposed to require the owners or operators of certain foreign flag tank vessels to provide the vessels' IMO international numbers to the Captains of the Port before arriving at a port or place in the United States. There were no comments on the advance notice of arrival requirements in the NPRM, and the requirements remain unchanged in the final rule. However, the effective date has been changed from 3 years to 90 days after publication of this final rule. Because no structural or operational changes are required to implement this provision, the change in the effective date should not adversely affect the owners or operators of foreign flag tank vessels operating in U.S. waters.

Location Within Regulations

In the NPRM, the regulations for emergency lightering equipment were located in a proposed new subpart G at 33 CFR 157.420. Because the requirements for structural measures, which were located in proposed §§ 157.410 and 157.415 in the NPRM, are not being issued at this time, the requirements for emergency lightering operations will be located at § 157.410 in the final rule. Section 157.400 entitled "Purpose and scope" is being issued at this time except that proposed paragraph (c), which established the effective date for the entire subpart, has been deleted.

Regulatory Evaluation

The NPRM of October 22, 1993, was classified as "major" under Executive Order 12291, which was in effect, because the cost of the proposed requirements would be over $100 million annually. As previously discussed, the final rule implements only a minor portion of that proposal. This rule is not a significant regulatory action under Executive Order 12866, and has not been reviewed by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979).

A draft Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT has been prepared and is available in the docket for inspection or copying where indicated under "ADDRESSES." The Evaluation is summarized as follows.

Summary of Benefits

This rulemaking requires all applicable vessels to carry emergency lightering equipment including reducers, adapters, bolts, washers, nuts, and gaskets. The principal benefit will be to facilitate rapid oil transfer from a stricken tank vessel to another tank vessel in those instances where the stricken vessel's cargo pumps are operable. The resultant ability to rapidly transfer oil will minimize the risk of further spillage. A review of a sample of marine pollution cases did not reveal a sufficient number of incidents from which the benefits of this measure could be directly quantified. However, the measures will be useful in cases where a vessel's cargo transfer system remains operational although portions of the ship are damaged and substantial quantities of oil remain aboard. This lightering equipment can be used to reduce the risk of further spillage.

This final rule also requires a foreign flag vessel to report its IMO international number to the Coast Guard Captain of the Port when reporting its advance notice of arrival. This international number will provide the Coast Guard with a means of accessing Marine Safety Information System (MSIS) data on the vessel, from which the Coast Guard may determine whether any special attention would be necessary if the vessel were involved in a collision or grounding. A quick response that takes into account the special circumstances of a vessel will significantly reduce the amount of oil spilled as a result of a collision or grounding. Although the benefits from this requirement could be significant, the Coast Guard is unable to quantify them from available data.

Summary of Costs

The present value of the cost to the tank vessel industry of providing a storage area and acquiring emergency lightering equipment is expected to total $6 million. U.S. tank vessels will incur $1 million of the total cost and foreign tank vessels trading with the United States will incur the remaining $5 million. The undiscounted cost per vessel will range from $4,000 to $9,500 for foreign tank vessels, and $5,000 to $12,500 for U.S. tank vessels covered by this final rule, depending on the configuration of the vessel and extent of modifications required to provide appropriate storage. The undiscounted cost for U.S. tank barges is estimated at about $5,000 per barge. Additionally, the cost to U.S. tank vessels may be more expensive because U.S. materials and labor rates are generally higher.

The requirement for a foreign vessel to provide its international number in its advance notice of arrival report will create no additional cost to the tank barge and tankship industries. Tank vessels are now required to report advance notice of arrival to the Captain of the Port of each U.S. port visited, and the international number is readily available to the master, owner, or agent.

The present value of the total cost of this final rule to the tankship and tank barge industries is $6 million.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact on small entities for this rule.

The present value of the cost of this rule totals $6 million. The undiscounted cost per vessel will range from as low as $4,000–$5,000 per vessel for the smallest tankship and tank barge included in this rulemaking to only $12,500 per vessel for the largest U.S. flag tank vessel affected. These sums include both the hardware and shipyard costs for stowage arrangements and are extremely small when compared with the capital invested in the affected vessels. No early vessel retirements are anticipated as a result of this final rule. In accordance with OPA 90, the Coast Guard excludes from this final rule the tank barge and tankship fleet under 5,000 GT.

Because of the exemption of tank vessels of less than 5,000 GT from this final rule and the low cost per vessel, the Coast Guard certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains collection-of-information requirements. The Coast Guard has submitted the requirements to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and OMB has approved them. The section number is 160.207 and the corresponding OMB approval number is OMB Control Number 2115–0557.

Federalism

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

Environment

The Coast Guard considered the environmental impact of this rule and concluded that preparation of an Environmental Impact Statement is not necessary. An Environmental Assessment (EA) and a Finding of No Significant Impact are available in the docket for copying or inspection where indicated under "**ADDRESSES.**" The environmental impacts of the requirements of this rule are sufficiently severable from the operational and structural measures proposed in the NPRM to allow independent evaluation.

List of Subjects

33 CFR Part 157

Cargo vessels, Oil pollution, Reporting and recordkeeping requirements.

33 CFR Part 160

Administrative practice and procedure, Harbors, Hazardous materials transportation, Marine safety, Navigation (water), Report and recordkeeping requirements, Vessels, Waterways.

For the reasons discussed in the preamble, the Coast Guard is amending 33 CFR parts 157 and 160 as follows:

PART 157—RULES FOR THE PROTECTION OF THE MARINE ENVIRONMENT RELATING TO VESSELS CARRYING OIL IN BULK

1. The authority citation for part 157 is revised to read as follows:

Authority: 33 U.S.C. 1903; 46 U.S.C. 3703, 3703a (note); 49 CFR 1.46. Subpart G is issued under section 4115(b), Pub. L. 101–380, 104 Stat. 520.

2. Section 157.03 is amended by revising the introductory text to read as follows:

§ 157.03 Definitions.

Except as otherwise stated in a subpart.

* * * * *

3. Subpart G is added to part 157 to read as follows:

Subpart G—Structural and Operational Measures for Certain Oil Tankers Without Double Hulls

Sec.

157.400 Purpose and scope.
157.410 Emergency lightering requirements for oil tankers.

Subpart G—Structural and Operational Measures for Certain Oil Tankers Without Double Hulls

§ 157.400 Purpose and scope.

(a) In accordance with the Oil Pollution Act of 1990, certain oil tankers

without double hulls must comply with measures that provide as substantial protection to the environment as is economically and technologically feasible.

(b) For the purposes of this subpart, "oil" has the same meaning as provided in § 151.05 of this chapter.

(c) This subpart applies to each oil tanker of 5,000 gross tons or more that—

(1) Enters or operates in the navigable waters of the United States or the United States Exclusive Economic Zone (EEZ), as defined in 33 U.S.C. 2701(8); and

(2) Is not currently equipped with a double hull but required to be equipped with a double hull at a date set out in Appendix G to this part.

§ 157.410 Emergency lightering requirements for oil tankers.

No later than August 5, 1995, each oil tanker, to which this subpart applies, shall carry the equipment listed in paragraphs (a), (b), and (c) of this section. This equipment shall be located on the main deck, in the cargo control room, in the pump room, or in the forecastle locker. This equipment must be protected from the weather and must be stored in one separate and marked location which is as convenient to the cargo manifold, as is practicable.

(a) Reducers, adapters, bolts, washers, nuts, and gaskets to allow at least two simultaneous transfer connections to be made from the vessel's cargo manifold to 15-centimeter (6-inch), 20-centimeter (8-inch), and 25-centimeter (10-inch) cargo hoses. All reducers must be permanently marked with sizes.

(b) One extra set of adapters, bolts, washers, nuts, and gaskets per reducer set must be carried as spares.

(c) Reducers, bolts, and gaskets must meet the requirements of 46 CFR 56.25.

PART 160—PORTS AND WATERWAYS SAFETY—GENERAL

4. The authority citation for Part 160 is revised to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. 3703a (note); 49 CFR 1.46. Section 160.207(c)(5) is issued under 4115(b), Pub. L. 101–380, 104 Stat. 520.

5. In § 160.207, paragraph (c)(5) is added to read as follows:

§ 160.207 Notice of arrival: Vessels bound for ports or places in the United States.

* * * * *

(c) * * *

(5) The International Maritime Organization (IMO) international number of each foreign flag vessel of 5,000 gross tons or more, which is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue.

* * * * *

Dated: July 15, 1994.

J.C. Card,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–19173 Filed 8–4–94; 8:45 am]

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federal register

Friday
August 5, 1994

Part IX

Department of Transportation

Federal Aviation Administration

14 CFR Part 13
Civil Penalty Assessment Procedures; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 13

[Docket No. 27854; Notice No. 94–26]

RIN 2120–AE–84

Civil Penalty Assessment Procedures

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to revise the procedures for assessing civil penalties for violations of the Federal Aviation Regulations and other provisions. The procedures proposed in this notice implement the requirements of the FAA Civil Penalty Administrative Assessment Act of 1992, as they modify the procedures for adjudicating a civil penalty against a person acting in the capacity of a pilot, flight engineer, mechanic, or repairman. The proposed amendments are intended to inform the public of the procedures by which the FAA will carry out the authority in the new Act and to make other clarifying changes to Part 13.

DATE: Comments must be received on or before October 4, 1994.

ADDRESSES: Comments on this notice may be delivered or mailed, in triplicate, to the Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC–10), Docket No. 27854, 800 Independence Avenue, SW., Room 915G, Washington, DC 20591. Comments submitted must be marked: "Docket No. 27854." Comments may be inspected in Room 915G between 8:30 a.m. and 5 p.m. on weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mardi Ruth Thompson, Senior Attorney, Regulations Division (AGC–200), Federal Aviation Administration, 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–3073.

SUPPLEMENTARY INFORMATION:

Comments Invited

Although most of the proposed changes in this notice are purely procedural, the FAA recognizes that the participation of the public may add significantly to the rulemaking process. Accordingly, this rulemaking is being done with notice and opportunity for public comment.

Interested persons are invited to participate in the rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to environmental, energy, federalism, or international trade impacts that might result from adopting the proposals in this notice are also invited. Comments must include the regulatory docket or notice number and be submitted in triplicate to the address above. All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

All comments received on or before the closing date will be considered by the Administrator before taking action on this proposed rulemaking. Late-filed comments will be considered to the extent practicable. The proposals contained in this notice may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a pre-addressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket No. 27854." The postcard will be date-stamped by the FAA and returned to the commenter.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center (APA–200), 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Requests must include the notice or docket number.

Persons interested in being placed on a mailing list for future rulemaking actions should request a copy of Advisory Circular 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The FAA has ad authority, under a demonstration program that has been extended several times, to assess civil penalties not to exceed $50,000 for certain violations of the Federal Aviation Act of 1958 (49 U.S.C. App. 1301 *et seq.*) (FAAct), the Federal Aviation Regulations (14 CFR Parts 1–199), and other statutes and orders. Before August 26, 1992, the procedures for adjudicating such civil penalties were the same for all persons charged with violations. This authority, for the most part, was temporary and finally expired on July 31, 1992. (Section 905 of the FAAct in effect on July 31, 1992, 49 U.S.C. App. 1475.) The FAA rules adopted to carry out this authority, found in § 13.16 and Part 13, Subpart G (14 CFR 13.16 and Part 13 Subpart G), provide an opportunity for a hearing before an administrative law judge (ALJ) of the Department of Transportation (DOT) and for further appeal to the FAA Administrator.

On August 26, 1992, the FAA Civil Penalty Administrative Assessment Act of 1992 (CPAA Act) was enacted (Pub. L. 102–345, 106 Stat. 923), amending the FAAct. The CPAA Act made permanent the FAA's authority to assess civil penalties in these cases. For violations of the FAR and other provisions occurring on or after the date of enactment, the CPAA Act changed the procedures by which persons acting in the capacity of pilots, flight engineers, mechanics, and repairmen may seek review of civil penalties sought by the FAA. These changes include a hearing before a National Transportation Safety Board (NTSB) ALJ and an appeal to the full NTSB, in place of hearing before a DOT ALJ and an ultimate administrative appeal to the Administrator. In addition, some changes were made to the procedures for assessing civil penalties in cases against other persons.

A technical amendment to the CPAA Act was enacted on October 31, 1992, by section 208 of the Airport and Airway Safety, Capacity, Noise Improvement, and Intermodal Transportation Act of 1992 (Pub. L. 102–581, 106 Stat. 4872). The authority of the FAA to assess civil penalties for violations of sections 901(c) (relating to imparting or conveying false information, generally involving alleged aircraft piracy or other criminal acts) and 901(d) (regarding carriage of weapons) of the FAAact inadvertently was omitted from the CPAA Act. The technical amendment returned this authority to the FAA.

At present, the procedures for civil penalty assessment actions are contained in § 13.16 and Part 13, Subpart G. To carry out the CPAA Act, a new § 13.18 is proposed. That section would set forth new procedures for civil penalty actions against persons acting in the capacity of pilots, flights engineers, mechanics and repairmen. In addition, the FAA proposes to modify current § 13.16 to exclude the actions covered under proposed § 13.18, and to make other clarifying changes to Part 13. Unless otherwise noted below, all references to the FAAact include the amendments made by the CPAA Act and the technical amendment noted above.

Although the FAA is initiating civil penalty actions against persons acting in

the capacity of pilots, flights engineers, mechanics, and repairmen simply by informing the persons charged of the procedures to be used, this notice informs the public generally of how the FAA proposes to implement portions of the CPAA Act. This information will be helpful to the public, particularly to airmen, attorneys who handle these types of cases, and others who may be affected by the revised procedures.

DISCUSSION OF PROPOSED RULE

Topic-by-Topic Analysis

Civil Penalty Assessments Against a Person Acting in the Capacity of a Pilot, Flight Engineer, Mechanic, or Repairman

Applicability

Proposed § 13.18(a) would state the statutory authority for assessing a civil penalty against a person acting in the capacity of a pilot, flight engineer, mechanic, or repairman. This authority is discussed further in this preamble under discussion of proposed § 13.16(a). Under section 2(c) of the CPAA Act, the revised procedures apply only to violations occurring on or after the date of enactment, August 26, 1992.

Interpretation of "Person Acting in the Capacity"

In reviewing the CPAA Act the question arises, under what circumstances is a person "acting in the capacity of a pilot, flight engineer, mechanic, or repairman"? The CPAA Act could be interpreted in a number of ways. In developing the interpretation that follows, we are mindful that it is to the advantage of the FAA, the public, and the NTSB for the applicability of the CPAA Act to be easy to understand and use in each case. It is also logical and advantageous for similar cases to be heard in the same forum, to the extent possible. Further, the reviewing forum does not affect whether a respondent is afforded full due process when a civil penalty is assessed: Under both the NTSB and the FAA procedures, the respondent is given an opportunity for a hearing before an administrative law judge, an appeal within the respective agency, a right to petition the court of appeals to review any final adverse agency decision, and other procedural protections. The following interpretation was developed considering these factors, as well as relevant statutory construction principles.

This interpretation applies only to the applicability of the CPAA Act, and is not intended to affect the application of any other portion of the FAAct or the regulations administered by the FAA.

Section 901(a)(3)(D) of the FAAct provides a different administrative forum for adjudication in civil penalty assessment cases involving violations by a person "acting in the capacity of a pilot, flight engineer, mechanic, or repairman * * *." We have considered whether a person in this context must actually hold a pilot certificate to be "acting in the capacity of a pilot." This phrase, however, describes the respondent by his or her activities, not by legal status. The dictionary definition of the word "acting" includes both "holding a temporary rank or position" and "simulation." Webster's Third New International Dictionary 20 (1961). A person can simulate the capacity of a pilot without actually holding a pilot certificate, such as when operating in control of an aircraft without the appropriate airman certificates. The same is true for persons acting as flight engineers, mechanics, and repairmen. In each case a person can function as an airman (although in violation of the FAAct and the regulations), without holding an FAA certificate to do so. The FAA, therefore, interprets the CPAA Act not to require that a person hold a certificate in order to bring a civil penalty action under FAAct section 901(a)(3)(D). It is the nature of the activity that triggers the applicability of section 901(a)(3)(D), not the particular certificates held by the person.

The FAA has considered the type of activities that may constitute "acting in the capacity of a pilot, flight engineer, mechanic, or repairman." The capacity of a pilot is defined in the FAAct and the regulations, most notably in Parts 61 and 91, where the privileges and duties are set forth. The capacity of the other airmen also is defined in the FAAct and the regulations.

The term "acting," of necessity, includes the failure to act as legally required. Thus, a pilot who refuses to present his or her pilot certificate for inspection on request by the Administrator under § 61.3(h) has acted (although improperly) in the capacity of a pilot. Acting in the capacity of an airman may also include failure to surrender an airman certificate when it is suspended or revoked, and any civil penalty action would be heard under the NTSB review procedures. See, §§ 61.19(f), 63.15(c), and 65.15(c). Note from these samples that the privileges and duties under the FAR extend beyond actually flying an aircraft or performing maintenance on an aircraft. The NTSB procedures are not limited to cases involving "operational" violations.

The new procedures do not apply to an airman who is not acting in the capacity of a pilot, flight engineer, mechanic, or repairman. For instance, a person who holds a pilot certificate, but refuses to submit to screening before entering a sterile area of an airport under § 107.20, is not acting in the capacity of a pilot. That rule applies to any passenger or other person entering a sterile area, not just pilots or persons operating aircraft. Any civil penalty action would be under the FAA review procedures in FAAct section 901(a)(3)(E).

Finally, we have considered the extent of the respective airman's duties and privileges in conjunction with CPAA Act. For example, a flight instructor certificate is not a pilot certificate. A person must hold a pilot certificate, however, to obtain and to use a flight instructor certificate. See, §§ 61.183(c)(1) and 61.195(b). For purposes of the CPAA Act, any civil penalty action for violations by a person acting in the capacity of a flight instructor would be heard under the NTSB procedures.

Similarly, a person must hold a mechanic certificate to obtain and to use an inspection authorization. See, §§ 65.91(c)(1) and 65.92(a). Any civil penalty action for violations by persons acting in the capacity of an authorized inspector would be heard under the NTSB review procedures.

Medical certificates are required for pilots and flight engineers, but also are required for flight navigators and air traffic control tower operators. Civil penalties for violations relating to medical certification by persons who are otherwise acting in the capacity of pilots or flight engineers would be heard under the NTSB review procedures; violations by other persons would be heard under the FAA procedures.

The sanction examples in this interpretation are only for purposes of explaining the interpretation, and do not necessarily reflect agency sanction policy.

The FAA would welcome comments on this interpretation.

Procedures

Section 901(a)(3)(D)(i) of the FAAct provides that before issuing an order assessing a civil penalty against a person acting in the capacity of a pilot, flight engineer, mechanic, or repairman, the FAA must advise the person of the charges or any reasons relied upon by the FAA for the proposed action. The FAA must also provide the person with an opportunity to answer the charges and be heard as to why an order should not be issued. The person against whom

an order assessing a civil penalty is issued may appeal the order to the NTSB. These procedures are substantially similar to those provided for by section 609(a) of the FAAct (49 U.S.C. App. 1429(a)) regarding certificate actions (such as suspension and revocation of airman certificates). The procedures for taking certificate actions are found in § 13.19. Proposed § 13.18 would provide procedures for civil penalty actions in these cases in a manner substantially similar to those now used for certificate actions.

Proposed § 13.18 procedures are different from those in § 13.16. Under the statutory authority for cases against persons acting in the capacity of pilots, flight engineers, mechanics, and repairman (new section 901(a)(3)(D) of the FAAct), the order that assesses a civil penalty is issued first, with an opportunity to appeal to the NTSB. Under the statutory authority for cases against others (former section 905 and new section 901(a)(3)(E) of the FAAct), the opportunity for a hearing is given before an order is issued and the appeal is not to the NTSB, but to DOT administrative law judges and then to the FAA Administrator.

Under proposed § 13.18(e), the FAA would initiate a civil penalty action against a person acting in the capacity of a pilot, flight engineer, mechanic, or repairman by issuing a notice of proposed assessment. The notice would contain a statement of the charges and the proposed amount of the penalty. The person charged with the violation would be given the opportunity to respond using informal procedures, such as a written response or an informal conference with an agency attorney. This notice would satisfy the requirement under section 901(a)(3)(D)(i) that the person be advised of the charges and be given an opportunity to answer them and be heard. This procedure would be substantially the same as that used for certificate actions.

Under proposed § 13.18(b), an order of assessment may be issued following the notice and opportunity to respond. Thereafter, the person has the right to appeal the order to the NTSB under section 901(a)(3)(D)(iv) of the FAAct. Under that section of the FAAct, an appeal stays the effectiveness of the order.

Under section 1006 of the FAAct, a petition for review of an order of the NTSB or the Administrator may be filed with the courts of appeals of the United States or the United States Court of Appeals for the District of Columbia. Proposed § 13.18(j) would provide that the Administrator's order of assessment is not a final order of the Administrator for purposes or judicial appellate review unless it is appealed first to the NTSB.

Compromise of Civil Penalties

Section 13.16(l)(1) currently provides agency attorneys with the authority to compromise a civil penalty action with no finding of violation. Proposed § 13.18(k)(1) would continue to provide this authority in civil penalty assessment actions against persons acting in the capacity of pilots, flight engineers, mechanics, and repairmen.

Agency attorneys may issue compromise orders after discussions and deliberations with the person charged with the violation. Frequently an agreement is reached verbally and the agency attorney issues the compromise order that reflects the agreement. The civil penalty amount agreed upon may be less than that proposed in the notice of proposed civil penalty. The person charged generally is not required to sign the compromise order.

Section 13.16(l)(1) does not specifically require the person charged either to pay the civil penalty or sign a promissory note before an order is issued. The FAA has experienced problems with this approach. When no payment is received before the issuance of a compromise order, in some cases the person fails to pay the civil penalty and debt collection procedures must be initiated. If the person has not signed a promissory note agreeing to the amount of the penalty and a payment schedule, there is a risk than the person will dispute whether the amount in the compromise order is the amount agreed upon, complicating collection proceedings. Collection procedures often are time-consuming and costly, and may not result in recovery of the full amount of the debt.

The FAA is proposing to require that no compromise order will be issued under § 13.18 unless the civil penalty is paid or a promissory note providing for installment payments is signed by the person charged. In most cases the full amount will be paid before the compromise order is issued, eliminating the possibility that collection proceedings will be needed. In those cases in which a payment schedule is used, the promissory note will show specifically what has been agreed to, which should simplify collection proceedings if they become necessary.

Although the current rules do not address issues relating to debt collection after issuance of a compromise order, the approach described above has been used successfully by many agency attorneys. Furthermore, it appears to be well-accepted by the persons who agree to compromise orders.

Civil Penalty Assessments Against Persons Other Than Those Acting in the Capacity of Pilots, Flight Engineers, Mechanics, and Repairmen

The general rules for assessing civil penalties for violations before the enactment of the CPAA Act are found in § 13.16 of the FAR. These rules remain in effect for all actions arising from violations that occurred before August 26, 1992. These rules will remain in effect for all actions arising from violations occurring after that date, except for violations by persons acting in the capacity of pilots, flight engineers, mechanics, and repairmen.

When a person charged with a violation under § 13.16 requests a hearing, the rules of practice in Part 13, Subpart G govern the proceedings.

Applicability

Section 13.16(a) of the FAA currently contains a partial list of the statutory provisions authorizing the FAA to assess civil penalties. The FAA proposes to expand that list to provide more information. Proposed § 13.16(a)(1) would describe the statutory provisions that give the FAA authority to assess civil penalties. Proposed § 13.16(a)(2) would specify the amounts of the penalties that may be assessed. There may be other civil penalty provisions that may apply on occasion, and when necessary this authority is used to assess civil penalties.

Proposed § 13.16(a)(1) describes the FAA's general statutory authority for assessing civil penalties. Proposed § 13.16(a)(1)(i) states that under section 905 of the FAAct, in effect on July 31, 1992 (before section 905 expired), the FAA may assess a civil penalty for violations occurring before August 26, 1992, for violations of the FAAct. Proposed § 13.16(a)(1)(ii) states that under section 901(a)(3) of the FAAct, in effect on July 31, 1992, the FAA may assess a civil penalty for a violation of title V of the FAAct (which relates to the registration of aircraft and recordation of aircraft ownership) occurring before August 26, 1992. Section 905 of the FAAct was repealed by section 2(b) of the CPAA Act, and section 901(a)(3) was amended by section 2(a) of the CPAA Act. Section 2(c) of the CPAA Act, however, provides that sections 901(a)(3) and 905 of the FAAct as they existed on July 31, 1992, continue in effect with respect to violations of the FAAct occurring before August 26, 1992.

Proposed § 13.16(a)(1)(iii) states that under section 901(a)(3) of the FAAct, the FAA may assess civil penalties against persons other than those acting in the capacity of pilots, flight engineers, mechanics, or repairmen, for violations occurring on or after August 26, 1992. This provision applies to violations of title III, V, VI, or XII or section 1101 of 1115(e)(2)(B) of the FAAct or any rule, regulation, or order issued thereunder. This is the authority granted in section 2(a) of the CPAA Act. In addition, this section applies to violations of section 901(c) and 901(d) of the FAAct occurring on or after October 31, 1992, the date of the technical amendment cited above.

Proposed § 13.16(a)(1)(iv) repeats the statutory language of section 9308(e) of the Airport Noise and Capacity Act of 1990 (ANCA) (49 U.S.C. App. 2157(e)). As explained in the preamble to the final rule implementing ANCA (56 FR 48628, 48630; September 25, 1991), section 9308(e) and the implementing regulations in Part 91 apply to the operators of Stage 2 aircraft. This section would not change the penalties or procedures that may apply to aircraft operating rules in Part 91. The proposed sections also do not change the penalties or procedures that may apply to airport operators for violations of Part 158 (passenger facility charges) or Part 161 (airport noise or access restrictions).

Proposed § 13.16(a)(1)(v) describes the statutory limitations on the authority in § 13.16(a)(1) (i), (ii), (iii), and (iv). In cases outside this authority (*e.g.*, in which the amount in controversy exceeds $50,000), the FAA may not assess a civil penalty. It may only seek a civil penalty under the procedures in § 13.15. These limitations are statutory, and are found in sections 901(a)(3) and 905 of the FAAct as they existed on July 31, 1992, and in section 901(a)(3)(C) of the FAAct as amended by the CPAA Act.

Proposed § 13.16(a)(1)(vi) states the authority to assess civil penalties for hazardous materials violations. This authority is granted to the Secretary of Transportation under section 110 of the Hazardous Materials Transportation Act (HMT Act), and delegated to the FAA under 49 CFR 1.47(k). Because the authority to assess penalties is not granted by section 901(a)(3) of the FAAct, these cases are not subject to the limitations described in proposed § 13.16(a)(1)(v).

Proposed § 13.16(a)(1)(vii) states the authority to assess civil penalties under section 404(d) of the FAAct, for violations relating to smoking on scheduled flights and tampering with smoke alarm devices. This authority is granted to the Secretary of Transportation in section 404(d), and delegated to the FAA in 49 CFR 1.47(q). It is not subject to the limitations in proposed § 13.16(a)(1)(v).

Proposed § 13.16(a)(2) describes the amounts of civil penalties authorized by the various statutes for each violation. Proposed § 13.16(a)(2)(i) states the general authority, found in section 901(a)(1) of the FAAct, for civil penalties of up to $1,000 for each violation. Proposed § 13.16(a)(2)(ii) states the authority, found in section 901(a) of the FAAct, to seek civil penalties not exceeding $10,000 for each violation by a person (other than an airman serving in the capacity of an airman) who operates aircraft for compensation or hire. Proposed § 13.16(a)(2)(iii) states the authority, found in section 901(a)(1) of the FAAct, for civil penalties not exceeding $10,000 for violations relating to the registration of aircraft and recordation of aircraft ownership under title V of the FAAct. Proposed § 13.16(a)(2)(iv) stats the authority, found in section 901(c) of the FAAct, for civil penalties of not more than $10,000 for imparting or conveying false information, generally involving alleged aircraft piracy or other criminal acts. Proposed § 13.16(a)(2)(v) states the authority, found in section 901(d) of the FAAct, for civil penalties of not more than $10,000 for certain offenses regarding the carriage of weapons.

Proposed § 13.16(a)(2)(vi) states the authority to seek civil penalties of not more than $10,000 for each hazardous materials violation occurring before November 16, 1990, or a civil penalty of not more than $25,000 and not less than $250 for each violation occurring on or after November 16, 1990, in accordance with section 901(a)(1) of the FAAct and section 110 of the HMT Act. It further states the factors that must be considered by the agency in determining the amount of the civil penalty under the HMT Act. Proposed § 13.16(a)(2)(vii) states the authority, for violations of section 404(d) of the FAAct, to seek a civil penalty of the amount specified in the FAAct, or an amount not to exceed $2,000.

Part 13, Subpart G contains the rules of practice for hearings in cases initiated under § 13.16. Section 13.201 of that subpart currently provides a partial list of the statutory provisions under which the FAA may assess civil penalties. The list is not completely accurate. For instance, reading § 13.201(c) together with § 13.210(a) may lead someone to conclude that the FAA cannot assess civil penalties in excess of $50,000 in cases under the HMT Act. This would be incorrect, as discussed above. The FAA proposes to remove the discussion of statutory authority from § 13.201, and incorporate all such information in proposed § 13.16(a) (1) and (2).

Standard of Review

Section 901(a)(3)(E)(ii) of the FAAct, as amended by § 2(a) of the CPAA Act, enacts the standard by which the Administrator reviews the decisions of ALJs. That section provides that the only issues the Administrator will consider on appeal are: (1) Whether each finding of fact is supported by a preponderance of reliable, probative, and substantial evidence; (2) whether each conclusion of law is made in accordance with applicable law, precedent, and public policy; and (3) whether the ALJ committed any prejudicial errors that support the appeal. The FAA proposes to incorporate these standards in § 13.233(b). With the exception of a reference to the "FAA decisionmaker" rather than the "Administrator," the proposed change in § 13.233(b) mirrors the language of the CPAA Act.

Section 13.233(j), regarding the FAA decisionmaker's decision on appeal, would be modified to remove the language that touches upon the standard of review. The existing regulation states that the FAA decisionmaker will review the record, briefs, and oral argument "to determine if the administrative law judge committed prejudicial error in the proceedings or that the initial decision should be affirmed, modified, or reversed." The proposed change would provide that the FAA decisionmaker will review the record, briefs, and oral argument "when considering the issues on appeal." In this way, the proposed rule will refer back to the standard of review set forth in § 13.233(b). The FAA decisionmaker retains the authority to affirm, modify, or reverse an initial decision specified in § 13.233(j); this would not be changed by these proposed amendments.

In § 13.233(b)(1) there is a typographical error. The word "filing" would be corrected to read "finding."

Other Amendments

As discussed in the preamble for § 13.18, above, the FAA has experienced problems with § 13.16(l)(1), regarding compromise orders. For the reasons explained above, the FAA proposes to amend that section to provide that no compromise order will be issued unless the civil penalty is paid or a promissory note providing for installment payments is signed by the person charged.

Section 13.16(k) indicates when a party may petition for review of a civil penalty assessment to the United States

Courts of Appeals. That section states that an initial decision or order issued by an ALJ that has not been appealed to the FAA decisionmaker, and an order compromising a civil penalty action, do not constitute final orders of the Administrator for the purposes of judicial review under section 1006 of the FAAct. A petition for review from these orders is not appropriate, because available administrative remedies were not exhausted. They are considered to be final orders of the Administrator, however, for such purposes as closing out the enforcement action in FAA records and collecting the civil penalty as a debt to the United States. In the case of an initial decision in which the person has been found to have violated the FAR, the finding of violation becomes part of the FAA enforcement history of the person. Accordingly, the FAA proposes to amend that section to delete the characterization of these orders as not final.

Limitation Period for Commencing Civil Penalty Assessments

Section 2462 of title 28 of the United States Code prescribes a general 5-year limit within which the United States must commence an action for the assessment of a civil penalty. This statute of limitations recently has been held to be applicable to the entire federal government in civil penalty cases, unless Congress specifically provides otherwise. In 1990, the FAA, as the prosecuting and regulating agency, self-imposed a 2-year regulatory limit on the initiation of its civil penalty assessment cases, except where good cause exists. See, 55 FR at 27552 to 27557 (July 3, 1990). In adopting this regulatory limitation period, the FAA attempted to carefully balance the needs of the agency for sufficient time to investigate, review, and initiate a case; the interest of respondents in timely notice and adjudication; and the public interest in promoting compliance with the regulations.

Subsequently, in 1992, the CPAA Act codified the FAA's 2-year limit for civil penalty assessment cases adjudicated by the FAA, but did not establish a limitation period for civil penalty assessment cases appealable to the NTSB. Thus, the law limiting the time in which the FAA may initiate civil penalty assessment actions against persons acting in the capacity of pilots, flight engineers, mechanics, or repairmen continues to be section 2462.

On February 25, 1993, the Board published interim rules to implement the CPAA Act (58 FR 11379). In requesting public participation, the NTSB asked particularly for comments on the proposed applicability of its stale complaint rule, 49 CFR 821.33, to civil penalty actions. That rule applies, by its terms, to certificate action cases adjudicated before the NTSB, that is, cases involving the amendment, modification, suspension, or revocation of certificates issued by the FAA. It provides, with some exceptions, that a complaint may be dismissed where an offense occurred more than 6 months before the Administrator advised the respondent as to the reasons for proposing certificate action. The Board will now apply the 6-month stale complaint rule to both certificate action and civil penalty cases it hears on appeal.

In responding to the Board's request for comments, the FAA stated that it will continue agency policy to initiate all cases affected by the new procedures as expeditiously as possible. It is expected that those cases generally will be initiated within 6 months of the date the violation occurred. There must, however, be administrative flexibility within the agency to allocate its resources, for instance, when higher safety priorities demand. Even in such instances, the FAA is constrained by the statutory time limits for taking action.

In every case, regardless of the time taken for initiation, the FAA has been careful to distinguish the inherent authority of the Board, an adjudicative body, to consider whether delay in a particular case has unfairly prejudiced the opportunity of a respondent to defend against charges. The FAA fully supports the adoption by the Board, by rule, of an adjudicative policy favoring dismissal of a case or other appropriate action whenever a delay in initiating a particular case is shown to substantially diminish a respondent's ability to defend.

Civil Penalties Other Than Administrative Assessment

Section 13.15 contains the general procedures by which the FAA may seek a civil penalty, other than by the administrative assessment procedures in §§ 13.16 and 13.18. Under § 13.15, the FAA may compromise a penalty, but if no agreement is reached the FAA refers the case to the United States Attorney General to prosecute and collect the civil penalty.

Section 13.15 requires clarification. For instance, it indicates that all civil penalties in which the amount in controversy is over $50,000 must follow the procedures of that section. As discussed above, however, some civil penalties over $50,000 (such as hazardous materials violations) can be assessed administratively under § 13.16. The FAA proposes to clarify that § 13.15 applies to all civil penalty actions other than those in which the administrative procedures of §§ 13.16 and 13.18 are used.

Change in Position Titles

In a number of places in Part 13, authority to carry out various investigation and enforcement functions is delegated to the Assistant Chief Counsel for Regulations and Enforcement. The Regulations and Enforcement Division, however, has been split into two divisions—the Regulations Division and the Enforcement Division. The Assistant Chief Counsel for each division has the responsibility and authority to carry out various investigation and enforcement functions. Therefore, the FAA proposes to change the authority references in Part 13 to the Assistant Chief Counsel for Regulations and the Assistant Chief Counsel for Enforcement.

Initial Regulatory Evaluation Summary

The FAA believes that the proposed procedural changes and minor clarifications conform the existing procedural rules to amendments made in the CPAA Act, and clarify existing rules. The changes do not, in economic terms, alter the basic processes by which civil penalties are assessed within the agency. For this reason, a full Regulatory Evaluation is not warranted.

This regulatory evaluation examines the potential costs and benefits of the proposed rule to amend Part 13.

The objectives of the proposed rule are to make clarifying changes, and to disclose the procedures that implement the CPAA Act.

Benefits

The potential benefits of this proposed rule include clarifying the rule and explaining in detail how portions of the CPAA Act would be implemented. These proposed changes would provide potentially impacted aviation parties (e.g., pilots, flight engineers, mechanics, and repairmen) with a better understanding of the civil penalty process.

Costs

The potential costs of the proposed rule would be zero because it consists only of procedural and clarifying changes to Part 13. The proposed procedural changes would only explain how the requirements of the CPAA Act and other statutes are implemented. The changes would not impose new economic requirements on potentially impacted parties. The clarification changes would further enhance the

public's comprehension of the civil penalty assessment process.

International Trade Impact Assessment

The proposed rule represents only procedural and clarifying changes. These proposed changes would not impose any costs on either U.S. or foreign operators. Therefore, a competitive trade disadvantage would not be incurred by U.S. operators abroad or foreign operators in the United States.

Initial Regulatory Flexibility Determination

In accordance with the Regulatory Flexibility Act of 1980, the FAA certifies that the proposed rule would not have a significant economic impact, positive or negative, on a substantial number of small entities because the proposed rule would only address procedural and clarifying changes. Such changes would not impose any cost burdens or result in any cost savings.

Federalism Implications

This proposed amendment would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The respondents affected by the proposed new procedures are private citizens, not state governments. Therefore, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

Paperwork Reduction Act

This proposed rule does contain no information collection requests requiring approval of the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980 (Pub. L. 96–511), there are no requirements for information collection associated with this proposed rule.

Conclusion

For the reasons discussed in the preamble, and based on the findings of the Regulatory Flexibility Determination and the International Trade Analysis, the FAA has determined that this proposed regulation is not economically significant under Executive Order 12866. However, historically there has been significant public interest in the FAA's rules of practice in civil penalty assessment actions. For this reason, the FAA has determined that this proposed regulation is a significant regulatory action under the Executive Order. For the same reason, this proposal is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), due to the public interest in rules of practice for civil penalty proceedings. In addition, this proposal, the FAA certifies that this proposal, if adopted, 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.

List of Subjects in 14 CFR Part 13

Administrative practice and procedure, Air transportation, Federal Aviation Administration, Hazardous materials transportation, Investigations, Law enforcement, Penalties.

The Proposed Amendments

Accordingly, the Federal Aviation Administration proposes to amend part 13 of the Federal Aviation Regulations (14 CFR part 13), as follows:

PART 13—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

1. The authority citation for part 13 continues to read as follows:

Authority: 49 U.S.C. 106(g) and 322; 49 U.S.C. App. 1354 (a) and (c), 1374(d), 1401–1406, 1421–1432, 1471–1473, 1481, 1482, 1484–1489, 1523, 1655(c), 1808–1810, 2157 (e) and (f), 2216, 2218, 2219; Public Law 102–345, 106 Stat. 923; Section 208, Public Law 102–581, 106 Stat. 4872; 18 U.S.C. 6002, 6004; 49 CFR 1.47.

2. Section 13.15 is amended by revising the title and the introductory text of paragraph (a), removing the text of paragraph (a)(2), redesignating paragraph (a)(3) as (a)(2), and revising paragraph (c) introductory text, to read as follows:

§ 13.15 Civil penalties other than administrative assessment.

(a) *General.* This section applies to each action in which the FAA seeks a civil penalty other than by administrative assessment procedures under §§ 13.16 or 13.18. These actions, and the penalties that apply, include, but are not limited to, the following.

* * * * *

(b) * * *

(c) The Administrator may compromise any civil penalty proposed in accordance with this section, before referral to the United States Attorney General, or the delegate of the Attorney General, for prosecution.

* * * * *

3. Section 13.16 is amended by revising the title and paragraphs (a), (k), the introductory text of paragraphs (l) and (l)(1), and paragraph (l)(1)(i), to read as follows:

§ 13.16 Civil penalties: Administrative assessment other than against a person acting in the capacity of a pilot, flight engineer, mechanic, or repairman.

(a) *General.* This section applies to each action in which the FAA seeks to assess a civil penalty by administrative procedures, other than an action against a person acting in the capacity of a pilot, flight engineer, mechanic, or repairman under section 901(a)(3)(D) of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1471(a)(3)(D), section 2(a) of the FAA Civil Penalty Administrative Assessment Act of 1992 (Pub. L. 102–345, 106 Stat. 923), and section 208 of the Airport and Airway Safety, Capacity, Noise Improvement, and Intermodal Transportation Act of 1992 (Pub. L. 102–581, 106 Stat. 4872)). These actions and the penalties that apply include, but are not limited to, the following:

(1) *Authority to assess civil penalties.*

(i) The FAA may assess a civil penalty for a violation occurring before August 26, 1992, of the Federal Aviation Act of 1958, as amended, in accordance with section 905 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1475) in effect on July 31, 1992, and section 2(c) of the FAA Civil Penalty Administrative Assessment Act of 1992 (Pub. L. 102–345, 106 Stat. 923).

(ii) The FAA may assess a civil penalty for a violation of title V of the Federal Aviation Act of 1958 (which relates to registration of aircraft and recordation of aircraft ownership) occurring before August 26, 1992, in accordance with section 901(a)(3) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1471(a)(3)) in effect on July 31, 1992, and section 2(c) of the FAA Civil Penalty Administrative Assessment Act of 1992 (Pub. L. 102–345, 106 Stat. 923).

(iii) The FAA may assess a civil penalty against any person (other than a person acting in the capacity of a pilot, flight engineer, mechanic, or repairman) for a violation of title III, V, VI, or XII or section 1101 or 1115(e)(2)(B) of the Federal Aviation Act of 1958, as amended, or any rule, regulation, or order issued thereunder, occurring on or after August 26, 1992, or section 901(c) or 901(d) of the Federal Aviation Act of 1958, as amended, or any rule, regulation, or order issued thereunder, occurring on or after October 31, 1992, in accordance with section 901(a)(3) of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1471(a)(3), section 2(a) of the FAA Civil Penalty Administrative Assessment Act of 1992 (Pub. L. 102–345, 106 Stat. 923), and section 208 of the Airport and Airway Safety, Capacity, Noise Improvement,

and Intermodal Transportation Act of 1992 (Pub. L. 102–581, 106 Stat. 4872)).

(iv) Violations of section 9308 or 9309 of the Airport Noise and Capacity Act of 1990 (49 U.S.C. App. 2157 or 2158) or any regulation issued to carry out such sections are subject to the same civil penalties and procedures as are provided by title IX of the Federal Aviation Act of 1958, as amended, for violations of title VI, in accordance with section 9308(e) of the Airport Noise and Capacity Act of 1990 (49 U.S.C. App. 2157(e)).

(v) Notwithstanding the provisions of paragraphs (a)(1)(i), (a)(1)(ii), (a)(1)(iii), and (a)(1)(iv) of this section, the United States District Courts have exclusive jurisdiction of any civil penalty action initiated by the FAA, in accordance with section 901(a)(3)(C) of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1471(a)(3)(C)), and with sections 901(a)(3) and 905 of the Federal Aviation Act of 1958 (49 U.S.C. App. 1471(a)(3) and 1475) in effect on July 31, 1992, and section 2(c) of the FAA Civil Penalty Administrative Assessment Act of 1992 (Pub. L. 102–345, 106 Stat. 923)—

(A) That involves an amount in controversy in excess of $50,000;

(B) That is an in rem action or in which an in rem action based on the same violation has been brought;

(C) Regarding which an aircraft subject to lien has been seized by the United States; and

(D) In which a suit for injunction relief based on the violation giving rise to the civil penalty has also been brought.

(vi) The FAA may assess a civil penalty against any person who knowingly commits an act in violation of the Hazardous Materials Transportation Act, as amended, or any rule, regulation, or order issued thereunder, in accordance with section 901(a)(1) of the Federal Aviation Act of 1958, as amended, and section 110 of the Hazardous Materials Transportation Act, as amended (49 U.S.C. App. 1809), and 49 CFR 1.47(k).

(vii) The FAA may assess a civil penalty against any person who violates section 404(d) of the Federal Aviation Act of 1958, as amended (relating to the prohibition against smoking on scheduled flights and tampering with smoke alarm devices), or any rule, regulation, or order issued thereunder, in accordance with sections 404(d) and 901(a)(1) of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1374(d) and 1471(a)(1)), and 49 CFR 1.47(q).

(2) *Amount of civil penalties.*—(i) Except as otherwise provided by statute, any person who violates any provision of title III, IV, V, VI, VII, or XII or of section 1101, or 1115(e)(2)(B) of the Federal Aviation Act of 1958, as amended, or any rule, regulation, or order issued thereunder, is subject to a civil penalty of not to exceed $1,000 for each such violation, in accordance with section 901(a)(1) of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1471(a)(1)).

(ii) Any person who operates aircraft for the carriage of persons or property for compensation or hire (other than an airman serving in the capacity of an airman) is subject to a civil penalty of not to exceed $10,000 for each violation of title III, VI, or XII of the Federal Aviation Act of 1958, as amended, or any rule, regulation, or order issued thereunder, occurring after December 30, 1987, in accordance with section 901(a)(1) of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1471(a)(1)).

(iii) Any person is subject to a civil penalty of not to exceed $10,000 for each violation that relates to registration or recordation of an aircraft under title V of the Federal Aviation Act of 1958, as amended, in accordance with section 901(a)(1) of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1471(a)(1)).

(iv) Whoever imparts or conveys or causes to be imparted or conveyed false information, knowing the information to be false and under circumstances in which such information may reasonably be believed, concerning an attempt or alleged attempt being made or to be made, to do any act which would be a crime prohibited by subsection (i), (j), (k), or (l) of section 902 of the Federal Aviation Act of 1958, as amended, is subject to a civil penalty of not more than $10,000, in accordance with section 901(c) of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1471(c)).

(v) Except for certain law enforcement officers and other authorized persons, whoever while aboard, or while attempting to board, any aircraft in, or intended for operation in, air transportation or intrastate air transportation, has on or about the person or the person's property a concealed deadly or dangerous weapon, which is, or would be, accessible to such person in flight is subject to a civil penalty of not more than $10,000, in accordance with section 901(d) of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1471(d)).

(vi) Any person who knowingly commits an act in violation of the Hazardous Materials Transportation Act, as amended, or any rule, regulation, or order issued thereunder, is subject to a civil penalty of not more than $10,000 for each violation occurring before November 16, 1990, or a civil penalty of not more than $25,000 and not less than $250 for each violation occurring on or after November 16, 1990, in accordance with section 901(a)(1) of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1471(a)(1)), and section 110 of the Hazardous Materials Transportation Act, as amended (49 U.S.C. App. 1809). An order assessing a civil penalty for a violation under the Hazardous Materials Transportation Act, or a rule, regulation, or order issued thereunder, will be issued only after consideration of—

(A) The nature and circumstances of the violation;

(B) The extent and gravity of the violation;

(C) The person's degree of culpability;

(D) The person's history of prior violations;

(E) The person's ability to pay the civil penalty;

(F) The effect on the person's ability to continue in business; and

(G) Such other matters as justice may require.

(vii) Any person who violates section 404(d) of the Federal Aviation Act of 1958, as amended, or any rule, regulation, or order issued thereunder, is subject to a civil penalty of not more than the amount specified in the Federal Aviation Act of 1958, as amended, for each violation, in accordance with sections 404(d) and 901 of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1374(d) and 1471). Any passenger who tampers with, disables, or destroys any smoke alarm device located in any lavatory aboard an aircraft engaged in air transportation or intrastate air transportation is subject to a civil penalty in accordance with section 404(d) and 901 of the Federal Aviation Act of 1058, as amended, except that such civil penalty may be imposed in an amount up to $2,000.

* * * * *

(k) *Exhaustion of administrative remedies.* A party may petition for review only of a final decision and order of the Administrator to the courts of appeals of the United States or the United States Court of Appeals for the District of Columbia under section 1006 of the Federal Aviation Act of 1958, as amended. An initial decision or order issued by an administrative law judge that has not been appealed to the FAA decisionmaker and an order compromising a civil penalty action may not be appealed under section 1006 of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1486).

(l) *Compromise.* The FAA may compromise any civil penalty action initiated in accordance with section 901 of the Federal Aviation Act of 1958, as amended, at any time before referring the action to the United States Attorney General, or the delegate of the Attorney General, for collection.

(1) An agency attorney may compromise any civil penalty action where a person charged with a violation agrees to pay a civil penalty and the FAA agrees to make no finding of violation. Under such agreement, a compromise order is issued following the payment of the agreed-upon amount or the signing of a promissory note. The compromise order states the following:

(i) The person has paid a civil penalty or has signed a promissory note providing for installment payments.

* * * * *

4. Part 13 is amended by adding a new § 13.18 to read as follows:

§ 13.18 Civil penalties: Administrative assessment against a person acting in the capacity of a pilot, flight engineer, mechanic, or repairman.

(a) *General.* This section applies to each action in which the FAA seeks to assess a civil penalty by administrative procedures under section 901(a)(3)(D) of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1471(a)(3)(D), section 2(a) of the FAA Civil Penalty Administrative Assessment Act of 1992 (Pub. L. 102–345, 106 Stat. 923), and section 208 of the Airport and Airway Safety, Capacity, Noise Improvement, and Intermodal Transportation Act of 1992 (Pub. L. 102–581, 106 Stat. 4872)) against a person acting in the capacity of a pilot, flight engineer, mechanic, or repairman. These actions, and the penalties that apply, include, but are not limited, to the following:

(1) *Authority to assess civil penalties.*—(i) The FAA may assess a civil penalty against any person acting in the capacity of a pilot, flight engineer, mechanic, or repairman for a violation of title III, V, VI, or XII or section 1101, or 1115(e)(2)(B) of the Federal Aviation Act of 1958, as amended, or any rule, regulation, or order issued thereunder, occurring on or after August 26, 1992, in accordance with section 901(a)(3) of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1471(a)(3), section 2(a) of the FAA Civil Penalty Administrative Assessment Act of 1992 (Pub. L. 102–345, 106 Stat. 923), and section 208 of the Airport and Airway Safety, Capacity, Noise Improvement, and Intermodal Transportation Act of 1992 (Pub. L. 102–581, 106 Stat. 4872)).

(ii) Violations of section 9308 or section 9309 of the Airport Noise and Capacity Act of 1990 (49 U.S.C. App. 2157 and 2158) or any regulation issued to carry out such sections are subject to the same civil penalties and procedures as are provided by title IX of the Federal Aviation Act of 1958, as amended, for violations of title VI, in accordance with section 9308(e) of the Airport Noise and Capacity Act of 1990 (49 U.S.C. App. 2157(e)).

(iii) Notwithstanding the provisions of paragraphs (a)(1)(i) and (a)(1)(ii) of this section, the United States District Courts have exclusive jurisdiction of any civil penalty action initiated by the Administrator, in accordance with section 901(a)(3)(C) of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1471(a)(3)(C))—

(A) That involves an amount in controversy in excess of $50,000;

(B) That is an in rem action or in which an in rem action is based on the same violation has been brought;

(C) Regarding which an aircraft subject to lien has been seized by the United States; and

(D) In which a suit for injunctive relief based on the violation giving rise to the civil penalty has also been brought.

(2) *Amount of civil penalties.*—(i) Except as otherwise provided by statute, any person who violates any provision of title III, IV, V, VI, VII, or XII or of section 1101 or 1115(e)(2)(B) of the Federal Aviation Act of 1958, as amended, or any rule, regulation, or order issued thereunder, is subject to a civil penalty of not to exceed $1,000 for each such violation, in accordance with section 901(a)(1) of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1471(a)(1)).

(ii) Any person is subject to a civil penalty of not to exceed $10,000 for each violation that relates to registration or recordation of an aircraft under title V of the Federal Aviation Act of 1958, as amended, in accordance with section 901(a)(1) of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1471(a)(1)).

(b) *Order of assessment.* An order of assessment, which assesses a civil penalty, may be issued for a violation described in paragraph (a) of this section after notice and an opportunity to answer any charges and be heard as to why such order should not be issued.

(c) *Definitions.* As used in this part, the following definitions apply:

Flight engineer means a person who holds a flight engineer certificate issued under part 63 of this chapter.

Mechanic means a person who holds a mechanic certificate issued under part 65 of this chapter.

Person acting in the capacity of a pilot, flight engineer, mechanic, or repairman means a person acting in such capacity, whether or not that person holds the respective airman certificate issued by the FAA.

Pilot means a person who holds a pilot certificate issued under part 61 of this chapter.

Repairman means a person who holds a repairman certificate issued under part 65 of this chapter.

(d) *Delegation of authority.* The authority of the Administrator, under section 901 of the Federal Aviation Act of 1958, as amended, to initiate and assess civil penalties for a violation of the Act, or a rule, regulation, or order issued thereunder, is delegated to the Chief Counsel, the Deputy Chief Counsel, the Assistant Chief Counsel for Enforcement, the Assistant Chief Counsel for each region and center. The authority of the Administrator to refer cases to the Attorney General of the United States, or the delegate of the Attorney General, for collection of civil penalties is delegated to the Chief Counsel, the Deputy Chief Counsel, the Assistant Chief Counsel for Enforcement, the Assistant Chief Counsel for Regulations, and the Assistant Chief Counsel for each region and center.

(e) *Notice of proposed assessment.* A civil penalty action is initiated by sending a notice of proposed assessment to the person charged with a violation specified in paragraph (a) of this section. The notice of proposed assessment contains a statement of the charges and the amount of the proposed civil penalty. The person charged with a violation may do the following:

(1) Submit the amount of the proposed civil penalty or an agreed-upon amount, in which case either an order of assessment or a compromise order will be issued in that amount.

(2) Answer the charges in writing.

(3) Submit a written request for an informal conference to discuss the matter with an agency attorney and submit relevant information or documents.

(4) Request that an order be issued in accordance with the notice of proposed assessment so that the person charged may appeal to the National Transportation Safety Board.

(f) *Appeal.* Any person who receives an order of assessment issued under this section may appeal the order to the National Transportation Safety Board. The appeal stays the effectiveness of the Administrator's order.

(g) *Failure to respond to notice of proposed assessment.* An order of assessment may be issued if the person

charged with a violation fails to respond to the notice of proposed assessment within 15 days after receipt of that notice.

(h) *Payment.* A person shall pay a civil penalty by sending a certified check or money order, payable to the Federal Aviation Administration, to the office identified by the agency attorney. The civil penalty must be paid within 30 days after service of the order of assessment, unless an appeal is filed with the National Transportation Safety Board. In such case, the civil penalty must be paid within 30 days after a final order of the Board or the Court of Appeals that affirms the order of assessment in whole or in part.

(i) *Collection of civil penalties.* If a person does not pay a civil penalty imposed by an order of assessment or a compromise order within 60 days after service of the order, the Administrator may take action provided under the law to collect the penalty, including referring the order to the United States Attorney General, or delegate of the Attorney General, to begin proceedings to collect the civil penalty. The action is brought in a United States District Court, under the authority in section 903 of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1473).

(j) *Exhaustion of administrative remedies.* A party may petition for review only of a final decision and order of the National Transportation Safety Board to the courts of appeals of the United States or the United States Court of Appeals for the District of Columbia under section 1006 of the Federal Aviation Act of 1958, as amended. An order of assessment that has not been appealed to the National Transportation Board and an order compromising a civil penalty action may not be appealed under section 1006 of the Federal Aviation Act of 1958, as amended (49 U.S.C. App. 1486).

(k) *Compromise.* The FAA may compromise any civil penalty action initiated in accordance with section 901 of the Federal Aviation Act of 1958, as amended, at any time before referring the action to the United States Attorney General, or the delegate of the Attorney General, for collection.

(1) An agency attorney may compromise any civil penalty action where a person charged with a violation agrees to pay a civil penalty and the FAA agrees to make no finding of violation. Under such agreement, a compromise order is issued following the payment of the agreed-upon amount or the signing of a promissory note. The compromise order states the following:

(i) The person has paid a civil penalty or has signed a promissory note providing for installment payments;

(ii) The FAA makes no finding of violation; and

(iii) The compromise order will not be used as evidence of a prior violation in any subsequent civil penalty proceeding or certificate action proceeding.

(2) An agency attorney may compromise the amount of any civil penalty proposed or assessed in an order.

5. Section 13.201 is amended by removing paragraph (c) and revising paragraph (a) to read as follows:

§ 13.201 Applicability.

(a) this subpart applies to all cases in which a hearing has been requested under § 13.16.

* * * * *

6. Section 13.233 is amended by revising the introductory text of paragraph (b), paragraphs (b)(1) and (b)(3), and the first sentence of the introductory text in paragraph (j), to read as follows:

§ 13.233 Appeal from initial decision.

(a) * * *

(b) *Issues on appeal.* In any appeal from a decision of an administrative law judge, the FAA decisionmaker considers only the following issues:

(1) Whether each finding of fact is supported by a preponderance of reliable, probative, and substantial evidence;

(2) * * *

(3) Whether the administrative law judge committed any prejudicial errors that support the appeal.

* * * * *

(j) *FAA decisionmaker's decision on appeal.* The FAA decisionmaker will review the record, the briefs on appeal, and the oral argument, if any, when considering the issues on appeal. * * *

* * * * *

7. In Part 13 remove the words "the Assistant Chief Counsel for Regulations and Enforcement" and add, in their place, the words "the Assistant Chief Counsel for Regulations, the Assistant Chief Counsel for Enforcement" in the following places:

(a) § 13.15(b), (c)(1), and (c)(3);

(b) § 13.16(c), first and second sentences;

(c) § 13.19(b), the introductory text of (c), and the closing text of (c);

(d) § 13.21;

(e) § 13.25(a) and (b);

(f) § 13.71;

(g) § 13.73;

(h) § 13.81(a); and

(i) § 13.202, definition of *Agency attorney.*

Issued in Washington, DC, on July 29, 1994.

Mark L. Gerchick,

Chief Counsel.

[FR Doc. 94–19120 Filed 8–4–94; 8:45 am]

BILLING CODE 4910–13–M

federal register

Friday
August 5, 1994

Part X

Department of the Treasury
Office of the Comptroller of the Currency
12 CFR Part 34

Federal Reserve System
12 CFR Parts 225 and 226

Federal Deposit Insurance Corporation
12 CFR Part 323

Department of the Treasury
Office of Thrift Supervision
12 CFR Part 564

National Credit Union Administration
12 CFR Part 722

Real Estate Appraisal Exceptions in Major Disaster Areas, Joint Order; and Truth in Lending; FRS Final Rule

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 34

FEDERAL RESERVE SYSTEM

12 CFR Part 225

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 323

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 564

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 722

Real Estate Appraisal Exceptions in Major Disaster Areas

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; Office of Thrift Supervision, Treasury; and National Credit Union Administration.

ACTION: Statement and Order; temporary exceptions.

SUMMARY: Section 2 of the Depository Institutions Disaster Relief Act of 1992 (DIDRA), authorizes the Federal financial institutions regulatory agencies to make exceptions to statutory and regulatory requirements relating to appraisals for certain transactions. The exceptions are available for transactions that involve real property in major disaster areas when the exceptions would facilitate recovery from the disaster and would be consistent with safety and soundness. Expiration dates for certain transactions are set out in the SUPPLEMENTARY INFORMATION section.

DATES: This order is effective on August 5, 1994 and expires for specific areas on the dates indicated in the SUPPLEMENTARY INFORMATION section.

FOR FURTHER INFORMATION CONTACT:

Office of the Comptroller of the Currency (OCC)

William C. Kerr, National Bank Examiner or Thomas E. Watson, National Bank Examiner (202) 874–5170, Office of the Chief National Bank Examiner; or Horace G. Sneed, (202) 874–4460, Senior Attorney, Bank Operations and Assets Division, 250 E Street SW., Washington, DC 20219.

Board of Governors of the Federal Reserve System (Board)

Rhoger H. Pugh, Assistant Director, (202) 728–5883, Stanley B. Rediger, Supervisory Financial Analyst, (202) 452–2629, Virginia M. Gibbs, Supervisory Financial Analyst, (202) 452–2521, Division of Banking Supervision and Regulation; or Deneen Donnley-Evans, Staff Attorney, (202) 736–5567, Legal Division. For the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD), (202) 452–3544, 20th and C Streets NW., Washington, DC 20551.

Federal Deposit Insurance Corporation (FDIC)

Robert F. Miailovich, Associate Director, (202) 898–6918, James D. Leitner, Examination Specialist, (202) 898–6790, Division of Supervision; or Walter P. Doyle, Counsel, (202) 898–3682, Legal Division, 550 17th Street NW., Washington, DC 20429.

Office of Thrift Supervision, Treasury (OTS)

Robert Fishman, Acting Deputy Assistant Director, Policy, (202) 906–5672; Deirdre Kvartunas, Program Analyst, (202) 906–7933; Diana Garmus, Deputy Assistant Director, Corporate Activities, (202) 906–5683; Ellen J. Sazzman, Attorney, Regulations and Legislation Division, Chief Counsel's Office, (202) 907–7133; 1700 G Street NW., Washington, DC 20552.

National Credit Union Administration (NCUA)

Michael J. McKenna, Office of General Counsel, (703) 518–6540, or Herb Yolles, Office of Examination and Insurance, (703) 518–6360, 1775 Duke Street, Alexandria, VA 22314.

SUPPLEMENTARY INFORMATION:

Statement

Section 2 of DIDRA, 12 U.S.C. 3352, authorizes the agencies to make exceptions to statutory and regulatory appraisal requirements for transactions with respect to real property located in areas that the President has determined, pursuant to section 5170 of Title 42, that a major disaster exists, provided that the exception would facilitate recovery from the major disaster and is consistent with safety and soundness.[1] Such exceptions expire not later than three years after the date of the President's determination that a major disaster exists in the area.

Since July 7, 1994, and continuing, the President has declared several areas as Major Disaster Areas in certain Alabama, Florida, and Georgia counties because of the extensive flooding that occurred and is continuing. The agencies believe that granting relief from the appraisal requirements for certain real estate transactions in all such areas affected by this flooding is consistent with the provisions of the DIDRA.

The agencies have determined that the disruption of real estate markets in all such affected areas interferes with the ability of depository institutions to obtain appraisals that comply with statutory and regulatory requirements and, therefore, may impede institutions in making loans and engaging in other transactions that would aid in the reconstruction and rehabilitation of the affected area. Accordingly, the agencies have determined that recovery from this major disaster would be facilitated by excepting transactions involving real estate located in the area directly affected by the flooding from the real estate appraisal requirements of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) as amended, 12 U.S.C. 3331 *et seq.*, and regulations promulgated thereto. This has the effect of excepting certain transactions from the definition of "federally related transactions."

The agencies have also determined that safety and soundness would not be adversely affected by such exceptions so long as the depository institution's records relating to any such excepted transaction clearly indicate either that the property involved was directly affected by the major disaster or that the transaction would facilitate recovery from the disaster and there is a binding commitment to fund the transaction within three years after the date the major disaster was declared. In addition, the transaction must continue to be subject to review by management and by the agencies in the course of examination of the institution under normal supervisory standards relating to safety and soundness, though the transactions need not comply with the specific requirements of Title XI of FIRREA and the agencies' appraisal regulations.

Expiration Dates

Any exceptions provided under the order shall expire not later than three years after the date on which the President determines, pursuant to section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5170, that a

[1] The agencies must make the exception no later than 30 months after the date on which the President determines that a major disaster exists in the area.

major disaster exists in the area. Accordingly, exceptions for the major disasters declared due to the flooding expire on: July 8, 1997 for Alabama counties; July 10, 1997 for Florida counties; and July 7, 1997 for Georgia counties. Exceptions for any other counties in this area that have been declared major disasters by the President as a result of the flooding that began on or about July 7, 1994 expire 3 years after the date of such declaration.

Order

In accordance with section 2 of DIDRA, relief is hereby granted from the provisions of Title XI of FIRREA and the agencies appraisal regulations for any real estate-related financial transaction that requires the services of an appraiser under those provisions, provided that:

(1) The transaction involves real estate located in an area that the President has determined, pursuant to section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5170, is a major disaster area as a result of the July 1994 flooding in Alabama, Florida, and Georgia, and has been designated eligible for Federal assistance by the Federal Emergency Management Agency (FEMA); [1]

(2)(a) The real property involved was directly affected by the major disaster, or

(b) The real property involved was not directly affected by the major disaster but the institution's records explain how the transaction would facilitate recovery from the disaster;

(3) There is a binding commitment to fund a transaction that is made within three years after the date the major disaster was declared by the President; and

(4) The institution retains in its files, for examiner review, appropriate documentation supporting the property's valuation.

Appendix to Order

Alabama: Barbour, Coffee, Conecuh, Covington, Dale, Geneva, Henry, Houston, Randolph, Russell

Florida: Bay, Calhoun, Franklin, Gadsden, Gulf, Holmes, Jackson, Liberty, Okaloosa, Santa Rosa, Walton, Washington

Georgia: Baker, Bibb, Butts, Calhoun, Clay, Clayton, Coweta, Crawford, Crisp, Decatur, Dooly, Dougherty, Early, Fayette, Fulton, Henry, Houston, Jasper, Jones, Lamar, Lee, Macon, Meriwether, Miller, Mitchell, Monroe, Montgomery, Newton, Peach, Pike, Pulaski, Quitman, Randolph, Rockdale, Seminole, Spalding, Stewart, Sumter, Talbot, Taylor, Terrell, Toombs, Troup, Twiggs, Upson, Webster, Wheeler, Wilcox, Worth

Dated: August 2, 1994.

Eugene A. Ludwig,

Comptroller of the Currency.

By order of the Board of Governors of the Federal Reserve System.

Dated: July 28, 1994.

William W. Wiles,

Secretary of the Board.

Federal Deposit Insurance Corporation.

Dated: July 28, 1994.

Robert E. Feldman,

Acting Executive Secretary.

Dated: July 26, 1994.

By the Office of Thrift Supervision.

John F. Downey,

Acting Director.

Dated: July 26, 1994.

Becky Baker,

Secretary of the Board, National Credit Union Administration.

[FR Doc. 94–19259 Filed 8–4–94; 8:45 am]

BILLING CODE OCC 4810–33–P (20%); BOARD 6210–01–P (20%); FDIC 6714–01–P (20%); OTS 6720–01–P (20%); NCUA 7535–01–P (20%)

[1] The Alabama, Florida, and Georgia counties affected are listed in the appendix to this order. The exception would also include any other such areas that the President subsequently declares are major disaster areas as a result of the flooding.

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–0844]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; temporary exceptions.

SUMMARY: The Board is amending Regulation Z (which implements the Truth in Lending Act) to provide relief in areas in the South recently affected by major flooding. The amendments provide a temporary exception from provisions of the regulation that prohibit a creditor from using a preprinted form by a creditor to obtain a consumer's waiver of the right to rescind certain home-secured loans when loan proceeds are needed immediately to meet a consumer's bona fide personal financial emergency. In addition, a consumer's need to obtain funds immediately shall be regarded as a bona fide personal financial emergency for purposes of Regulation Z for transactions secured by a consumer's principal dwelling located in areas of the South recently declared to be major disaster areas because of extensive flooding. Generally, Regulation Z requires a mandatory three day waiting period on rescindable transactions before funds can be disbursed. The special exceptions expire one year from the date the area was declared a major disaster.

EFFECTIVE DATE: July 29, 1994.

FOR FURTHER INFORMATION CONTACT: Jane Jensen Gell, Staff Attorney, or Adrienne D. Hurt, Managing Counsel, Division of Consumer and Community Affairs, at (202) 452–2412 or (202) 452–3667; for the hearing impaired *only*, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD), at (202) 452–3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Truth in Lending Act (TILA), 15 U.S.C 1601–1666j, and Regulation Z, 12 CFR Part 226, with some exceptions, a consumer has the right to rescind a credit obligation secured by the consumer's principal dwelling for three days after becoming obligated, due to the risk of loss of the consumer's home in the event of default. There is a mandatory waiting period of three business days before funds can be disbursed in order to give consumers an opportunity to reflect on the loan terms and to elect to cancel the transaction (12 CFR 226.15 and 226.23). A consumer may modify or waive this right of rescission to meet a bona fide personal financial emergency. The consumer must provide the creditor a written, signed and dated waiver statement that describes the emergency. Under Regulation Z, 12 CFR 226.15(e) and 226.23(e), the waiver statement may not be executed on a preprinted form.

The Board has previously adopted an exception to Regulation Z for transactions in areas affected by Hurricanes Andrew and Iniki and the April 1992 Los Angeles civil unrest (57 FR 53545 (1992)); extensive flooding in the Midwest (58 FR 40582 (1993)); and most recently, a major earthquake in California (59 FR 6532 (1994)). The Board's exception permitted a temporary waiver of the provisions in Regulation Z that prohibit an institution's use of a preprinted form to obtain a consumer's waiver of the right to rescind certain home-secured loans when loan funds were needed immediately to meet a consumer's bona fide personal financial emergency. In addition, a consumer's need to obtain funds immediately was regarded as a bona fide personal financial emergency for purposes of Regulation Z, where the home securing the loan was located in the disaster area.

II. Relief for Flood Affected Communities

During the summer of 1994, extensive flooding has occurred in several Southern States, including Alabama, Florida, and Georgia. As a result, the President has determined that extensive major disaster areas exist in those states. In order to aid consumers in obtaining

credit speedily to begin repairs in these areas and to ease the paperwork burden on banks extending credit in these areas, the Board has determined to provide a temporary exception in this situation to the restrictions in §§ 226.15(e) and 23(e) of Regulation Z in flood affected areas. This exception will expire one year from the date the President determined that an area was a major disaster.

The Board is amending Regulation Z to permit a temporary exception to its provisions that prohibit the use of a preprinted form by an institution to obtain a consumer's waiver of the right to rescind certain home-secured loans when the home is located in an area that the President has determined, pursuant to section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act , (42 U.S.C. 5170 (1989)), is a major disaster area as a result of the extensive flooding in 1994 in the South. The Board notes, however, that the consumer must still sign and date the waiver statement. The following counties in Alabama, Florida, and Georgia have been declared major disaster areas.

Alabama: Barbour, Coffee, Covington, Dale, Geneva, Henry, Houston, Randolph

Florida: Calhoun, Gulf, Holmes, Jackson, Walton, Washington

Georgia: Baker, Bibb, Butts, Calhoun, Clay, Clayton, Coweta, Crawford, Crisp, Decatur, Dooly, Dougherty, Early, Fayette, Fulton, Henry, Houston, Jones, Lamar, Lee, Macon, Meriwether, Miller, Mitchell, Monroe, Peach, Pike, Pulaski, Randolph, Seminole, Spalding, Stewart, Sumter, Talbot, Taylor, Terrell, Troup, Twiggs, Upson, Webster, Wilcox, Worth

III. Public Comment and Effective Date

The Administrative Procedures Act (APA) grants specific exemptions from its notice and public comment requirements for rulemakings when these requirements are contrary to the public interest (5 U.S.C. 553(b)(3)(B)). The amendments in the final rule provide a temporary exemption to Regulation Z and remove a restriction that may impair the availability of loans to consumers who have encountered a bona fide personal financial emergency as a result of having a home located in an area where a major disaster has occurred. The Board finds that it is in the public interest to permit this relief immediately and without advance notice and public comment. As explained above, the amendment to Regulation Z may reduce the paperwork burden on banks extending credit in certain disaster areas and aid in making credit speedily available to consumers in these areas. In addition, consumers continue to have the right to rescind certain loans unless that right is specifically waived. Moreover, the exemption is limited in scope and duration and would provide immediate assistance to consumers' and lenders' ongoing efforts to reconstruct and rehabilitate only in certain areas that have been affected by recent major disasters recognized under the appropriate federal relief statutes.

For reasons explained above, the Board also believes that deferring the effective date of this action is contrary to the public interest in connection with the adoption of the final rule. The APA grants a specific exemption from its requirements relating to this item in these instances (5 U.S.C. 553 (d)(3)). Accordingly, the amendments to Regulation Z are effective immediately.

IV. Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board does not believe that the adoption of this final rule would have a significant adverse impact on a substantial number of small entities. The amendment imposes no new requirements and temporarily removes a restriction imposed by Regulation Z on entities subject to the regulation.

V. Paperwork Reduction Act Analysis

No collection of information pursuant to section 3504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) are contained in these changes.

List of Subjects in 12 CFR Part 226

Advertising, Banks, banking, Consumer protection, Credit, Federal Reserve System, Finance, Penalties, Rate limitations, Reporting and recordkeeping requirements, Truth in lending.

For the reasons set forth in the preamble, the Board is amending 12 CFR part 226 as follows:

PART 226—TRUTH IN LENDING (REGULATION Z)

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

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

Subart B—Open-End Credit

§ 226.16 [Amended]

2. In § 226.16 footnotes 36b and 36c are redesignated 36c and 36d, respectively.

3. In § 226.15 a new paragraph (e)(3) and footnote 36b are added to read as follows:

§ 226.15 Right of rescission.

* * * * *

(e) * * *

(3) The consumer's need to obtain funds immediately shall be regarded as a bona fide personal financial emergency provided that the dwelling securing the extension of credit is located in an area declared during June through September 1994 to be a major disaster area, pursuant to 42 U.S.C. 5170, because of severe storms and flooding in the South.[36b] In this instance, creditors may use printed forms for the consumer to waive the right to rescind. This exemption to paragraph (e)(1) of this section shall expire one year from the date an area was declared a major disaster.

* * * * *

Subpart C—Closed-End Credit

4. In § 226.23 a new paragraph (e)(3) and footnote 48(b) are added to read as follows:

§ 226.23 Right of rescission.

* * * * *

(e) * * *

(3) The consumer's need to obtain funds immediately shall be regarded as a bona fide personal financial emergency provided that the dwelling securing the extension of credit is located in an area declared during June through September 1994 to be a major disaster area, pursuant to 42 U.S.C. 5170, because of severe storms and flooding in the South.[48b] In this instance, creditors may use printed forms for the consumer to waive the right to rescind. This exemption to paragraph (e)(1) of this section shall expire one year from the date an area was declared a major disaster.

* * * * *

By order of the Board of Governors of the Federal Reserve System, July 29, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–19310 Filed 8–4–94; 8:45 am]

BILLING CODE 6210–01–P

[36b] A list of the affected areas will be maintained and published by the Board. Such areas now include parts of Alabama, Florida, and Georgia.

[48b] A list of the affected areas will be maintained and published by the Board. Such areas now include parts of Alabama, Florida, and Georgia.

Reader Aids

Federal Register

Vol. 59, No. 150

Friday, August 5, 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, AUGUST

38875–39246.....1
39247–39412.....2
39413–39672.....3
39673–39936.....4
39937–40204.....5

CFR PARTS AFFECTED DURING AUGUST

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:
6709.....39671
6710.....39673
6711.....39675
6712.....39935

5 CFR

12000.....39937

7 CFR

406.....39413
906.....39414
922.....39415
923.....39415
924.....39415
981.....39417
997.....39419
998.....39421
1250.....38875
1413.....39247
1421.....39247
1427.....39251
301.....39937
Proposed Rules:
55.....38944
56.....38944
59.....38944
70.....38944
947.....39479
1205.....39480
1413.....39707
1710.....39975
1714.....39975
1785.....39975

8 CFR

103.....39394
204.....38876
211.....39394
216.....39394
235.....39394
242.....39394

9 CFR

317.....39941
318.....39254
319.....39254
381.....39254

10 CFR

73.....38889
Proposed Rules:
61.....39485

11 CFR

107.....39635
114.....39635
9008.....39635

12 CFR

34.....40202
225.....39677, 40202
226.....40203
323.....40202
564.....40202
701.....39423
707.....39425
722.....40202
Proposed Rules:
225.....39709
707.....39486

13 CFR

121.....39426

14 CFR

23.....39941
25.....39427
36.....39679
39.....39429, 39431, 39432, 40084
71.....39434, 39435, 40084
91.....39679
95.....39436
97.....39943, 39944, 39947
1260.....38900
Proposed Rules:
Ch. I.....39983
1.....39192
13.....40192
36.....39711
39.....39983
71.....39394
91.....39711
189.....39395

16 CFR

305.....39951
Proposed Rules:
1500.....39306

17 CFR

200.....39680
Proposed Rules:
270.....39311

18 CFR

284.....38901

19 CFR

4.....39682
210.....39020
211.....39020
Proposed Rules:
348.....39985
420.....39991

21 CFR

210.....39255
211.....39255
520.....39438
556.....38901

558.....38901
Proposed Rules:
Ch. I.....39888
102.....39635
330.....39499

22 CFR

42.....39952
518.....39440

23 CFR

1212 256

24 CFR

103.....39955
200.....39394
204.....39956
905.....39402
960.....39402
Proposed Rules:
91.....40148
92.....40148
570.....40148
574.....40148
576.....40148
968.....40148
905.....39072
950.....39072

25 CFR

Proposed Rules:
10.....40086
20.....40182
63.....40184

26 CFR

1.....39958
301.....38902

28 CFR

37.....39898
77.....39910

29 CFR

1640.....39898
1952.....39257

30 CFR

216.....38904
218.....38904
Proposed Rules:
Ch. II.....38946
206.....39712
250.....39991
935.....39993

33 CFR

26.....39962
100.....39456
110.....39963
126.....39963
157.....40186
160.....39458, 39963, 40186
162.....39962
165.....39456, 39460, 39461

34 CFR

388.....40176

36 CFR

Proposed Rules:
14.....39228

38 CFR

21.....39966
Proposed Rules:
17.....38947

39 CFR

11.....39257
111.....39967

40 CFR

50.....38906
52.....39683, 39684, 39686, 39688, 39690, 39691, 39692, 39699, 39832
80.....39258
81.....39394, 39692, 39699, 40084
86.....39638
180.....39462, 39464, 39466, 39467
186.....39467
271.....39967, 39971
600.....39638
721.....39292, 39293, 39295
799.....38917
Proposed Rules:
51.....39501
52.....39311, 39715, 39716, 39994
63.....38949
180.....39502, 39504, 39505
185.....39505
186.....39505
721.....39311, 40001

42 CFR

400.....39296
405.....39828
414.....39828
Proposed Rules:
52.....39312

43 CFR

Public Land Orders:
725 (Revoked in part by PLO 7072).....39468
829 (Revoked in part by PLO 7071).....39468
7067.....39635
7070.....39701
7071.....39468
7072.....39468
7073.....39469
7074.....39702
7075.....39702
7076.....39702
Proposed Rules:
39.....39216
432.....39316
2820.....39228

44 CFR

64.....38921
65.....39972
Proposed Rules:
67.....40002

46 CFR

4.....39469
38.....39963
68.....39635
78.....39963
97.....39963
194.....39963
Proposed Rules:
97.....40004
148.....40004

47 CFR

0.....39703
18.....39471
22.....39299
24.....39704
64.....38922, 39300
69.....38922
73.....38930, 39301
Proposed Rules:
73.....38949, 38950, 39317

48 CFR

225.....38931, 39974
252.....38931
519.....38931
552.....38931
1845.....38937
1852.....38937
Proposed Rules:
9.....39317
10.....39317
13.....39317
15.....39317
23.....39317
25.....39317
31.....39317
45.....39317
52.....39317
207.....40005
237.....40005
251.....39318
252.....39318, 40005
552.....38950
Ch. 9.....38951

49 CFR

229.....39705
571.....38938, 39472
575.....38938
Proposed Rules:
192.....39319, 39506
195.....39506
393.....39518
571.....39522
Ch. X.....39524

50 CFR

36.....39408
204.....39301
301.....39476, 39477
605.....38942
641.....39301
672.....39477, 39478, 39705
675.....39305
678.....38943
Proposed Rules:
Ch. I.....39316
17.....39524, 39532, 39868, 39874, 39879
29.....39228
222.....39540
226.....39716
611.....39724
658.....39724
675.....39725

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470).

H.R. 1346/P.L. 103–285

To designate the Federal building located on St. Croix, Virgin Islands, as the "Almeric L. Christian Federal Building". (Aug. 1, 1994; 108 Stat. 1449; 1 page)

H.R. 1873/P.L. 103–286

To require certain payments made to victims of Nazi persecution to be disregarded in determining eligibility for and the amount of benefits or services based on need. (Aug. 1, 1994; 108 Stat. 1450; 3 pages)

H.R. 2532/P.L. 103–287

To designate the Federal building and United States courthouse in Lubbock, Texas, as the "George H. Mahon Federal Building and United States Courthouse". (Aug. 1, 1994; 108 Stat. 1453; 1 page)

H.R. 3770/P.L. 103–288

To designate the United States courthouse located at 940 Front Street in San Diego, California, and the Federal building attached to the courthouse as the "Edward J. Schwartz Courthouse and Federal Building". (Aug. 1, 1994; 108 Stat. 1454; 1 page)

H.R. 3840/P.L. 103–289

To designate the Federal building and United States courthouse located at 100 East Houston Street in Marshall, Texas, as the "Sam B. Hall, Jr. Federal Building and United States Courthouse". (Aug. 1, 1994; 108 Stat. 1455; 1 page)

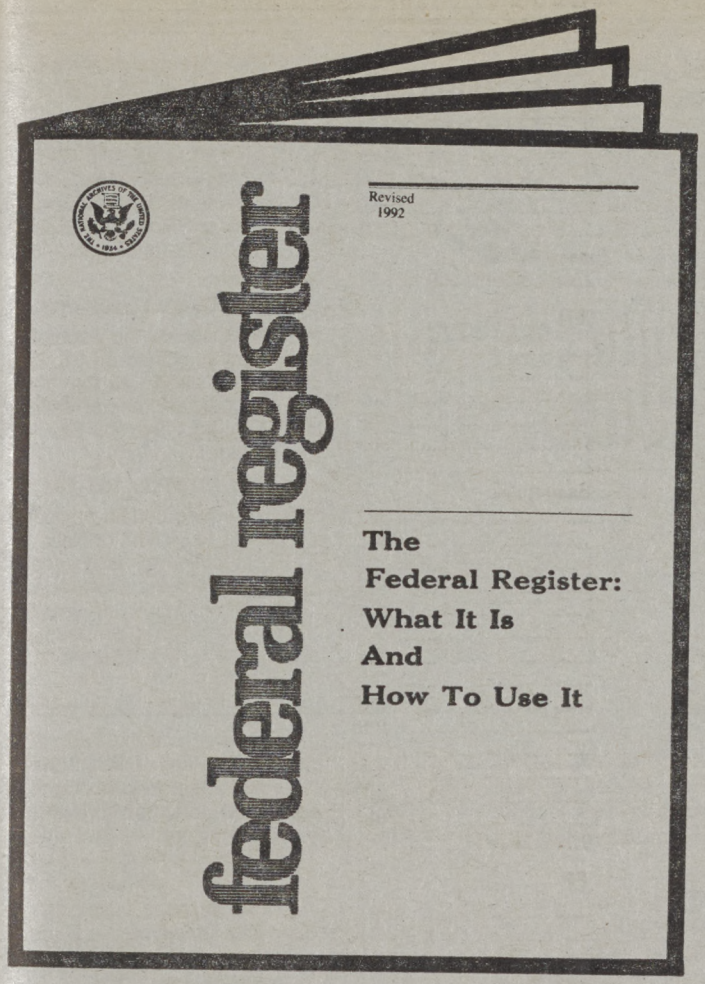
S. 1880/P.L. 103–290

To provide that the National Education Commission on Time and Learning shall terminate on September 30, 1994. (Aug. 1, 1994; 108 Stat. 1456; 1 page)

S.J. Res. 172/P.L. 103–291

Designating May 29, 1995, through June 6, 1995, as a "Time for the National Observance of the Fiftieth Anniversary of World War II". (Aug. 1, 1994; 108 Stat. 1457; 1 page)

Last List August 4, 1994



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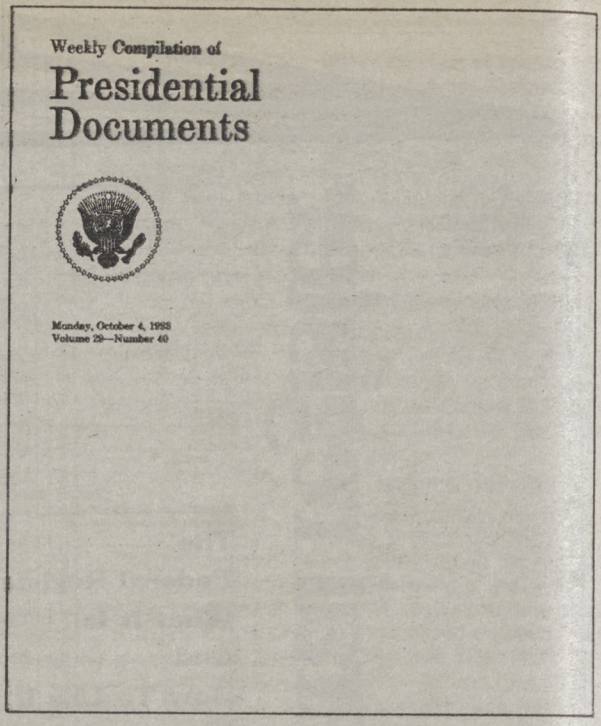
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