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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[FV-91-258FR]

Raisins Produced from Grapes Grown in California; Revising Reserve Pool Requirements for Certain Seedless Raisins

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises the administrative rules and regulations of the California raisin marketing order. This action will revise the reserve pool requirements for raisins produced from Fiesta, Emerald Seedless, Perlette, Delight, and other similar grape varieties. This revision was recommended by the Raisin Administrative Committee (Committee), which is responsible for the local administration of the Federal marketing order regulating the handling of raisins produced from grapes grown in California.

EFFECTIVE DATE: August 12, 1991.

FOR FURTHER INFORMATION CONTACT: Richard Lower, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2524-S, PO Box 96456, Washington, DC 20090-6456; telephone: (202) 475-3861.

SUPPLEMENTARY INFORMATION: This final rule is issued under marketing agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act".

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

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

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

There are approximately 25 handlers of California raisins who are subject to regulation under the raisin marketing order, and approximately 5,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A majority of producers and a minority of handlers of California raisins may be classified as small entities.

This action revises the reserve pool requirements for raisins produced from Fiesta, Perlette, Delight, Emerald Seedless and other similiar grape varieties. Currently, these varietal types are included under the Natural (sun-dried) Seedless raisin category.

Section 989.110(a) of the rules and regulations provides the definition for Natural (sun-dried) Seedless varietal type of raisin which includes all sun-dried seedless raisins that possess characteristics similar to Natural Thompson Seedless raisins. The above-mentioned grape varieties fit into this varietal type category when they are sun-dried into raisins. Raisins made from Fiesta, Perlette, Delight, Emerald Seedless and other similiar grape varieties that meet the minimum grade and condition standards may be placed in the Natural (sun-dried) Seedless reserve pool by handlers to satisfy their reserve pool obligations (see § 989.66). The reserve portion of a crop must be held by handlers for the account of the Committee to be sold into specified outlets throughout the crop year.

Reserve pool raisins must be stored by handlers until they are relieved of their responsibility by the Committee. The Committee may relieve a handler's reserve pool responsibility by transferring reserve pool raisins to another handler who needs reserve pool raisins for an authorized reserve pool purchase. The Committee has found that some handlers are reluctant to accept raisins from the Natural (sun-dried) Seedless reserve pool that are of the Fiesta, Perlette, Delight, Emerald Seedless, and other similiar grape varieties from other handlers because the receiving handlers do not have a market for them. Raisins made from these varietal types are somewhat larger than raisins made from the Thompson Seedless grape and generally are sold into different markets.

Therefore, the Committee has recommended that handlers who acquire raisins made from the Fiesta, Perlette, Delight, Emerald Seedless, and other similiar grape varieties from producers and place them in the Natural (sun-dried) Seedless reserve pool be required to utilize such raisins. With this revision, handlers may not transfer reserve pool raisins made from the above-mentioned varietal types unless the transfer to another handler is acceptable to the Committee or the receiving handler.

Handlers acquiring raisins made from the Fiesta, Perlette, Delight, Emerald Seedless, and other similiar grape varieties from producers can place such raisins in the reserve pool. They will be required to use the above mentioned raisins rather than transfer them to another handler. This will alleviate the concerns receiving handlers have in accepting such raisins when they have no market in which to sell them.

In the case where handlers may not have any other reserve pool raisins besides raisins made from the Fiesta,

Perlette, Delight, Emerald Seedless, and other similiar grape varieties, handlers may substitute free tonnage raisins that will be acceptable to the Committee for the varieties mentioned above. Substitution of free tonnage for reserve pool tonnage is authorized under § 989(b)(3) of the marketing order.

The rules and regulations currently provide that handlers must identify each lot of raisins received by having the Inspection Service attach control cards to one container on each pallet or to each bin of raisins in a lot. Thus, each lot of raisins received and placed in the reserve pool can be identified as to its varietal type and can be properly disposed of by handlers. Therefore, this change may be easily implemented since containers are properly marked as to the varietal type of raisins.

A proposed rule on this action was published in the **Federal Register** on May 28, 1991 (56 FR 24041). The proposal provided interested persons the opportunity to file written comments through June 27, 1991. One comment was submitted. The commenter inquired what the penalty would be if the raisin packer does not comply with this rule; what would happen if the packer runs out of raisins or goes bankrupt; and would the packers post a bond for the total amount of product worth for reserve raisins. After the effective date of this rule, if there is a raisin packer who does not comply with this rule, runs out of raisins or goes bankrupt, the Committee could conduct an investigation and submit the results with a recommended action to the Department. The Department would review the information and proceed with the appropriate action authorized under the Act. In response to the third question, there is no provision which requires raisin packers to post a bond while handling reserve raisins.

Based on available information, the Administrator of the AMS has determined that the issuance of this final rule will not have a sigificant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the Committee's recommendation, the one comment received, and other available information, it is found that revising the reserve pool requirements for certain seedless raisins will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because transfers of raisins between handlers are heaviest during the period from June through September and it is desirable that this rule cover as many of the transfers as possible.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is revised as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

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

2. Section 989.166 is amended by revising paragraph (a)(1) to read as follows:

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

§ 989.166 Reserve tonnage generally.

(a) *Set-aside obligations.*—(1) *Natural (sun-dried) Seedless.* Handlers who acquire any lot of natural condition Natural (sun-dried) Seedless raisins which have been dipped in or sprayed with water, with or without chemicals prior to or during the drying process, for purposes other than to expedite drying, or that have been produced from seedless varieties of grapes other than Thompson Seedless (i.e., Fiesta, Emerald Seedless, Perlette, Delight, and other similiar grape varieties), may set aside such raisins to satisfy their reserve pool obligation: *Provided,* That such raisins shall be identified by the Inspection Service affixing to one container on each pallet or to each bin in each lot, a prenumbered RAC control card (to be furnished by the Committee) which shall remain affixed until raisins are processed or disposed of as natural condition raisins: and *Provided further,* That such raisins shall not be deliverered to the Committee or transferred to another handler without approval of the Committee or the receiving handler.

* * * * *

Dated; August 5, 1991.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 91–19117 Filed 8–9–91; 8:45 am]

BILLING CODE 3410–02–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD7–91–74]

Drawbridge Operation Regulations; Gulf Intracoastal Waterway, FL

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: At the request of the City of St. Petersburg Beach and the Florida Department of Transportation, the Coast Guard is changing the operating regulations governing the Pinellas Bayway Structure "C" bridge, mile 114, at St. Petersburg Beach by permitting the number of openings to be limited during certain periods. This change is being made because periods of peak vehicular traffic have changed. This action will accommodate the needs of vehicular traffic and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: These regulations become effective on September 11, 1991.

FOR FURTHER INFORMATION CONTACT: Ian MacCartney, (305) 536–4103.

SUPPLEMENTARY INFORMATION: On May 23, 1991, the Coast Guard published proposed rule (56 FR 23666) concerning this amendment.

The Commander, Seventh Coast Guard District, also published the proposal as a Public Notice dated June 13, 1991. In each notice, interested persons were given until July 8, 1991, to submit comments.

Drafting Information:

The drafters of these regulations are Ian MacCartney, project officer, and LT Genelle Tanos, project attorney.

Discussion of Comments:

Eight comments and a petition were received in response to the proposed rule. Two commenters were opposed to any change in the regulations; two commenters preferred a 15-minute schedule instead of the proposed 20-minute schedule; four commenters and 370 signatories to a petition supported the proposed change in regulations. The Coast Guard has carefully considered the comments. No new information was provided to justify a change to the

proposed rule published on May 23, 1991.

Federalism:

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

Ecomomic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulations and nonsignificant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. We conclude this because the regulations exempt tugs with tows. Since the economic impact is expected to be minimal, the Coast Guard certifies that they will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations:

In consideration of the foregoing, part 117 of title 33, Code of Federal Regulations, is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.287(e) is revised to read as follows:

§ 117.287 Gulf Intracoastal Waterway.

* * * * *

(e) The draw of the Pinellas Bayway, Structure "C" bridge, mile 114, at St. Petersburg Beach shall open on signal; except that from 7 a.m. to 7 p.m., the draw need open only on the hour, and forty minutes past the hour.

* * * * *

Dated: July 29, 1991.

K.M. Dantyne,

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

[FR Doc. 91–19104 Filed 8–9–91; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3981–3]

Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Air Pollution Episode Contingency Plan for Albuquerque/Bernalillo County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: This notice approves the Air Pollution Episode Contingency Plan for Albuquerque/Bernalillo County, as adopted by the Albuquerque/Bernalillo County Air Quality Control Board on January 26, 1989. The Air Pollution Episode Contingency Plan for Albuquerque/Bernalillo County was submitted by the Governor of New Mexico to EPA on April 14, 1989. This plan adequately addresses the requirements of 40 Code of Federal Regulations (CFR), part 51, subpart H (Prevention of Air Pollution Emergency Episodes), and is comparable to the New Mexico Environmental Improvement Board's Air Pollution Episode Contingency Plan, as adopted on July 7, 1988. EPA approved this plan on August 21, 1990 (55 FR 34013).

DATES: This action will be effective October 11, 1991 unless notice is received within 30 days of publication that adverse or critical comments will be submitted. If the effective date is delayed timely notice will be published in the Federal Register.

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs at the EPA Regional Office listed below. Copies of the documents relevant to this proposed action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least twenty-four hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T–AP), 1445 Ross Avenue, Dallas, Texas 75202–2733.

Albuquerque Environmental Health Department, The City of Albuquerque, One Civic Plaza Northwest, 5th and Marquette Street NW., P.O. Box 1293, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Sather, Planning Section (6T–AP), Air Programs Branch, U.S. EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, Telephone (214) 655–7214, or (FTS) 255–7214.

SUPPLEMENTARY INFORMATION: This section contains an evaluation of the Air Pollution Episode Contingency Plan for Albuquerque/Bernalillo County. The Governor of New Mexico submitted the Air Pollution Episode Contingency Plan for Albuquerque/Bernalillo County to EPA on April 14, 1989. This plan was reviewed for consistency with the requirements of 40 CFR subpart H, § 51.150 (Classification of regions for episode plans), § 51.151 (Significant harm levels), and § 51.152 (Contingency plans).

The Air Pollution Episode Contingency Plan for Albuquerque/Bernalillo County addresses all the necessary requirements for a Priority I region (defined in 40 CFR 51.150). First, the plan includes significant harm levels for sulfur dioxide, PM_{10}, carbon monoxide, ozone, and nitrogen dioxide as per 40 CFR 51.151. Second, the plan adequately addresses all requirements for contingency plans outlined in 40 CFR 51.152. Three stages of episode criteria as per 40 CFR 51.152 (a)(1) and 40 CFR 51, appendix L, are set forth: air pollution alert, air pollution warning, and air pollution emergency. The Episode Stage Criteria Table on page 3 of the plan shows alert, warning, emergency, and significant harm levels for the pollutants sulfur dioxide, PM_{10}, carbon monoxide, ozone, and nitrogen dioxide. The plan also provides for public announcement of, and specifies adequate emission control actions to be taken at, each episode stage (40 CFR 51.152 (a)(2) and 40 CFR 51.152 (a)(3)). Finally, the plan sufficiently addresses the requirements of 51.152(b)(1–3) concerning prompt acquisition of forecasts of atmospheric stagnation conditions including updates, source compliance inspections, and communication procedures.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective October 11, 1991 unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a

proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective October 11, 1991.

Final Action

The EPA is today approving the Air Pollution Episode Contingency Plan for Albuquerque/Bernalillo County, as adopted by the Albuquerque/Bernalillo County Air Quality Control Board on January 26, 1989. This plan adequately addresses the requirements of 40 CFR, part 51, subpart H (Prevention of Air Pollution Emergency Episodes).

The EPA has reviewed this request for revision of the federally-approved State implementation plan for conformance with the provisions of the 1990 Clean Air Act Amendments enacted on November 15, 1990. The EPA has determined that this action conforms with those requirements irrespective of the fact that the submittal preceded the date of enactment.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

This action has been classified as a table 3 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget waived tables 2 and 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years.

Under 5 U.S.C. 605(b), the Administrator has certified that SIP approvals do not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 11, 1991. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7642.

Dated: June 19, 1991.

W.B. Hathaway,

Acting Regional Administrator (6A).

40 CFR Part 52, Subpart GG, is amended as follows:

PART 52—[AMENDED]

1. The Authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart GG—New Mexico

2. Section 52.1639 is revised to read as follows:

§ 52.1639 Prevention of air pollution emergency episodes.

(a) The plan submitted by the Governor of New Mexico on August 19, 1988, and as adopted on July 7, 1988, by the New Mexico Environmental Improvement Board, entitled Air Pollution Episode Contingency Plan for New Mexico, is approved as meeting the requirements of section 110 of the Clean Air Act and 40 CFR part 51, subpart H. This plan is only approved for the State of New Mexico outside of the boundaries of Bernalillo County.

(b) The plan submitted by the Governor in (a) for the Air Pollution Episode Contingency Plan is not applicable to Bernalillo County. Therefore, the following plan described below is applicable to sources located within the boundaries of Bernalillo County (including the City of Albuquerque). This plan, submitted by the Governor of New Mexico on April 14, 1989, and adopted on January 26, 1989, by the Albuquerque/Bernalillo County Air Quality Control Board, entitled Air Pollution Episode Contingency Plan for Bernalillo County, is approved as meeting the requirements of section 110 of the Clean Air Act and 40 CFR part 51, subpart H.

[FR Doc. 91–18740 Filed 8–9–91; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 400, 406 and 407

Medicare and Medicaid; Eligibility for Premium Hospital Insurance; State Buy-in Agreements

[BPD–668–FC]

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: These rules—

1. Set forth the requirements and procedures for certain individuals under age 65 to enroll and become entitled to Medicare Part A benefits through payment of monthly premiums;

2. Revise the rules on State buy-in for Medicare benefits to provide that—

- After 1988, a State may, at any time, request a buy-in agreement or a modification of an existing agreement, including a modification under which the State may enroll a pay Part B premiums on behalf of a new buy-in coverage group—Qualified Medicare Beneficiaries (QMBs); and
- After 1989, a State may request and obtain a modification of an existing agreement, under which the State may also enroll QMB's in Part A and pay Part A premiums on their behalf.

These amendments are necessary to conform HCFA rules to changes made by section 9010 of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), section 301 of the Medicare Catastrophic Coverage Act of 1988 (MCCA), and sections 6012 and 6013 of the Omnibus Budget Reconciliation Act of 1989 (OBRA '89).

The purposes of the amendments are—

1. To make it possible for certain disabled individuals to become entitled to Medicare Part A benefits that require payment of a monthly premium. The provisions apply to an individual under age 65 who loses entitlement to Medicare Part A without premiums because his or her earnings exceed the limit imposed for entitlement to social security disability benefits, on which Medicare Part A entitlement was based; and

2. To make available to States, for payment of premiums for QMBs, the administrative and cost efficiencies of the State buy-in procedures.

EFFECTIVE DATE: These regulations are effective September 11, 1991.

COMMENT DATE: To be considered, comments must be mailed or delivered

to the appropriate address, as provided below, and must be received by 5 p.m. on October 11, 1991.

ADDRESSES: Mail comments to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–668–FC, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments.

In commenting, please refer to file code BPD–668–FC. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in room 309–G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202–245–7890).

FOR FURTHER INFORMATION, CONTACT: Denis Garrison, (301) 966–5643.

SUPPLEMENTARY INFORMATION:

A. Entitlement to Premium Hospital Insurance

1. Statutory Provisions

Before enactment of OBRA '89, only an individual who had attained age 65 and who met other specified conditions was eligible to enroll for "premium" hospital insurance, that is, Part A benefits for which payment of monthly premiums is required.

Section 6012 of OBRA '89 adds to the Act a new section 1818A to provide that an individual who has not attained age 65 is also eligible to enroll for premium hospital insurance if he or she meets the following requirements:

- Has been entitled to Part A benefits under section 226(b) of the Act (entitlement based on entitlement to social security disability benefits);
- Continues to have the disabling physical or mental impairment on the basis of which the individual qualified for disability benefits; but
- Loses entitlement under section 226(b) due solely to having earnings that exceed the "substantial gainful activity" limit established by the social security regulations at 20 CFR 404.1574; and
- Is not otherwise entitled to Part A benefits.

Section 6408(d) of OBRA '89 amends the Medicaid statute as follows:

- Provides for Medicaid payment of Part A premiums on behalf of individuals who are eligible to enroll for Part A under section 1818A of the Act (identified as Qualified Disabled and Working Individuals or QDWIs), who meet specified income and resources tests, and who are not otherwise eligible for Medicaid.
- Excludes QDWIs from the definition of QMB.

The amendment does not authorize use of the State buy-in procedures to pay the premiums for QDWIs. The Medicaid provisions applicable to QDWIs are set forth in a separate proposed rule (MB–031–P).

2. Changes in the Regulations

Revised designation scheme.

In anticipation of changes likely to be made by future statutory amendments, we have revised the designation scheme of part 406 of our rules (Hospital Insurance Eligibility and Entitlement) to make room for adding new provisions in logical order. We have also made substantive changes, as discussed below.

a. In § 406.1 (Statutory basis), we have added reference to the new section 1818A of the law, and in § 406.5 (Basis of eligibility and entitlement), we have stated that certain persons under age 65 may also obtain Part A benefits by paying a premium.

b. In § 406.20 (Basic requirements), we have revised paragraphs (a) and (b) and added a new paragraph (c) to set forth the requirements for the new under age 65 group.

c. In § 406.21 (now called "Individual enrollment"), we have—

- Expanded a cross-reference in paragraph (a)
- Revised paragraph (b) to specify the initial enrollment period for those under age 65;
- Revised paragraph (d) to make clear that the "deemed" initial enrollment period applies only to those age 65 or over; and
- Expanded paragraph (e)(1) to include a definition of "large group health plan" (LGHP), because the "special enrollment period" provisions of the paragraph apply with respect to LGHPs as well as to the "employer group health plan" (EGHP) that was already defined in the paragraph.

d. We have expanded the "effect of enrollment" provisions of current § 406.21 to add the effect on the new under age 65 group, and redesignated all those provisions under a new § 406.22-Effect of month of enrollment on entitlement.

e. We have redesignated § 406.25 as § 406.28 (End of entitlement), and made the following changes:

- Revised paragraph (c) to make clear that loss of SMI benefits ends entitlement only for those age 65 or over; and
- Added a new paragraph (f) to specify that, for those under age 65, entitlement ends with the end of the month after the month in which the individual receives notice of medical improvement.

f. We have redesignated § 406.22 (Monthly premiums) as § 406.32 and added new paragraphs (e) and (f) to specify—

- The months for which premiums are due; and
- The option for public or private organizations to pay Part A premiums on behalf of individuals.

g. Since Part A premiums for QDWIs may not be paid under a State buy-in agreement, the Medicare rules need only make clear that individuals who qualify as QDWIs may not qualify as QMBs. This is accomplished by defining QDWIs and QMBs in § 400.200 of the HCFA rules.

B. Extension of Disability Reentitlement Period

1. Statutory Provision

Section 9010 of the Omnibus Budget Reconciliation Act of 1987 amended sections 223(a)(i) and sections 202 (d), (e), and (f) of the Act to extend the disability reentitlement period from 15 months to 36 months, effective January 1, 1988. Section 9010 also amended section 226(b) of the Act to stipulate that Medicare must end as though the reentitlement period was still only 15 months long.

2. Changes in the Regulations

We have revised § 406.12(e) to reflect the effect of the new provisions on Medicare entitlement.

C. Expansion of State Buy-in Options

1. Statutory Provisions

Prior to 1970 and again during 1981, States were permitted, under section 1843 of the Act, to request a buy-in agreement with the Secretary, or to request a modification to broaden an existing agreement. Under the agreement (or modified agreement) States could elect to enroll in Medicare Part B and pay Part B premiums for certain Medicaid recipients who were also eligible for Part B coverage. The States had two basic options with respect to buy-in: They could limit buy-in to Medicaid recipients who were cash assistance recipients or they could elect a broad buy-in group consisting of all Medicaid recipients who were also

eligible for Medicare Part B. Part B enrollment and premium payment under the section 1843 buy-in provisions is determined without regard to the enrollment and coverage period and the premium computation rules applicable to people who enroll for Part B on an individual basis. Some States have elected to buy-in only for their cash assistance recipients, while a number of others elected to buy-in for all Medicaid recipients who are eligible for Medicare Part B.

Section 301 of the MCCA amended section 1843 of the Act to—

- Provide that States may, at any time after 1988, request a buy-in agreement or a modification of an existing agreement; and
- Establish Qualified Medicare Beneficiaries (QMBs) [1] as a group for which States may pay Part B premiums through buy-in. This means that a State that has a buy-in agreement covering only cash assistance recipients may broaden that agreement to include QMBs or all Medicaid recipients.

With respect to Part B buy-in for QMBs, unless a State indicated to us that it wished to use a different method, we considered that the State had requested and been granted a modification of its buy-in agreement to include Part B premiums for QMBs, effective January 1, 1989. All States currently have such a modification in effect.

Section 6013 of OBRA '89 added to section 1818 of the Act a new subsection (g) which requires the Secretary, at the request of a State after 1989, to enter into a modification of its buy-in agreement under which the State may enroll QMBs in Part A and pay the Part A premiums on their behalf.

Before enactment of section 6013, an individual who failed to enroll for premium Part A during his or her initial enrollment period (generally the 7-month period surrounding the month of attainment of age 65) could enroll only during the annual 3-month (January–March) general enrollment period (GEP). Coverage based on a GEP enrollment is effective the following July 1. This meant that an individual who first met the QMB eligibility requirements (other than entitlement to Part A) shortly after March 31 could not enroll until the next GEP, with coverage beginning the following July, as many as 15 months after the individual met the income and resource standards for QMB status. In such cases, QMB status would be significantly delayed by the individual's inability to enroll in Part A outside a GEP.

Furthermore, if an individual enrolled in Part A more than one year after initial eligibility, the State have been required to pay a premium increased because of late enrollment. In States that elect the buy-in method, individuals can become entitled to Part A benefits when they first meet all other QMB eligibility requirements, without regard to the enrollment period and premium increase rules that apply to individual enrollment. In order to make this possible, we will consider that an individual who, as determined by the State, meets the QMB requirements becomes a QMB at the instant in which the buy-in becomes effective with respect to that individual. This is necessary because the Medicaid statute provides that an individual must be entitled to Medicare Part A in order to be a QMB, but only QMBs can qualify for enrollment outside the established initial and general enrollment periods. By considering that the individual's QMB status becomes effective at the same instant that the buy-in becomes effective, we can honor the intent of section 6013—to avoid delay in qualifying for QMB status.

The State buy-in procedure is the most efficient way for a State to obtain coverage and pay Part A premiums for QMBs, and most closely fulfills the intent of Congress that State payment of Part premium for QMBs begin without significant delays. According, we informed the States that we would consider all States to have requested modification of their buy-in agreements to cover Part A for QMBs, unless they notified us, by a specified date, that they did not wish to use the buy-in procedure. Following is a list of the 35 States that have buy-in agreement modifications to include payment of Part A premium for QMBs:

Alaska	Iowa	North Dakota
Arizona	Maine	Ohio
Arkansas	Maryland	Oklahoma
Connecticut	Massachusetts	Pennsylvania
Delaware	Michigan	Rhode Island
District of Columbia	Minnesota	South Dakota
Florida	Mississippi	Tennessee
Georgia	Montana	Vermont
Hawaii	Nevada	West Virginia
Idaho	New Hampshire	Washington
Indiana	New York	Wisconsin
	North Carolina	Wyoming

In general, for QMBs who meet the SMI or premium HI eligibility requirements, enrollment is effective with the month in which they are determined to have QMB status. However, if enrollment is under a State buy-in agreement, that enrollment cannot be effective until the effective month of the agreement modification that covers QMBs.

2. Changes in the Regulations

Changes required in the Medicaid rules for buy-in are included in a proposed rule (MB–024–P) that contains all of the Medicaid provisions applicable to QMBs. This document contains only the changes that affect the Medicare rules, specifically, part 406—Hospital Insurance Eligibility and Entitlement, and part 407—Supplementary Medical Insurance (SMI) Enrollment and Entitlement.

a. In § 400.200, we have added a definition of "Qualified Medicare Beneficiary" or "QMB."

b. In part 406, we have added a new § 406.26 to set forth the rules that apply when a State enrolls QMBs in premium hospital insurance (Premium HI) under a State buy-in agreement. Section 406.26 makes clear the following:

- Premium HI buy-in for QMBs is effective beginning in 1990.
- Buy-in coverage begins when the individual has QMB status and the agreement modification covering Part A premiums for QMBs is effective.
- Buy-in coverage ends when HCFA receives the State's notice of loss of QMB status, the buy-in agreement is terminated, or the individual becomes entitled to premium-free hospital insurance.
- When buy-in coverage ends, the individual is deemed to have enrolled during his or her initial enrollment period, in premium-HI, unless buy-in coverage ended because the individual had become eligible for premium-free hospital insurance; and
- The individual is free to terminate the deemed enrollment.

c. In § 407.40, (Enrollment under a State buy-in agreement), we have—

- Expanded the "Statutory basis" paragraph to refer to section 301 of the MCCA and section 6013 of OBRA '89; and
- Added a definition of "Qualified Medicare Beneficiary," citing § 400.200.

d. In §§ 407.42 and 407.43, we have added a new buy-in category: Individuals who are Qualified Medicare Beneficiaries, and footnoted this new category to indicate that the rules for buy-in for Part A benefits for QMBs are set forth in § 406.26 of the Medicare rules.

e. We have also taken advantage of this opportunity to simplify the terminology and the description of the buy-in groups.

[1] Section 9403 of the Omnibus Reconciliation Act of 1986 defined QMBs (in section 1905(p) of the Act) and gave States the option of paying Medicare cost-sharing on their behalf.

Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposal. The notice identifies the legal authority under which the rule is proposed, and the terms and substance of the proposed rule or a description of the subjects and issues involved. The proposed rulemaking procedure can be waived when an agency finds that it is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding of good cause in a final rule.

These rules conform HCFA regulations to three self-executing amendments to the Medicare law (title XVIII of the Social Security Act). These amendments to the Act are so specific and detailed that they leave little or no room for alternative interpretations or implementation. Accordingly, we find that there is good cause to dispense with proposed rulemaking as unnecessary.

However, as indicated under "Dates" above, we will consider timely comments. Although we cannot acknowledge comments individually, if we revise these regulations as a result of comments, we will discuss all timely comments in the preamble to the revised rules.

Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any rule that meets one of the E.O. 12291 criteria for a "major rule"; that is, that is likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This final rule specifies the requirements and procedures regarding premium hospital insurance for individuals under age 65. However, Medicare program costs will not increase since the individuals affected have been covered under premium free Part A and these rules permit Part A coverage to continue if certain conditions are met and premium payments are made.

This proposal also revises the rules on State buy-in for Qualified Medicare Beneficiaries (QMBs) under Medicare Parts A and B.

As a result of the Part A State buy-in, we expect that approximately 200,000 individuals will be added to the Medicare Part A rolls. It is estimated that, as a result of these new enrollees, Medicare Part A income and outlays will increase by $425 million. However, we do not project any significant increase in net Medicare program costs since the monthly Part A premium covers the estimated monthly average Medicare Part A expenditure per entitled aged beneficiary. If these enrollees have higher utilization rates or use higher cost services (by being sicker or older, or for any other reason) than the average Medicare Part A entitled aged beneficiary, then their costs would exceed the premium payments made on their behalf, resulting in an increase in net Medicare program costs; however, data to substantiate or refute this possibility is not available at this time.

We also do not have data to determine how the cost of the Part A premium compares to average Medicaid hospital costs per recipient for these new Part A enrollees. If these costs are comparable, then there will be no significant impact on Medicaid expenditures resulting from the Part A buy-in. To the extent these new enrollees have higher costs than the average Part A enrollee, Medicaid program costs will decrease; however, low Medicaid hospital reimbursement rates may result in an offsetting increase in program payments when Part A premium payments under the buy-in are substituted for direct provider reimbursement.

With regard to Medicare Part B, all States have buy-in agreements and will initially expend funds by paying premiums on behalf of QMB's. However, the States' financial burden for QMBs will ease as claims for services are submitted to Medicare for payment. The effects of Part B QMBs on Medicare expenditures will be discussed in a separate proposed rule, "Medicaid Payment of Medicare Cost Sharing for QMBs."

Since this rule does not meet any of the E.O. 12291 criteria listed above, this rule is not a major rule and a regulatory impact analysis is not required.

B. Regulatory Flexibility Act (RFA)

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (5 U.S.C. 601 through 612) unless the Secretary certifies that a rule will not have a significant economic impact on a substantial number of small entities or a significant impact on the operations of a substantial number of small rural hospitals. This rule affects only individuals and States. We have not prepared a regulatory flexibility analysis or rural impact statement because we have determined, and the Secretary certifies, that this rule will not have a significant impact on a substantial number of small entities or on the operations of a substantial number of small rural hospitals.

Paperwork Reduction Act

These regulations contain no new information collection requirements subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980.

List of Subjects

42 CFR Part 400

Grant programs—health, Health facilities, Health maintenance organizations (HMO), Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 406

Health facilities, Kidney diseases, Medicare.

42 CFR Part 407

Medicare Part B enrollment and entitlement, State buy-in agreements.

42 CFR chapter IV is amended as set forth below:

PART 400—INTRODUCTION; DEFINITIONS

1. The authority citation continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) and 44 U.S.C. Chapter 35.

§ 400.200 [Amended]

2. In § 400.200, the following statements and definitions are added, in alphabetical order:

* * * * *

QDWI stands for Qualified Disabled and Working Individual.

QMB stands for Qualified Medicare Beneficiary.

Qualified Disabled and Working Individual means an individual who—

(1) Is eligible to enroll for Medicare Part A under section 1818A of the Act.

(2) Has income, as determined in accordance with SSI methodologies, that does not exceed 200 percent of the Federal poverty guidelines (as defined and revised annually by the Office of Management and Budget) for a family of the size of the individual's family;

(3) Has resources, as determined in accordance with SSI methodologies, that

do not exceed twice the relevant maximum amount established, for SSI eligibility, for an individual or for an individual and his or her spouse; and

(4) Is not otherwise eligible for Medicaid.

Qualified Medicare Beneficiary means an individual who—

(1) Is entitled to Medicare Part A, with or without payment of premiums, but is not entitled solely because he or she is eligible to enroll as a QDWI;

(2) Has resources, as determined in accordance with SSI methodologies, that do not exceed twice the maximum amount established for SSI eligibility; and

(3) Has income, as determined in accordance with SSI methodologies, that does not exceed 100 percent of the Federal poverty guidelines.

* * * * *

PART 406—HOSPITAL INSURANCE ELIGIBILITY AND ENTITLEMENT

1. The table of contents is revised to read as follows:

Subpart A—General Provisions

Sec.
406.1 Statutory basis.
406.2 Scope.
406.3 Definitions.
406.5 Basis of eligibility and entitlement.
406.6 Application or enrollment.
406.7 Forms to apply for entitlement under Medicare Part A.

Subpart B—Hospital Insurance Without Premiums

406.10 Individual age 65 or over who is entitled to social security or railroad retirement benefits.
406.11 Individual age 65 or over who is eligible as a social security or railroad retirement beneficiary, or on the basis of government employment.
406.12 Individual under age 65 who is entitled to social security or railroad retirement disability benefits.
406.13 Individual who has end-stage renal disease.
406.15 Special provisions applicable to Medicare qualified government employment.

Subpart C—Premium Hospital Insurance

406.20 Basic requirements.
406.21 Individual enrollment.
406.22 Effect of month of enrollment on entitlement.
406.26 Enrollment under State buy-in.
406.28 End of entitlement.
406.32 Monthly premiums.
406.33 Determination of months to be counted for premium increase: Enrollment.
406.34 Determination of months to be counted for premium increase: Reenrollment.
406.38 Prejudice to enrollment rights because of Federal Government error.

Subpart D—Special Circumstances That Affect Entitlement to Hospital Insurance

406.50 Nonpayment of benefits on behalf of certain aliens.
406.52 Conviction of subversive activities.

Authority: Secs. 202(t), 202(u), 226, 226A, 1102, 1818, and 1871 of the Social Security Act (42 U.S.C. 402(t), 402(u), 426, 426–1, 1302, 1395i–2, and 1395hh) and 3103 of Pub. L. 89–97 (42 U.S.C. 426a) unless otherwise noted.

§ 406.1 [Amended]

2. In § 406.1, in line one, "and 1818" is changed to "1818 and 1818A".

3. Section 406.5 is amended by revising paragraph (b) to read as follows:

§ 406.5 Basis of eligibility and entitlement.

* * * * *

(b) *Premium hospital insurance.* Many individuals who are age 65 or over, but do not meet the requirements set forth in subpart B of this part, and certain individuals under age 65, may obtain the benefits by paying a premium. Section 406.20 of this part explains the requirements individuals must meet to obtain premium hospital insurance.

4. In § 406.12, paragraph (e) is revised to read as follows:

§ 406.12 Individual under age 65 who is entitled to social security or railroad retirement disability benefits.

* * * * *

(e) *Continuation of Medicare entitlement when disability benefit entitlement ends because of substantial gainful activity (SGA).*—(1) *Definitions.* As used in this section—

Trial work period means the 9-month period provided under title II of the Act and as defined 20 CFR 404.1592, during which the individual may test his or her ability to work and still receive disability cash benefits; and

Reentitlement period means a period as defined in 20 CFR 404.1592a that begins with the first month after the trial work period and ends with the 36th month after the trial work period or, if earlier, with the first month in which the impairment no longer exists or is no longer disabling. (During the reentitlement period, benefits may be discontinued because of SGA. However, if SGA is later discontinued, benefits may be restricted without a new application and a new disability determination.)

(2) *Duration of continued Medicare entitlement.* Effective January 1, 1988, if an individual's entitlement to disability benefits or status as a qualified disabled railroad retirement beneficiary ends because he or she engaged in, or demonstrated the ability to engage in, substantial gainful activity after the 36 months following the end of the trial work period, Medicare entitlement continues until the earlier of the following:

(i) The last day of the 24th month following the first month of SGA occurring after the 15th month of the individual's reentitlement period or, if later, the end of the month following the month the individual's disability benefit entitlement ends.

(ii) The last day of the month following the month in which notice is mailed to the individual indicating that he or she is no longer entitled to hospital insurance because of an event or circumstance (for example, there has been medical improvement, or the disabled widow has remarried) that would terminate disability benefit entitlement if it had not already been terminated because of substantial gainful activity.

5. Section 406.20 is revised to read as follows:

§ 406.20 Basic requirements.

(a) *General provisions.* Hospital insurance benefits are available to most individuals age 65 or over and to certain individuals under age 65 who do not qualify for those benefits under subpart B of this part and are willing to pay a monthly premium. This is called premium hospital insurance.

(b) *Eligibility of individuals age 65 or over to enroll for premium hospital insurance.* Any individual is eligible to enroll for Medicare Part A if he or she—

(1) Has attained age 65;

(2) Is a resident of the United States and is either—

(i) A citizen of the United States; or

(ii) An alien lawfully admitted for permanent residence who has resided in the United States continuously for the 5-year period immediately preceding the month in which he or she meets all other requirements;

(3) Is not eligible for Part A benefits under subpart B of this part; and

(4) Is entitled to supplementary medical insurance (Part B of Medicare) or is eligible and has enrolled for it during an enrollment period.

(c) *Eligibility of individuals under age 65 to enroll for premium hospital insurance.* An individual who has not attained age 65 is eligible to enroll for Medicare Part A if he or she—

(1) Has been entitled to Medicare Part A (under § 406.12 or § 406.15) on the basis of entitlement or deemed entitlement to social security disability benefits, as provided under section 226(b) of the Act.

(2) Continues to have a disabling physical or mental impairment.

(3) Loses entitlement to disability benefits (and therefore also loses entitlement to Medicare Part A under § 406.12) solely because his or her earnings exceed the amount allowed under the social security regulations pertaining to "substantial gainful activity" (20 CFR 404.1571–404.1574); and

(4) Is not otherwise entitled to Medicare Part A.

6. Section 406.21 is amended to revise the heading and paragraphs (a), (b), (d), and (e), to read as follows:

§ 406.21 Individual enrollment.

(a) *Basic provision.* An individual who meets the requirements of § 406.20 (b) or (c) may enroll for premium hospital insurance only during his or her "initial enrollment period", a "general enrollment period", or a "special enrollment period", as set forth in paragraphs (b) through (e) of this section.

(b) *Initial enrollment periods*—(1) *Initial enrollment period for individual age 65 or over.* The initial enrollment period extends for 7 months, from the third month before the month the individual first meets the requirements of § 406.20 (b)(1) through (b)(3) through the third month after that first month of eligibility.

(2) *Initial enrollment period of individual under age 65.* The initial enrollment period begins with the month in which the individual receives notice that entitlement to Medicare Part A will end because he or she has lost entitlement to disability benefits solely because of earnings in excess of the amounts allowed under the social security regulations on substantial gainful activity (20 CFR 404.1571–404.1574). It continues for 7 full months after that month.

* * * * *

(d) *"Deemed" initial enrollment period for individual age 65 or over.* If an individual who has attained age 65 fails to enroll during the initial enrollment period because of reliance on incorrect documentary information which led him or her to believe that he or she was not yet age 65, an initial enrollment period may be established for him or her as though he or she had attained age 65 on the date indicated by the incorrect documentary information.

(2) The deemed initial enrollment period will be used to determine the individual's premium and right to enroll in a general enrollment period if such use is advantageous to the individual.

(e) *Special enrollment period*—(1) *Terminology.* As used in this paragraph—

(i) *Active individual* means an employee, an employer, a self-employed individual (such as the employer), an individual associated with the employer in a business relationship, or a family member of any of these persons.

(ii) *Employer plan* has, to the extent not inconsistent with section 1837 of the Act, either of the following meanings:

(A) *Employer group health plan* (EGHP), as defined in section 5000(b)(1) of the Internal Revenue Code (IRC) of 1986 which reads: "* * * 'group health plan' means any plan of, or contributed to by, an employer, to provide medical care * * * to his employees, former employees, or the families of such current or former employees, directly, or through insurance, reimbursement or otherwise.".

(B) *Large group health plan* (LGHP), as defined in section 5000(b)(2) of the IRC of 1986, which reads: "* * * a plan of, or contributed to by an employer or employee organization * * * to provide health care * * * to the employees, former employees, the employer, others associated or formerly associated with the employer in a business relationship, or their families, that covers employees of at least one employer that normally employed at least 100 employees on a typical business day during the previous calendar year."

(iii) *Family member* means any person who is enrolled in an LGHP because of a relationship to an active individual, including, for example, a divorced or common-law spouse, a step-child, step-brother, or step-sister, or a natural, adopted, or foster child.

(iv) The phrase "plan of" encompasses a plan that is under the auspices of an employer who makes no financial contribution—a so-called "employee-pay-all" plan. Since section 1837(i)(1)(B) of the Act (which is made applicable to premium hospital insurance by section 1818 of the Act) requires that the individual be covered under the plan "by reason of the individual's or the individual's spouse's current employment", the "former employee" language of the IRC definition does not apply.

(v) "Special enrollment period" (SEP) is a 7-month period that begins when any individual is no longer covered by an EGHP based on the individual's or the individual's spouse's current employment; or when an individual under age 65 is no longer covered by a LGHP as an active individual.

(2) *Basic rule.* Effective August 1, 1986, individuals may enroll in premium hospital insurance during SEPs that are available to them if they meet the following requirements:

(i) When first eligible to enroll for premium hospital insurance under § 406.20 (b) or (c), the individual was—

(A) Covered under an EGHP, by reason of current employment of the individual or the individual's spouse; or

(B) Covered under an LGHP, as an active individual under age 65.

(ii) The EGHP and LGHP coverage has ended because of termination of the employment or for any other reason.

(3) *Beginning date of SEP.* If the individual enrolls during the month in which employer plan coverage ends, that month is considered the first month of the SEP. Otherwise, the SEP begins with the following month.

(4) *Effective date of coverage.* Enrollment during the first month of the SEP will result in coverage effective with the first day of that month; enrollment in the second through seventh months of the SEP will result in coverage effective with the month following the month of enrollment.

(5) *Limitation on right to subsequent SEPs.* Subsequent SEPs become available if the individual reacquires employer plan coverage based on current employment and later loses it. Generally, if an individual fails to enroll during any available SEP, no further SEPs become available. However, if an individual failed to enroll during a previous SEP because employer plan coverage (under the same or a different plan) was restored before the end of that SEP, that failure to enroll would not preclude another SEP now or in the future.

7. Section 406.22 is redesignated as § 406.32 and a new 406.22 is added, to read as follows:

§ 406.22 Effect of month of enrollment on entitlement.

(a) *Individual age 65 or over.* For an individual who has attained age 65, the following rules apply:

(1) If the individual enrolls during the 3 months before the first month of eligibility, entitlement begins with the first month of eligibility.

(2) If the individual enrolls in the first month of eligibility, entitlement begins with the following month.

(3) If the individual enrolls during the month after the first month of eligibility, entitlement begins with the second month after the month of enrollment.

(4) If the individual enrolls in either of the last 2 months of the enrollment period, entitlement begins with the third month after the month of enrollment.

(b) *Individual under age 65.* For an individual who has not attained age 65, the following rules apply:

(1) If the individual enrolls before the month in which he or she meets the requirements of § 406.20(c), entitlement begins with the month in which the individual meets those requirements.

(2) If the individual enrolls in the month in which he or she first meets the requirements of § 406.20(c), entitlement begins with the following month.

(3) If the individual enrolls in the month following the month in which he or she meets the requirements of § 406.20(c), entitlement begins with the second month after the month of enrollment.

(4) If the individual enrolls more than one month after the month in which he or she first meets the requirements of § 406.20(c), entitlement begins with the third month after the month of enrollment.

8. Section 406.26 is redesignated as § 406.38 and a new § 406.26 is added, to read as follows:

§ 406.26 Enrollment under State buy-in.

(a) *Enrollment of QMBs under a State buy-in agreement*—(1) *Effective date.* Beginning with calendar year 1990, a State may request and be granted a modification of its buy-in agreement to include enrollment and payment of Part A premiums for QMBs (as defined in section 1905(p)(1) of the Act) who can become entitled to Medicare Part A only by paying a premium.

(2) *Amount of premium.* Premiums paid under State buy-in are not subject to increase because of late enrollment or reenrollment.

(b) *Beginning of coverage under buy-in.* The coverage period begins with the latest of the following:

(1) The third month following the month in which the agreement modification covering QMBs is effectuated.

(2) The first month in which the individual is entitled to premium hospital insurance under § 406.20(b) and has QMB status.

(3) The date specified in the agreement modification.

(c) *End of coverage under buy-in.* Buy-in coverage ends with the earlier of the following:

(1) *Death.* Coverage ends on the last day of the month in which the QMB dies.

(2) *Loss of QMB status.* If the individual loses eligibility for QMB status, coverage ends on the last day of the month in which HCFA receives the State's notice of ineligibility.

(3) *Termination of buy-in agreement.* If the State's buy-in agreement is terminated, coverage ends on the last day of the last month for which the agreement is in effect.

(4) *Entitlement to premium-free Part A.* If the individual becomes entitled to premium-free Part A, buy-in coverage ends on the last day of entitlement to premium Part A.

(d) *Continuation of coverage: Individual enrollment following termination of buy-in coverage.*—(1) *Deemed enrollment.* If coverage under a buy-in agreement ends because the agreement is terminated or the individual loses QMB status, the individual—

(i) Is considered to have enrolled during his or her initial enrollment period; and

(ii) Is entitled to Part A benefits and liable for Part A premiums beginning with the first month for which he or she is no longer covered under the buy-in agreement.

(2) *Voluntary termination.* (i) An individual may voluntarily terminate entitlement acquired under paragraph (d)(1) of this section by filing, with SSA or HCFA, a request for disenrollment.

(ii) Voluntary disenrollment is effective as follows:

(A) If the individual files a request within 30 days after the date of HCFA's notice that buy-in coverage has ended, the individual's entitlement ends on the last day of the last month for which the State paid the premium.

(B) If the individual files the request more than 30 days but not more than 6 months after buy-in coverage ends, entitlement ends on the last day of the month in which the request is filed.

(C) If the individual files the request later than the 6th month after buy-in coverage ends, entitlement ends at the end of the month after the month in which request is filed.

9. Section 406.25 is redesignated as § 406.28, and amended to revise the heading, the introductory text, and paragraph (c), and add a new paragraph (f), to read as follows:

§ 406.28 End of entitlement.

Any of the following actions or events ends entitlement to premium hospital insurance:

* * * * *

(c) *End of entitlement to supplementary medical insurance (SMI) for individual who has attained age 65.* In the case of an individual enrolled on the basis of § 406.20(b), entitlement to premium hospital insurance ends on the same date that entitlement to SMI ends.

* * * * *

(f) *End of disabling impairment for individual under age 65.* In the case of an individual enrolled on the basis of § 406.20(c), entitlement to premium hospital insurance ends on the last day of the month after the month in which the individual is notified that he or she no longer has a disabling impairment.

10. In redesignated § 406.32, new paragraphs (e) and (f) are added, to read as follows:

§ 406.32 Monthly premiums.

* * * * *

(e) *Months for which payment is due.* (1) A premium payment is due for each month beginning with the first month of coverage and continuing through the month of death or if earlier, the month in which coverage ends.

(2) A premium is due for the month of death if coverage is still in effect, even if the individual dies on the first day of the month.

(f) *Option for group payments.* A public or private organization may pay the premiums on behalf of one or more enrollees under a contract or other arrangement with HCFA if HCFA determines that this method of payment is administratively feasible. (The rules set forth in subpart E of part 408 of this chapter, for SMI premiums, also apply to group payment of Part A premiums.)

PART 407—SUPPLEMENTARY MEDICAL INSURANCE (SMI) ENROLLMENT AND ENTITLEMENT

1. The authority citation continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) unless otherwise noted.

2. The table of contents of part 407, subpart C is amended by revising the headings of §§ 407.42 and 407.43 to read as follows:

* * * * *

Subpart C—State Buy-in Agreements

* * * * *

407.42 Buy-in groups available to the 50 States, the District of Columbia, and the Northern Mariana Islands.

407.43 Buy-in groups available to Puerto Rico, Guam, the Virgin Islands, and American Samoa.

* * * * *

3. Section 407.40 is revised to read as follows:

§ 407.40 Enrollment under a State buy-in agreement.

(a) *Statutory basis.* (1) Section 1843 of the Act, as amended through 1969, permitted a State to enter into an agreement with the Secretary to enroll in the SMI program certain individuals who are eligible for SMI and who are members of the buy-in group specified in the agreement. A buy-in group could include certain individuals receiving Federally-aided State cash assistance

(with the option of excluding individuals also entitled to social security benefits or railroad retirement benefits) or could include all individuals eligible for Medicaid. Before 1981, December 31, 1969 was the last day on which a State could request a buy-in agreement or a modification to include a coverage group broader than the one originally selected.

(2) Section 945(e) of the Omnibus Reconciliation Act of 1980 (Pub. L. 96–499) further amended section 1843 to provide that, during calendar year 1981, a State could request a buy-in agreement if it did not already have one, or request a broader coverage group for an existing agreement.

(3) Several laws enacted during 1980–1987 had the effect of requiring that the buy-in groups available under section 1843 of the Act be expanded to include certain individuals who lose eligibility for cash assistance payments but are treated as if they were cash assistance recipients for Medicaid eligibility purposes.

(4) Section 301(e)(1) of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100–360) amends section 1843 of the Act to restore the 1981 provisions on a permanent basis, effective "after 1988."

(5) The same section 301, as amended by sections 608(d)(14)(H) of the Family Support Act of 1988 (Pub. L. 100–485), further amended section 1843 of the Act, beginning January 1, 1989, to establish a new buy-in category consisting of Qualified Medicare Beneficiaries and to provide that a State may request a buy-in agreement if it does not already have one, or request a broader buy-in group for the existing agreement.

(b) *Definitions.* As used in this section, unless the context indicates otherwise—

Cash assistance means any of the following kinds of monthly cash benefits, authorized by specified titles of the Act and, for convenience, represented by initials, as follows:

AABD stands for aid to the aged, blind or disabled under the first title XVI of the Act in effect until December 31, 1973.

AB stands for aid to the blind under title X of the Act.

AFDC stands for aid to families with dependent children under Part A of title IV of the Act.

APTD stands for aid to the permanently and totally disabled under title XIV of the Act.

OAA stands for old-age assistance under title I of the Act.

SSI stands for supplemental security income for the aged, blind, and disabled under the second title XVI of the Act, effective January 1, 1974.

SSP stands for State supplementary *Qualified Medicare Beneficiary* or *QMB* means an individual who meets the definition in § 400.200 of this chapter and, therefore, is eligible to have the State Medicaid agency pay Medicare cost sharing amounts on his or her behalf.

Railroad retirement beneficiary means an individual entitled to receive an annuity under the Railroad Retirement Act of 1974.

State means one of the 50 States, the District of Columbia, Guam, Puerto Rico, the Virgin Islands, American Samoa, or the Northern Mariana Islands, except when reference is made to "the 50 States".

State buy-in agreement or *buy-in agreement* means an agreement authorized by section 1843 of the Act, under which a State secures SMI or premium HI coverage for individuals who are members of the buy-in group specified in the agreement, by enrolling them and paying the premiums on their behalf.

(c) *Basic rules.*

(1) A State that has a buy-in agreement in effect must enroll any individual who is eligible to enroll in SMI under § 407.10.

(2) Any State that does not have a buy-in agreement in effect may request buy-in for any one of the groups specified in §§ 407.42 and 407.43.

(3) Any State that does have an agreement may request a modification to cover a broader buy-in group or cancel its current agreement and request a new agreement to cover a narrower group.

4. Section 407.42 is revised to read as follows:

§ 407.42 Buy-in groups available to the 50 States, the District of Columbia, and the Northern Mariana Islands.

(a) *Categories included in the buy-in groups.* The buy-in groups that are available to the 50 States, the District of Columbia, and the Northern Mariana Islands are specified in paragraph (b) of this section in terms of the following categories:

(1) *Category A:* Individuals who—

(i) Receive SSI or SSP or both; and

(ii) Are covered under the State's Medicaid plan as categorically needy.

(2) *Category B:* Individuals who—

(i) Under the Act or any other provision of Federal law are treated, for Medicaid eligibility purposes, as though they were receiving SSI or SSP; and

(ii) Are covered under the State's Medicaid plan as categorically needy.

(3) *Category C:* Individuals who are receiving AFDC.

(4) *Category D:* Individuals who, under the Act or any other provision of Federal law, are treated, for Medicaid eligibility purposes, as though they were receiving AFDC.

(5) *Category E:* Individuals who, in accordance with § 435.114 or § 435.134 of this chapter, are covered under the State's Medicaid plan despite the increase in social security benefits provided by Public Law 92–336.

(6) *Category F:* Individuals who are Qualified Medicare Beneficiaries.[1]

(7) *Category G:* All other individuals who are eligible for Medicaid.

(b) *Buy-in groups available.* Any of the 50 States, the District of Columbia, and the Northern Mariana Islands may buy-in for one of the following groups:

(1) *Group 1:* Categories A through G.

(2) *Group 2:* Categories A through F.

(3) *Group 3:* Categories A through E.

(4) *Group 4:* Categories A, B, and F, individuals in categories C and D who are not social security or railroad retirement beneficiaries, and individuals in category E who are included in that category (in accordance with § 435.134 of this chapter) because they received OAA, AB, APTD, or AABD in August 1972 or would have been eligible to receive such cash assistance for that month if they had applied or had not been institutionalized.

(5) *Group 5:* Categories A and B, individuals in categories C and D who are not social security or railroad retirement beneficiaries, and individuals in category E who are included in that category (in accordance with § 435.134 of this chapter) because they received OAA, AB, APTD, or AABD in August 1972 or would have been eligible to receive such cash assistance for that month if they had applied or had not been institutionalized.

(6) *Group 6:* Categories A, B, and F, and individuals in category E who are included in that category (in accordance with § 435.134 of this chapter) because they received AABD in August 1972 or would have been eligible to receive AABD for that month if they had applied or had not been institutionalized. This option is available only to those States that had an AABD program as of December 31, 1973.

(7) *Group 7:* Categories A and B, and individuals in category E who are included in that category (in accordance with § 435.134 of this chapter) because they received AABD in August 1972 or would have been eligible to receive AABD for that month if they had applied or had not been institutionalized. This

[1] Rules for buy-in for premium hospital insurance for QMBs are set forth in § 406.26 of this chapter.

option is available only to those States that had an AABD program as of December 31, 1973.

5. Section 407.43 is revised to read as follows:

§ 407.43 Buy-in groups available to Puerto Rico, Guam, the Virgin Islands, and American Samoa.

(a) *Categories included in buy-in groups.* The buy-in groups that are available to Puerto Rico, Guam, the Virgin Islands, and American Samoa, which are not covered by the SSI program, are described in paragraph (b) of this section in terms of the following categories:

(1) *Category A:* Individuals receiving OAA, AB, APTD, or AFDC.

(2) *Category B:* Individuals who, under the Act or any other provision of Federal law, are treated, for Medicaid eligibility purposes, as though they were receiving AFDC.

(3) *Category C:* Individuals who, in accordance with § 436.112 of this chapter, are covered under the State's Medicaid plan despite the increase in social security benefits provided by Public Law 92–336.

(4) *Category D:* Individuals who are Qualified Medicare Beneficiaries.[2]

(5) *Category E:* All other individuals who are eligible for Medicaid.

(b) *Buy-in groups available.* Puerto Rico, Guam, the Virgin Islands, and American Samoa may choose any of the following coverage groups:

(1) *Group 1:* Categories A through E.

(2) *Group 2:* Categories A through D.

(3) *Group 3:* Categories A through C.

(4) *Group 4:* Individuals in category D, and individuals in categories A and B who are not social security or railroad retirement beneficiaries.

(5) *Group 5:* Individuals in categories A and B who are not social security or railroad retirement beneficiaries.

(6) *Group 6:* Individuals in category D, individuals in category A who are receiving OAA, and individuals in category C who are included in that category (in accordance with § 436.112 of this chapter) because they received OAA for August 1972 or would have been eligible to receive OAA for that month if they had applied or had not been institutionalized.

(7) *Group 7:* Individuals in category A who are receiving OAA, and individuals in category C who are included in that category (in accordance with § 436.112 of this chapter) because they received OAA for August 1972 or would have been eligible to receive OAA for that month if they had applied or had not been institutionalized.

(8) *Group 8:* Individuals in category D and individuals in category A who are receiving OAA and are not social security or railroad retirement beneficiaries.

(9) *Group 9:* Individuals in category A who are receiving OAA and are not social security or railroad retirement beneficiaries.

6. Section 407.47 is revised to read as follows:

§ 407.47 Beginning of coverage under a State buy-in agreement.

(a) *General rule.* The beginning of an individual's coverage period depends on two factors:

(1) The individual's meeting the SMI eligibility requirements and the requirements for being a member of the buy-in group; and

(2) The effective date of the buy-in agreement or agreement modification that covers the group to which the individual belongs, and which may not be earlier than the third month after the month in which the agreement or modification is executed.

(b) *Application of general rule: Medicaid eligibles who are, or are treated as, cash assistance recipients.* For Medicaid eligibles who are, or are treated as, cash assistance recipients (that is, are members of categories A through E of § 407.42(a) or categories A through C of § 407.43(a)), coverage begins with the later of the following:

(1) The first month in which the individual—

(i) Meets the SMI eligibility requirements specified in § 407.10; and

(ii) Is a member of one of those categories.

(2) The month in which the buy-in agreement is effective.

(c) *Application of general rule: Qualified Medicare Beneficiaries.* For individuals who are QMBs (that is, are members of category F of § 407.42 or category D of § 407.43(a)), coverage begins with the later of the following:

(1) The first month in which the individual meets the SMI eligibility requirements specified in § 407.10, and has QMB status.

(2) The month in which the buy-in agreement or agreement modification covering QMBs is effective.

(d) *Application of general rule: Other individuals eligible for Medicaid.* For individuals who are members of category G of § 407.42(a) or category E of § 407.43(a), coverage begins with the later of the following:

(1) The second month after the month in which the individual—

(i) Meets the SMI eligibility requirements specified in § 407.10; and

(ii) Is determined to be eligible for Medicaid.

(2) The month in which the buy-in agreement or agreement modification is effective.

(e) *Coverage based on erroneous report.* If the State erroneously reports to SSA that an individual is a member of its coverage group, the rules of paragraphs (a) through (d) of this section apply, and coverage begins as though the individual were in fact a member of the group. Coverage will end only as provided in § 407.48.

7. Section 407.48 is amended by revising paragraphs (c) introductory text, and (d) to read as follows:

§ 407.48 Termination of coverage under a State buy-in agreement.

* * * * *

(c) *Loss of eligibility for the buy-in group.* If an individual loses eligibility for inclusion in the buy-in group, buy-in coverage ends as follows:

* * * * *

(d) *Termination or modification of buy-in agreement.* If the State's buy-in agreement is terminated, or modified to substitute a narrower buy-in group, coverage ends on the last day of the last month for which the agreement was in effect, or covered the broader buy-in group.

8. Section 407.50 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 407.50 Continuation of coverage: Individual enrollment following end of coverage under a State buy-in agreement.

(a) *Deemed enrollment.* When coverage under a buy-in agreement ends because the agreement terminates, or is modified to substitute a narrower buy-in group, or because the individual is no longer eligible for inclusion in the buy-in group, the individual—

* * * * *

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare-Hospital Insurance, and No. 13.774, Medicare-Supplementary Medical Insurance)

Dated: October 8, 1990.

Gail R. Wilensky,

Administrator, Health Care Financing Administration.

Approved: March 26, 1991.

Louis W. Sullivan,

Secretary.

[FR Doc. 91–19009 Filed 8–9–91; 8:45 am]

BILLING CODE 4120–01–M

[2] Rules for buy-in for premium hospital insurance for QMBs are set forth in § 406.26 of this chapter.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6866

[WY-930-4214-10; WYW 84553]

Partial Revocation of Executive Order No. 5327 as Amended by Public Land Order No. 4522; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a public land order insofar as it affects 30 acres of public land withdrawn from lease or other disposal of oil shale deposits. The land is no longer needed for the purpose for which it was withdrawn. The revocation is necessary to permit disposal of the land through a land sale under section 203 of the Federal Land Policy and Management Act of 1976. This action will open 30 acres to surface entry, mining, and mineral leasing for minerals other than oil, gas, and sodium. They have been and remain open to oil, gas, and sodium leasing unless segregated by other action or policy.

EFFECTIVE DATE: September 11, 1991.

FOR FURTHER INFORMATION CONTACT: Tamara Gertsch, BLM, Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6115.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Executive Order No. 5327, as amended by Public Land Order No. 4522, which withdrew public land from lease or other disposal of oil shale deposits, is hereby revoked insofar as it affects the following described land:

Sixth Principal Meridian

T. 19 N., R. 105 W.,
Sec. 8, S½N½SE¼SE¼, S½SE¼SE¼.

The area described contains 30 acres in Sweetwater County.

2. At 9 a.m. on September 11, 1991, the public land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of the record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on September 11, 1991 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 9 a.m. on September 11, 1991, the public land will be opened to mining location and to mineral leasing for minerals other than oil, gas, and sodium. Appropriation of the land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. sec. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: July 26, 1991.

Dave O'Neal,

Assistant Secretary of the Interior.

[FR Doc. 91–19095 Filed 8–9–91; 8:45 am]

BILLING CODE 4310–22–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 87

[PR Docket No. 90–340; FCC 91–216]

Amendment of the Aviation Services Rules concerning the frequency tolerance for VHF aircraft radios

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In 1984 the Commission amended the Aviation Services Rules to conform to the Final Acts of the 1979 WARC. Among other things, the frequency tolerance requirements of VHF aircraft radio stations was changed from a maximum 50 parts per million (ppm) to 30 ppm for transmitters installed after January 1, 1985, and for all transmitters after January 1, 1990. As a result of a petition by the aviation interests, the Commission extended the January 1, 1990, effective date on January 1, 1992, and the Commission issued a Notice of Proposed Rule Making (Notice) in PR Docket No. 90–340, proposing to "grandfather" installed aircraft radio stations. The instant Report and Order "grandfathers" the subject aircraft radio stations until January 1, 1997.

EFFECTIVE DATE: September 19, 1991.

FOR FURTHER INFORMATION CONTACT: William P. Berges, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632–7175.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order in PR Docket No. 90–340, FCC 91–216, adopted July 11, 1991, and released August 5, 1991. The full text of this Commission decision, including the adopted rule changes, 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 of this rule making may also be purchased from the Commission's copy contractor, Downtown Copy Center, (202) 452–1422, 1114 21st Street, NW., Washington, DC 20036.

Summary of Report and Order

1. In response to a written request filed by the Aircraft Owners and Pilots Association, the Experimental Aircraft Association, the General Aviation Manufacturers Association and the Helicopter Association International, the Commission released a Notice, PR Docket No. 90–340, 55 FR 31859 (1990), which proposed to allow currently installed radios operating with 50 ppm frequency tolerance to be used indefinitely, in lieu of the FCC Rule which would have required all radios to meet a 30 ppm frequency tolerance by January 1, 1990. The 50 ppm frequency tolerance is associated with radios that are designed to operate on channel spacing every 50 kHz and generally have 360 channels. The 30 ppm frequency tolerance is associated with radios that are designed to operate on channels spaced every 25 kHz and have 720 channels. The Commission emphasized, however, that the FAA is implementing 25 kHz spaced channels nationwide and aircraft flying into FAA controlled airspace may encounter rerouting and other delays unless equipped with 25 kHz spaced radios.

2. The Commission noted that the FAA has not yet implemented 25 kHz channel assignments nationwide and that there are aircraft operations in many rural areas that do not need 720 channels and concluded that a reasonable compromise was to "grandfather" 50 ppm transmitters for an additional 5 years. This Report and Order "grandfathers" until January 1, 1997, all VHF aircraft radios with 50 ppm frequency tolerance and 50 kHz channel spacing that were installed prior to January 2, 1985.

3. In accordance with the authority contained in section 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

It is ordered That part 87 of the Commission's Rules is amended as shown at the end of this document on the date shown on the "EFFECTIVE DATE" paragraph of this document.

It is further ordered That a copy of this Report and Order will be served the Chief Counsel for Advocacy of the Small Business Administration.

It is further ordered That this proceeding is terminated.

List of Subjects in 47 CFR Part 87

Aviation services, Aeronautical mobile stations, Radio.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Rule Changes

Part 87 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 87—AVIATION SERVICES

1. The authority citation for part 87 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–156, 301–609.

2. Section 87.133(a) is amended by adding footnote 10 to the table in paragraphs (a)(5) and (a)(6) to read as follows:

§ 87.133 Frequency stability.

(a) * * *

Frequency band (lower limit exclusive, upper limit inclusive), and categories of stations.	Tolerance [1].	Tolerance [2]
(5) * * *		
Aircraft and other mobile stations in the Aviation Services.	50 [5].....	30 [10]
* * * * *		
(6) * * *		
Aircraft stations.....	50 [5].....	30 [10]
* * * * *		

[1] This tolerance is the maximum permitted until January 1, 1990, for transmitters installed before January 2, 1985, and used at the same installation. Tolerance is indicated in parts in 10^6 unless shown as Hertz (Hz).

[2] This tolerance permitted after January 1, 1985, for new and replacement transmitters and to all transmitters after January 1, 1990. Tolerance is indicated in parts in 10^6 unless shown in Hertz (Hz).

* * * * *

[5] The tolerance for transmitters type accepted after January 1, 1974, is 30 parts in 10^6.

[6] In the 5000 to 5250 MHz band, the FAA requires tolerance of ±10 kHz for Microwave Landing System stations which are to be a part of the National Airspace System (FAR 171).

* * * * *

[10] Until January 1, 1997, the maximum frequency tolerance for transmitters with 50 kHz channel spacing installed before January 2, 1985, is 50 parts in 10^6.

* * * * *

[FR Doc. 91–19002 Filed 8–9–91; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 82–05; Notice 4]

RIN 2127–AA46

Federal Motor Vehicle Safety Standards; Seating Reference Point

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

ACTION: Final rule.

SUMMARY: This rule amends the definition of "seating reference point," a term used in this agency's safety standards. "Seating reference point" identifies a single adjustment point for each seating position. That point is used in determining if the vehicle complies with requirements set forth in several of the safety standards.

This rule amends the definition of "seating reference point" to clarify that it is not necessarily the absolute rearmost point to which a seat can be adjusted. This rule also amends the definition to provide that the "seating reference point" is established using 95th percentile adult male leg segments, instead of the smaller 90th percentile adult male leg segments specified in the current definition.

DATES: The amendment to the definition of "seating reference point" made in this rule is effective as of September 1, 1992. At their option, manufacturers may begin using the post-September 1992 definition, in place of the current one, after September 11, 1991.

Any petitions for reconsideration of this rule must be received by NHTSA no later than September 11, 1991.

ADDRESSES: Any petitions for reconsideration should refer to Docket No. 82–05; Notice 4 and be submitted to: NHTSA Docket Section, room 5109, 400 Seventh Street SW., Washington, DC 20590. (Docket hours are 9:30 am to 4 p.m. Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Jere Medlin, Crash Avoidance Division, NRM–11, room 5307, NHTSA, 400 Seventh Street SW., Washington, DC 20590 (202–366–5276).

SUPPLEMENTARY INFORMATION:

Seating Reference Point

For the purposes of the Federal Motor Vehicle Safety Standards, the term *seating reference point* is currently defined in 49 CFR 571.3 as:

[T]he manufacturer's design reference point which—

(a) Establishes the rearmost normal design driving or riding position of each designated seating position in a vehicle;

(b) Has coordinates established relative to the designed vehicle structure;

(c) Simulates the position of the pivot center of the human torso and thigh; and

(d) Is the reference point employed to position the two dimensional templates described in SAE Recommended Practice J826, Manikins for Use in Defining Vehicle Seating Accommodations, November 1962.

The four conditions set forth in the definition of "seating reference point" are intended to ensure that only one point will be the "seating reference point" for any seating position in a motor vehicle, and to ensure that all parties can agree where that one point is located for a particular seating position. The "seating reference point" is used, either directly or indirectly, as a reference point in determining compliance with several of the agency's safety standards. Standards No. 102 and 104 each use the "seating reference point" as a reference point to define a field of view or certain areas of the windshield that must comply with specified requirements. Standards No. 201, 202, 207, and 210 each use the "seating reference point" as a reference point for determining the components that are subject to the requirements of the standard or for positioning the seats to determine compliance with the requirements of the standard.

Rulemaking History

In 1980, Mercedes-Benz of North America, Inc. (Mercedes) petitioned the agency to amend the definition of "seating reference point" to specify 95th percentile thigh and lower leg segments in determining the location of the "seating reference point." In 1982, in response to the Mercedes petition, the agency published an advance notice of proposed rulemaking (ANPRM) stating that the "seating reference point" is not necessarily the absolute rearmost position to which a seat can be adjusted and that the agency intended to issue a notice of proposed rulemaking (NPRM) to change the definition of "seating reference point" (47 FR 9865; March 8, 1982). The purpose of the ANPRM was to allow interested parties an opportunity to raise issues and provide information that the agency should consider when formulating its proposal.

After evaluating the comments received on the ANPRM, the agency published an NPRM which differed substantially from the ANPRM (51 FR 20536; June 5, 1986). The NPRM stated

that the interpretation in the ANPRM that "seating reference point" was not necessarily the absolute rearmost position of the seat was incorrect. The new interpretation was based on two circumstances. First, Standard No. 210 used the SRP as its reference point and required the seat to be in its rearmost position. Thus, the location dictated by Standard No. 210 would prevent a manufacturer from establishing a seating position rearward of the SRP. Second, the agency surveyed the location of the SRP in vehicles in the most recent compliance testing program and discovered that all manufacturers had determined the SRP with the seat in its rearmost position. In addition, the agency was concerned that the ANPRM interpretation could lead a manufacturer to conclude that a seating position rearward of the SRP could be occupied while the vehicle was in motion. This could result in an upper anchorage location being forward of the occupant's shoulder, resulting in increased head movement and potentially increasing the risk of head injury.

Because the agency had determined that the location of the SRP should always be determined with the seat in its rearmost position, the agency proposed to delete the reference to leg segment length in the definition. Leg segment length was used in the current definition to determine the seat adjustment position used to locate the SRP. Since the NPRM proposed to specify the seat adjustment position at which the SRP was located as the rearmost position, there was no longer any need to refer to a particular leg segment length.

After further consideration, the agency tentatively concluded that the NPRM approach was not the best approach for this rulemaking. The agency decided that there were simpler, but equally effective, ways of ensuring that seats are positioned in the rearmost position for determining the upper anchorage locations in Standard No. 210. In April 1990, the agency published a final rule amending Standard No. 210 so that it no longer referred to "seating reference point" (55 FR 17970). In September 1990, the agency published a supplementary notice of proposed rulemaking (SNPRM) on the definition of "seating reference point," proposing to return to the approach originally discussed in the ANPRM (55 FR 37719). The definition proposed in the SNPRM was based upon the recommended practice of the Society of Automotive Engineers (SAE). (For interested parties, the history of this rulemaking is explained in greater detail in the SNPRM.)

NHTSA received 10 comments in response to the SNPRM. Eight of the nine automotive manufacturers who commented on the SNPRM unanimously supported adopting the proposed definition. Mercedes supported "the Agency's approach to clarifying the inconsistencies related to the definition of the seating reference point," but recommended the adoption of the wording they suggested in their comments on the NPRM. The only other commenter, the Automotive Occupants Restraints Council, deferred to the responses of the vehicle manufacturers. Commenters also raised six other issues relevant to this rulemaking, which are discussed below.

Comments

1. Adopt Mercedes Definition for the "Seating Reference Point"

Although Mercedes supported "the Agency's approach to clarifying the inconsistencies related to the definition of the seating reference point," they recommended adoption of their wording of paragraph (a), as suggested in their comments of May 5, 1983, to Docket 82–05, Notice 2:

"(a) Establishes the rearmost normal design driving or riding position as stipulated by the manufacturer, which accounts for all modes of cushion adjustment—including horizontal, vertical, and tilt—that are available in the seat, but not to include seat track travel used for purposes other than normal driving and riding positions."

The language preferred by Mercedes attempts to further clarify that the "seating reference point" is established by the manufacturer and is not the absolute rearmost point to which a seat can be adjusted.

Paragraphs (a), (b), (c), and (d)(1) of NHTSA's proposed definition are nearly identical with the SAE definition. In addition, all of the commenters except Mercedes supported the definition as proposed. Mercedes' recommendation that the agency adopt their unique language appears based upon preference only, and does not appear to significantly improve or clarify the proposed definition of "seating reference point" as proposed.

2. Adoption of "(SgRP)" in the Definition of "Seating Reference Point"

General Motors (GM) recommended that the agency adopt the phrase "(SgRP)" that is found after the wording "seating reference point" in SAE J1100 Jun84. GM stated that this would further clarify the meaning of the wording used in the standard and parallel current industry practice. GM stated that the "SRP" acronym used by NHTSA when referring to "seating reference point" may create confusion in some situations because GM and others in the industry use the "SRP" acronym to refer to the absolute rearmost position for the seat.

In the SNPRM, the agency stated that the proposed "definition of SRP is similar to the SgRP concept used by the SAE." In fact, the two definitions are virtually identical. Since the inclusion of the phrase "(SgRP)" in the definition would not change its meaning or require any additional modifications to any safety standards, the agency has decided to include the phrase to avoid any possible confusion. Hereinafter, the phrase "SgRP" will be used for the term "seating reference point" in this notice.

3. Allow Use of Either the Present or Proposed Definition of "Seating Reference Point"

In its comments, Volvo requested that manufacturers be allowed to choose between either the present or proposed definition in the future. Volkswagen stated that the final rule should allow immediate optional compliance with either the present or proposed definition.

The only reason offered by Volvo to support its suggestion was that manufacturers would not have to recertify their vehicles. The agency does not find this to be a compelling argument. Any rulemaking may require that manufacturers recertify their vehicles. In addition, four of the commenters (Chrysler, Ford, Volkswagen, and Freightliner) indicated that this rulemaking would have little or no effect on their current practices.

Volkswagen requested that the Final Rule allow optional use of either definition from publication of the final rule until the September 1, 1992 effective date. This would allow manufacturers who can comply with the 95th percentile location without product design changes to harmonize with European requirements as soon as possible. The agency finds this request to be reasonable.

Since no commenter suggested that the proposed September 1, 1992 effective date was not reasonable, it has been adopted. In addition, optional use of the new definition is permissible effective September 11, 1991.

4. Revision of Other Safety Standards

The SNPRM requested comments on whether adoption of the proposed change to the SgRP definition would create a need to amend safety standards which currently use the seating

reference point or similar terminology. Commenters raised issues involving several standards.

GM recommended modifications of Standard No. 104, Windshield Wiping and Washing Systems. GM stated:

"FMVSS No. 104 and, by reference, FMVSS No. 103 substitute the term "seating reference point" for the terms "manikin H point" and "H point" wherever either of those terms appears in any SAE Standard or Recommended Practice referred to in the standard. This substitution of terms results in references to "seating reference point with seat in rearmost position" (SAE Recommended Practice J903a, Figure 1). This terminology is potentially internally contradictory when the "seating reference point" is defined to permit a location at some point other than the rearmost position of the seat."

NHTSA agrees with GM that the amended definition of SgRP will create potentially contradictory references in Standard No. 104. Elsewhere in today's edition of the Federal Register, the agency has published an NPRM proposing to amend S3 of Standard No. 104.

In its comments, Mercedes requested revisions of Standards No. 103, 104, 107, and 111 "to permit the use of the Eyellipse and Head Contour Locator Line—Adjustable Seats as described in the newest version of SAE J941, October 1985." These standards all use SAE J941, November 1965 to determine the location for either the 95th or 99th percentile eye range contour (eyellipse). This SAE Recommended Practice requires the seat to be in its rearmost position. Since "seating reference point" is not referenced, NHTSA does not believe that it would be appropriate to address amendment of any of these standards in the rulemaking to amend Standard No. 104.

5. Reference Updated Version of SAE J1100

Volkswagen commented that SAE J1100 JUN84 was presently being updated by the SAE, and recommended that the updated version be substituted if available. NHTSA has contacted the SAE and been informed that the June 1984 version of SAE J1100 is the most recently approved version.

6. Correction of Typographical Error

Volkswagen pointed out that paragraph (b)(4) of the proposed definition inaccurately references "SAE J826" as "SEA J826." This typographical error has been rectified in the final rule.

7. Seat Location of Standard No. 210 Upper Anchorage Requirements

Mercedes also submitted comments concerning the April 30, 1990 amendment of Standard No. 210 (Docket 87–02; Notice 2). These comments were also submitted by Mercedes during the Standard No. 210 rulemaking and were addressed in the preamble to the Final Rule (55 FR 17970; April 30, 1990).

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has examined the impact of this final rule and determined that it is neither major within the meaning of Executive Order 12291, nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The new definition of SgRP will make NHTSA's regulatory definition consistent with existing industry practice in designing vehicles without adversely affecting safety. Therefore, no increase or decrease in cost for manufacturers is anticipated for this rule. Accordingly, NHTSA has not prepared a full regulatory evaluation.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this final rule under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. To the extent that any vehicle manufacturers qualify as small entities, their number would not be substantial. In any event, the agency does not anticipate that any economic impacts will be associated with this rule, as explained above. Accordingly, this new definition will not affect the purchase price of new motor vehicles purchased by small organizations and small governmental units.

National Environmental Policy Act

NHTSA has also analyzed this rule under the National Environmental Policy Act and determined that it will not have a significant impact on the human environment.

Executive Order 12612 (Federalism)

Finally, NHTSA has analyzed this rule in accordance with the principles and criteria contained in Executive Order 12612, and has determined that this rule does not have significant federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 571

Imports, Motor Vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA part 571 of title 49 of the Code of Federal Regulations is amended as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 continues to read as follows:

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

2. Section 571.3 is amended by revising the definition of "seating reference point" in paragraph (b). The amendment is effective on and after September 1, 1992 and may be used at the manufacturer's option on or after September 11, 1991. As revised, the definition reads as follows:

§ 571.3 Definitions.

* * * * *

(b) *Other definitions.* * * *

Seating reference point (SgRP) means the unique design H-point, as defined in SAE J1100 (June 1984), which:

(a) Establishes the rearmost normal design driving or riding position of each designated seating position, which includes consideration of all modes of adjustment, horizontal, vertical, and tilt, in a vehicle;

(b) Has X, Y, and Z coordinates, as defined in SAE J1100 (June 1984), established relative to the designed vehicle structure;

(c) Simulates the position of the pivot center of the human torso and thigh; and

(d) Is the reference point employed to position the two-dimensional drafting template with the 95th percentile leg described in SAE J826 (May 1987), or, if the drafting template with the 95th percentile leg cannot be positioned in the seating position, is located with the seat in its most rearward adjustment position.

* * * * *

Issued on: August 6, 1991.

Jerry Ralph Curry,

Administrator.

[FR Doc. 91–19015 Filed 8–9–91; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 910498–1098]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

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

ACTION: Notice of closure.

SUMMARY: NOAA announces the closure of the recreational salmon fishery in the

exclusive economic zone (EEZ) from Cape Alava to the Queets River, Washington, at midnight, July 30, 1991, to ensure that the coho salmon quota is not exceeded. The Director, Northwest Region, NMFS (Regional Director), has determined that the recreational fishery quota of 4,800 coho salmon for the subarea will be reached by midnight, July 30, 1991. The closure is necessary to conform to the preseason announcement of 1991 management measures. This action is intended to ensure conservation of coho salmon.

DATES: *Effective:* Closure of the EEZ from Cape Alava to the Queets River, Washington, to recreational salmon fishing is effective at 2400 hours local time, July 30, 1991. Actual notice to affected fisherman was given prior to that time through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.20, 661.21, and 661.23.

Comments: Public comments are invited until August 27, 1991.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115–0070. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: Joe Scordino at 206–526–6140.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR part 661 specify at § 661.21(a)(1) that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by notice issued under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

In its preseason notice of 1991 management measures (56 FR 21311, May 8, 1991), NOAA announced that the 1991 recreational fishery for all salmon species in the subarea from Cape Alava to the Queets River, Washington, would begin on July 1 and continue through the earliest of September 26 or the attainment of either a subarea quota of 4,800 coho salmon or the overall recreational quota of 40,000 chinook salmon north of Cape Falcon, Oregon. Based on the best available information on July 25, the recreational fishery catch in the subarea from Cape Alava to the Queets River, Washington, is projected to reach the 4,800 coho salmon quota by midnight, July 30, 1991. Therefore, the fishery in this subarea is closed to further recreational fishing effective 2400 hours local time, July 30, 1991.

In accordance with the inseason notice procedures of 50 CFR 661.20, 661.21, and 661.23, actual notice to fishermen of this closure was given prior to 2400 hours local time, July 30, 1991, by telephone hotline number (206) 526–6667 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF–FM and 2182 KHz. NOAA issues this notice to closure of the recreational salmon fishery in the EEZ from Cape Alava and the Queets River, Washington, which is effective 2400 hours local time, July 30, 1991.

The Regional Director consulted with representatives of the Pacific Fishery Management Council and the Washington Department of Fisheries regarding a closure of the recreational fishery between Cape Alava and the Queets River, Washington. The State of Washington will manage the recreational fishery in State waters adjacent to this area of the EEZ in accordance with this Federal action. This notice does not apply to treaty Indian fisheries or to other fisheries that may be operating in other areas.

Because of the need for immediate action, NOAA has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted through August 27, 1991.

Other Matters

This action is authorized by 50 CFR 661.21 and 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

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

Dated: August 6, 1991.

Joe Clem,

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

[FR Doc. 91–19086 Filed 8–7–91; 12:25 pm]

BILLING CODE 3510–22–M

50 CFR Part 661

[Docket No. 910498–1098]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

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

ACTION: Notice of closures.

SUMMARY: NOAA announces the closure of the recreational salmon fishery in the exclusive economic zone (EEZ) from Cape Falcon to Humbug Mountain, Oregon, at midnight, July 28, 1991, for the remainder of the season to ensure that the coho salmon quota is not exceeded. The Director, Northwest Region, NMFS (Regional Director), has determined that the overall recreational fishery catch quota of 259,000 coho salmon from Cape Falcon, Oregon, to the U.S.-Mexico border was reached by July 28, 1991. The closure is necessary to conform to the preseason announcement of 1991 management measures. This action is intended to ensure conservation of coho salmon.

NOAA also announces the closure of the recreational salmon fishery in the EEZ from Humbug Mountain, Oregon, to Horse Mountain, California, for the period from July 29 through August 30, 1991.

This fishery will reopen on August 31 through September 2, 1991. Beginning September 3, the previously announced inseason adjustment closing this area on Mondays through Thrusdays of each week will be in effect for the remainder of the scheduled season. The Regional Director has determined that due to high catch rates of chinook salmon and the need to maintain total catch level near the harvest guideline of 20,000 chinook salmon, this fishery should be closed from July 29 through August 30, reopen for the 3-day period from August 31 through September 2 and then, beginning September 3 continue with the Monday through Thursday closure. This action is intended to ensure conservation of chinook salmon.

DATES: *Effective:* Closure of the EEZ between Cape Falcon and Humbug Mountain, Oregon, to recreational salmon fishing was effective at 2400 hours local time, July 28, 1991. Closure of the EEZ between Humbug Mountain, Oregon, and Horse Mountain, California, to recreational salmon fishing is effective at 2400 hours local time, July 28, 1991, through 2400 hours

local time, August 30, 1991. The recreational fishing week is closed Mondays through Thursdays in the EEZ from Humbug Mountain, Oregon, to Horse Mountain, California, effective at 0001 hours local time, September 3, 1991. Actual notice to affected fishermen was given prior to those times through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.20, 661.21, and 661.23. *Comments:* Public comments are invited until August 27, 1991.

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, Washington 98115–0070; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal, Island, California 90731–7415. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: Joe Scordino at 206–526–6140, or Rodney R. McInnis at 213–514–6199.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR part 661 specify at § 661.21(a)(1) that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by notice issued under § 661.23, close the commercial or recreational fishery, or both, for all salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

In its preseason notice of 1991 management measures (56 FR 21311, May 8, 1991), NOAA announced that the 1991 recreational fishery for all salmon species in the subarea from Cape Falcon to Humbug Mountain, Oregon, would begin on May 27 and continue through the earlier of September 15 or the attainment of the overall recreational fishery catch quota of 259,000 coho salmon from Cape Falcon, Oregon, to the U.S.-Mexico border. Based on the best available information on July 22, the recreational fishery catch from Cape Falcon, Oregon, to the U.S.-Mexico border was estimated to be about 214,000 coho salmon through July 22 and was projected to reach the 259,000 coho salmon quota by midnight, July 28, 1991. Therefore, the recreational fishery in the subarea from Cape Falcon to Humbug Mountain, Oregon, was closed for the remainder of the Season effective 2400 hours local time, July 28, 1991.

The preseason notice of 1991 management measures provides that the recreational fishery south of Humbug Mountain, Oregon, will remain open, with a 20,000 chinook harvest guideline between Humbug Mountain, Oregon, and Horse Mountain, California, after the recreational coho quota is reached. However, resource concerns over chinook salmon require temporary closure of the subarea from Humbug Mountain, Oregon, to Horse Mountain, California, as described below. The recreational fishery from Horse Mountain, California, to the U.S.-Mexico border continues as announced in the preseason notice of 1991 management measures.

The 1991 recreational fishery from Humbug Mountain, Oregon, to Horse Mountain, California, opened on May 25 and is scheduled to continue through September 30. When the season opened, Tuesdays and Wednesdays of each week were closed. An in season adjustment was implemented on July 23 to close two additional days of the week (Mondays and Thursdays) in order to dampen catch rates and keep the total catch in this fishery close to the 20,000 chinook guideline (56 FR 34031, July 25, 1991). However, the additional closures were not sufficient to prevent the guideline from being exceeded in July. Based on the best available information on July 22, the recreational catch was estimated to be about 18,300 chinook salmon through July 21. Of this total cumulative catch, about 2,400 chinook salmon were caught during the calendar week of July 15–21 when the fishery was open for 5 days. With the implementation of the additional days of closure, the next calendar week of July 22–28 would be open for 4 days. Projected catches through July 28 would exceed the guideline of 20,000 chinook salmon. Therefore, the recreational fishery in the subarea from Humbug Mountain, Oregon, to Horse Mountain, California, is closed from July 29 through August 30, 1991.

Unlike fisheries managed under quotas that require closure upon the projected attainment of the quota, fisheries managed under harvest guidelines do not require closure upon the projected attainment of the guideline. To provide recreational fishing opportunity during the Labor Day weekend and in September, the fishery from Humbug Mountain, Oregon, to Horse Mountain, California, will be reopened on August 31 and September 1–2, 1991. Then, beginning September 3, Mondays through Thursdays of each week will be closed for the remainder of the season, which is scheduled to end September 30. Fishery impacts on Klamath River fall chinook salmon, the stock of concern, during September 1991 are not included in the impacts for the 1991 fishing season, but will be applied to the 1992 fishing season (through August 1992). Fishery impacts on Klamath River fall chinook salmon are also greatly reduced during the month of September relative to the earlier months.

In accordance with the inseason notice procedures of 50 CFR 661.20, 661.21, and 661.23, actual notice to fishermen of these closures was given prior to those times listed above by telephone hotline number (206) 526–6667 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF–FM and 2182 KHz.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Oregon Department of Fish and Wildlife, and the California Department of Fish and Game regarding closure of the two recreational fisheries between Cape Falcon, Oregon, and Horse Mountain, California. The States of Oregon and California will manage the recreational fisheries in State waters adjacent to this area of the EEZ in accordance with this Federal action. This notice does not apply to other fisheries that may be operating in other areas.

Because of the need for immediate action, NOAA has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted through August 22, 1991.

Other Matters

This action is authorized by 50 CFR 661.21 and 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians, Reporting and recordkeeping requirements.

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

Dated: August 7, 1991.

Joe P. Clem,

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

[FR Doc. 91–19087 Filed 8–7–91; 12:36 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 56, No. 155
Monday, August 12, 1991

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

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

10 CFR Part 1705

[Docket No. RM-91-2]

Rules Implementing the Privacy Act

AGENCY: Defense Nuclear Facilities Safety Board.

ACTION: Proposed rule.

SUMMARY: Each Federal agency is required by the Privacy Act of 1974, 5 U.S.C. 552a, to promulgate rules which set forth procedures by which individuals can examine and request correction of agency records containing personal information. In this notice the Board proposes a rule to satisfy that requirement.

DATES: Comment period expires September 11, 1991.

ADDRESSES: Mail comments to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Washington, DC 20004. Attention: Office of the General Counsel.

FOR FURTHER INFORMATION CONTACT: Robert M. Andersen, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004, (202) 208-6387.

SUPPLEMENTARY INFORMATION:

Section (f) of the Privacy Act of 1974, 5 U.S.C. 552a(f), requires each Federal agency to promulgate rules which, in the main, set forth procedures by which individuals can examine and request correction of agency records containing personal information. The Board, a Federal agency established by the National Defense Authorization Act, Fiscal Year 1989 (Public Law 100-456), is therefore obligated to publish such regulations. The Board has previously published notices in the Federal Register regarding its systems of records covered by the Privacy Act.

Because Privacy Act regulations are intended for use by the general public, the Board has tried to keep its proposed rule simple and straightforward. Some aspects of the Privacy Act dealing solely with the Board's internal procedures and safeguards will be dealt with by directive to the Board's staff rather than by rule. The Board sees no need to elaborate upon the Act's penalty sections in the rule, as those sections are self-executing.

The proposed rule is largely self-explanatory, and is fairly typical of other Federal agency rules in this area. The Board would particularly appreciate public comment on four aspects of the rule:

(1) Is the rule consistent with the Privacy Act?

(2) Is the rule complete as regards public access to records and record correction?

(3) Is the rule clear and understandable?

(4) Is the fee provision reasonable?

Paperwork Reduction Act Statement

The proposed rule is not subject to the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*) because it does not contain any information collection requirements within the meaning of 44 U.S.C. 3502(4).

Regulatory Flexibility Act Certification

As required by the Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-12), the Board certifies that this rule, if adopted, will not have a significant economic impact on a substantial number of small entities and that, therefore, a regulatory flexibility analysis need not be prepared. 5 U.S.C. 605(b).

List of Subjects in 10 CFR Part 1705

Privacy Act.

The Proposed Regulations

Accordingly, chapter XVII of title 10 of the Code of Federal Regulations is proposed to be amended by adding a part 1705 to read as follows:

Chapter XVII—Defense Nuclear Facilities Safety Board

PART 1705—PRIVACY ACT

Sec.

1705.01 Scope.
1705.02 Definitions.
1705.03 Systems of records notification.
1705.04 Requests by persons for access to their own records.
1705.05 Processing of requests.
1705.06 Appeals from access denials.
1705.07 Requests for correction of records.
1705.08 Appeals from correction denials.
1705.09 Disclosure of records to third parties.
1705.10 Fees.
1705.11 Exemptions.

Authority: 5 U.S.C. 552a(f).

§ 1705.01 Scope.

This part contains the Board's regulations implementing the Privacy Act of 1974, Public Law 93-579, 5 U.S.C. 552a.

§ 1705.02 Definitions.

The following terms used in these regulations are defined in the Privacy Act, 5 U.S.C. 552a(a): "agency," "individual," "maintain," "record," "system of records," "statistical record," and "routine use." The Board's use of these terms conforms with the statutory definitions. References in this part to "the Act" refer to the Privacy Act of 1974.

§ 1705.03 Systems of records notification.

(a) *Public notice.* The Board has published in the Federal Register its systems of records. The Office of the Federal Register biennually compiles and publishes all systems of records maintained by Federal agencies, including the Board.

(b) *Requests regarding record systems.* Any person who wishes to know whether a system of records contains a record pertaining to him or her may file a request in person or in writing. Written requests should be directed to: Privacy Act Officer, Defen Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004. Telephone requests should be made by calling the Board at 202-208-6400, and asking to speak to the Privacy Act Officer.

§ 1705.04 Requests by persons for access to their own records.

(a) *Requests in writing.* A person may request access to his or her own records in writing by addressing a letter to: Privacy Act Officer, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004. The request should contain the following information:

(1) Full name, address, and telephone number of requester,

(2) Proof of identification, which should be a copy of one of the following:

Valid driver's license, valid passport, or other current identification which contains both an address and picture of the requester,

(3) The system of records in which the desired information is contained, and

(4) At the requester's option, authorization for copying expenses (see § 1705.10 below).

(b) *Requests in person.* Any person may examine his or her own records on the Board's premises. To do so, the person should call the Board's offices at 202–208–6400 and ask to speak to the Privacy Act Officer. This call should be made at least two weeks prior to the time the requester would like to see the records. During this call, the requester should be prepared to provide the same information as that listed in paragraph (a) of this section except for proof of identification.

§ 1705.05 Processing of requests.

(a) *Requests in writing.* The Privacy Act Officer will acknowledge receipt of the request within five working days of its receipt in the Board's offices. The acknowledgment will advise the requester if any additional information is needed to process the request. Within fifteen working days of receipt of the request, the Privacy Act Officer will provide the requested information or will explain to the requester why additional time is needed for response.

(b) *Requests in person.* Following the initial call from the requester, the Privacy Act Officer will determine (1) whether the records identified by the requester exist, and (2) whether they are subject to any exemption under § 1705.11 below. If the records exist and are not subject to exemption, the Privacy Act Officer will call the requester and arrange an appointment at a mutually agreeable time when the records can be examined. The requester may be accompanied by one person of his or her own choosing, and should state during this call whether or not a second individual will be present at the appointment. At the appointment, the requester will be asked to present identification as stated in § 1705.04(a)(2).

(c) *Excluded information.* If a request is received for information compiled in reasonable anticipation of litigation, the Privacy Act Officer will inform the requester that this information is not subject to release under the Privacy Act (*see* 5 U.S.C. 552a(d)(5)).

§ 1705.06 Appeals from access denials.

When access to records has been denied by the Privacy Act Officer, the requester may file an appeal in writing. This appeal should be directed to the Chairman, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., Suite 700, Washington, DC 20004. The appeal letter must (a) specify those denied records which are still sought, and (b) state why the denial by the Privacy Act Officer is erroneous. The Chairman or his designee will respond to such appeals within twenty working days after the appeal letter has been received in the Board's offices. The appeal determination will explain the basis for continuing to deny access to any requested records.

§ 1705.07 Requests for correction of records.

(a) *Correction requests.* Any person is entitled to request correction of a record pertaining to him or her. This request must be made in writing and should be addressed to Privacy Act Officer, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004. The letter should clearly identify the corrections desired. An edited copy of the record wil usually be acceptable for this purpose.

(b) *Initial response.* Receipt of a correction request will be acknowledged by the Privacy Act Officer in writing within five working days of receipt of the request. The Privacy Act Officer will endeavor to provide a letter to the requester within thirty working days stating whether or not the request for correction has been granted or denied. If the Privacy Act Officer decides to deny any portion of the correction request, the reasons for the denial will be provided to the requester.

§ 1705.08 Appeals from correction denials.

(a) When amendment of records has been denied by the Privacy Act Officer, the requester may file an appeal in writing. This appeal should be directed to the Chairman, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW., suite 700, Washington, DC 20004. The appeal letter must (1) specify the records subject to the appeal, and (2) state why the denial of amendment by the Privacy Act Officer is erroneous. The Chairman or his designee will respond to such appeals within thirty working days (subject to extension by the Chairman for good cause) after the appeal letter has been received in the Board's offices.

(b) The appeal determination, if adverse to the requester in any respect, will: (1) Explain the basis for denying amendment of the specified records, (2) inform the requester that he or she may file a concise statement setting forth reasons for disagreeing with the Chairman's determination, and (3) inform the requester of his or her right to pursue a judicial remedy under 5 U.S.C. 552a(g)(1)(A).

§ 1705.09 Disclosure of records to third parties.

Records subject to the Privacy Act that are requested by any person other than the individual to whom they pertain will not be made available except in the following circumstances:

(a) Their release is required under the Freedom of Information Act in accordance with the Board's FOIA regulations, 10 CFR part 1703;

(b) Prior consent for disclosure is obtained in writing from the individual to whom the records pertain; or

(c) Release is authorized by 5 U.S.C. 552a(b)(1) or (3) through (11).

§ 1705.10 Fees.

A fee will not be charged for search or review of requested records, or for correction of records. When a request is made for copies of records, a copying fee will be charged at the same rate established for FOIA requests. *See* 10 CFR 1703.107. However, the first 100 pages of copying will be free of charge.

§ 1705.11 Exemptions.

The Board has not invoked any of the Privacy Act exemptions. Should it do so in the future, this section will be amended.

Dated: August 6, 1991.

John T. Conway,

Chairman.

[FR Doc. 91–18987 Filed 8–9–91; 8:45 am]

BILLING CODE 6820–KD

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 91–ANE–26]

Airworthiness Directives; General Electric Company (GE) CF6–45/–50 Series Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to GE CF6–45/–50 series turbofan engines, which currently requires repetitive visual inspections of the left-hand side seventh stage low pressure turbine (LPT) cooling air manifold tubes and attachment hardware for distress, and replacement

as required. This proposed action includes the repetitive visual inspections of the AD being superseded, and also requires the incorporation of check valves in the seventh stage air tubes as a terminating action to the inspection program. This proposal is prompted by the availability of check valves which eliminates the need for mandatory repetitive inspections of the left-hand side stage LPT cooling air system. This condition, if not corrected, could result in left-hand side seventh stage LPT cooling air manifold tube failures, which could result in an LPT overtemperature condition and subsequent uncontained LPT stage 1 disk rupture.

DATES: Comments must be received no later than September 26, 1991.

ADDRESSES: Send comments on the proposal in duplicate to the FAA, New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 91–ANE–26, 12 New England Executive Park, Burlington, Massachusetts 01803–5299, or deliver in duplicate to room 311, at the above address.

Comments may be inspected at the above location in room 311, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except federal holidays.

The applicable service information may be obtained from General Electric Company, Technical Publications Department, 1 Neumann Way, Cincinnati, Ohio 45215, or may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, room 311, 12 New England Executive Park, Burlington, Massachusetts.

FOR FURTHER INFORMATION CONTACT: Robert Ganley, Engine Certification Office, ANE–140, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; telephone (617) 273–7082.

SUPPLEMENTARY INFORMATION: 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 duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator 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 91–ANE–26." The postcard will be date/time stamped and returned to the commenter.

Discussion

On December 11, 1986, the FAA issued AD 85–25–56R1, Amendment 39–5495 (52 FR 1318, January 13, 1987), to require repetitive visual inspections on the left-hand side seventh stage LPT cooling air manifold on GE CF6–45/–50 series turbofan engines. That action was prompted by an uncontained LPT stage 1 disk failure due to loss of cooling air from a failed left-hand side seventh stage cooling air manifold tube. The FAA determined that the failure of the cooling air manifold tube was caused by loose, broken, improperly installed, or missing attachment hardware. It was found that a loosely secured tube could enter into an adverse vibratory mode and fail due to high cycle fatigue. This condition, if not corrected, could result in failure of the cooling air manifold tube which could result in an LPT overtemperature condition and subsequent uncontained LPT stage 1 disk rupture.

Since the issuance of the AD, the FAA has determined that in addition to properly securing the seventh stage cooling air manifold tubes to reduce vibration, check valves could be installed into the seventh stage cooling air manifold which would prevent loss of LPT cooling air following tube failure. This would improve the reliability and durability of the seventh stage LPT cooling air system. The incorporation of these check valves relieves the necessity to inspect seventh stage cooling manifolds at shorter intervals than prescribed by the appropriate maintenance manuals, and provides a terminating action to the inspection program.

The FAA has reviewed and approved the technical contents of GE CF6–50/–45 Service Bulletin (SB) 75–063, dated July 5, 1990, which describes the incorporation procedure of the check valves.

Since this condition is likely to exist or develop on other engines of this same type design, an AD is proposed which would supersede AD 85–25–56R1, to require the incorporation of the check valves in the seventh stage air tubes, as a terminating action to the inspection program.

There are approximately 321 GE CF6–45/–50 series engines of the affected design installed on aircraft of U.S. registry which would be affected by this AD. It is estimated that it would take approximately 4 manhours per engine to accomplish the required reinspection requirement, and 11 manhours per engine to incorporate the check valves. The average labor cost would be $55 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $264,825.

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 "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket.

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 (FAA) proposes to amend 14 CFR part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—[AMENDED]

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

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment number 39–5495 (52 FR 1318, January 13, 1987), and adding the following new airworthiness directive (AD):

General Electric Company: (Docket No. 91–ANE–26).

Applicability: General Electric Company (GE) CF6–45/–50 series turbofan engines, installed on, but not limited to, McDonnell Douglas DC–10–15 series, DC–10–30 series, Airbus A300 series, Boeing 747–200 series, and 747–300 series aircraft.

Compliance: Required as indicated, unless previously accomplished.

To prevent failure of the left-hand side seventh stage low pressure turbine (LPT) cooling air manifold tube, which could result in an LPT overtemperature condition and subsequent uncontained LPT stage 1 disk rupture, accomplish the following:

(a) For those engines not in compliance with the requirements of GE CF6–50/–45 Service Bulletin (SB) 75–54, dated July 19, 1985 (AD 85–25–56R1), or paragraph 2.A. or 2.B. of GE CF6–50/–45 SB 75–46, Revision 3, dated June 8, 1982 (AD 85–25–56R1), comply with paragraph (a)(1), then paragraph (a)(2) of this AD.

(1) Accomplish the requirements of paragraph 2.A.1. and 2.A.2. of GE CF6–50/–45 SB 75–55, dated September 13, 1985 (AD 85–25–56R1), concurrently with the requirements of paragraph 2.A. of GE CF6–50/–45 SB 75–54, dated July 19, 1985, within the next 10 flight cycles after the effective date of this AD.

(2) Accomplish the requirements of paragraph 2. of GE CF6–50/–45 SB 75–55, dated September 13, 1985, within 60 calendar days of complying with paragraph (a)(1) of this AD.

(b) For engines already in compliance with the requirements of GE CF6–50/–45 SB 75–54, dated July 19, 1985, or paragraph 2.A. or 2.B. of GE CF6–50/–45 SB 75–46, Revision 3, accomplish the requirements of paragraph 2. of GE CF6–50/–45 SB 75–55, dated September 13, 1985, within 60 calendar days after the effective date of this AD.

(c) Replace cracked, broken or ruptured left-hand side seventh stage LPT cooling air manifold tube and attachment hardware, found during accomplishment of paragraph (a) or (b) of this AD, prior to further flight.

(d) Inspect the left-hand side seventh stage LPT cooling air manifold tubes and attachment hardware in accordance with the requirements of paragraph 2.A., 2.B., 2.C. and 2.D.(4)(b) of GE CF6–50/–45 SB 75–58, dated April 14, 1986 (AD 85–25–56R1), within the next 250 flight cycles after the effective date of this AD, and thereafter, at intervals not to exceed 250 flight cycles from the last inspection.

(e) Replace or tighten, in accordance with paragraph 2.D. of GE CF6–50/–45 SB 75–58, dated April 14, 1986, left-hand side seventh stage LPT cooling air system hardware found worn, loose, cracked or broken during accomplishment of paragraph (d) of this AD, prior to further flight.

(f) Install check valves for the seventh stage LPT cooling air manifold tubes in accordance with GE CF6–50/–45 SB 75–063, dated July 5, 1990, prior to July 30, 1993. Repetitive inspection of the left-hand side seventh stage LPT cooling air manifold tubes and attachment hardware in accordance with paragraph (d) of this AD is no longer required once the check valves are incorporated.

(g) Aircraft may be ferried in accordance with the provisions of FAR 21.197 and 21.199 to a base where the AD can be accomplished.

(h) Upon submission of substantiating data by an owner or operator through an FAA Inspector (maintenance, avionics, operations, as appropriate) an alternate method of compliance with the requirements of this AD or adjustments to the compliance schedule specified in this AD may be approved by the Manager, Engine Certification Office, Engine & Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5299. (i) All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to General Electric Aircraft Engines, CF6 Distribution Clerk, room 132, 111 Merchant Street, Cincinnati, Ohio 45246. These documents may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts.

Issued in Burlington, Massachusetts, on July 23, 1991.

Jack A. Sain,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR 91–19058 Filed 8–9–91; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 91–ASW–8]

Proposed Alteration of VOR Federal Airways; LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of several Federal airways located in the vicinity of Lafayette, LA. The Lafayette VOR is being relocated to the Lafayette Regional Airport. This action would realign all airways affected by the relocation of the Lafayette navigational aid.

DATES: Comments must be received on or before September 20, 1991.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASW–500, Docket No. 91–ASW–8, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267–9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 91–ASW–8." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence

Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to realign three VOR Federal airways located in the vicinity of Lafayette, LA. The Lafayette, LA, VOR is being relocated January 9, 1992, to lat. 30°11'37"N., long. 91°59'32"W., at the Lafayette Regional Airport. Section 71.123 of part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6G dated September 4, 1990.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. App. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. § 71.123 is amended as follows:

V–194 [Amended]

By removing the words "Sabine Pass, TX; INT Sabine Pass 077° and Lafayette, LA, 254° radials; Lafayette; Baton Rouge, LA;" and substituting the words "Sabine Pass, TX; Lafayette, LA; Baton Rouge, LA;".

V–552 [Amended]

By removing the words "INT Lake Charles 064° and Lafayette, LA, 285° radials;" and substituting the words "INT Lake Charles 064°T(057°M) and Lafayette, LA, 281°T(278°M) radials;".

V–559 [Revised]

From Lafayette, LA, INT Lafayette 016°T(013°M) and Baton Rouge, LA, 264°T(261°) radials; to Baton Rouge.

Issued in Washington, DC, on July 29, 1991.

Jerry W. Ball,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 91–19059 Filed 8–9–91; 8:45 am]

BILLING CODE 4910–13–M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1700

Requirements for the Special Packaging of Household Substances; Opportunity for Oral Comment on Proposed Rule

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of opportunity for oral comment on proposed rule.

SUMMARY: On October 5, 1990, the Commission proposed to amend its requirements under the Poison Prevention Packaging Act of 1970, as amended, for child-resistant packaging. 55 FR 40856. These amendments would change the child and adult tests under which child-resistant packaging is evaluated. In response to several requests from members of the affected industry, the date by which written comments on the proposal should be received was extended to July 1, 1991. 56 FR 9181 (March 5, 1991). In the notice announcing the extension of the comment period, the Commission also solicited comment on a change to the adult test protocol that was suggested during the original comment period, which ended on January 3, 1991.

In this notice, the Commission announces that it has scheduled an opportunity for members of the public to present oral comments on the proposal.

DATES: An opportunity for the presentation of oral comments will be provided at 10 a.m. on September 12, 1991. Persons who wish to present oral comments to the Commission on this proposal must contact Sheldon Butts in the Office of the Secretary by August 29, 1991.

Summaries of the oral comments should be submitted to the Office of the Secretary by August 29, 1991.

ADDRESS: Summaries of oral comments should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207 or delivered to Room 420, 5401 Westbard Avenue, Bethesda, MD 20816 (telephone 301–492–6800).

FOR FURTHER INFORMATION CONTACT: Concerning the arrangements for oral comments: Sheldon Butts, Deputy Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 492–6800; Concerning the proposed rule: Virginia White, Project Manager, Directorate for Health Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492–6477.

Dated: August 7, 1991.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 91–19093 Filed 8–9–91; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 110

[CGD11–91–07]

Anchorage Regulations; San Francisco Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing a rule change to the anchorage grounds of San Francisco Bay encompassing the waters known as Anchorage No. 8. Loading of any dangerous cargoes or combustible liquids in Anchorage No. 8 will be prohibited, unless authorized by the Captain of the Port.

The small size of this anchorage and its proximity to the Oakland Inner Harbor Entrance Channel and the Naval Air Station make it unsafe for operations involving the transfer of dangerous cargoes or combustible liquids. It is best suited as a temporary anchorage for vessels awaiting pier facilities or other anchorage areas. This change is needed to safeguard San Francisco Bay, the environment, vessels and cargo against accidents, pollution,

destruction, loss, or other incidents of a similar nature.

DATES: Comments must be received on or before September 26, 1991.

ADDRESSES: Comments should be mailed to Commanding Officer, U.S. Coast Guard Marine Safety Office, Bldg. 14 Coast Guard Island, Alameda, CA 94501–5100. The comments and other materials referenced in this notice will be available for inspection and copying at the Marine Safety Office, Bldg. 14 Coast Guard Island, Alameda, CA. Normal office hours are between 7:30 a.m. and 3:30 p.m. Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant M.F. Thurber, Coast Guard Marine Safety Office, San Francisco Bay, CA, 415–437–3073.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD11–91–07) and the specific section of the proposal to which their comments apply, and give reasons for each comment. The regulation may be changed in light of comments received.

All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid this rulemaking process.

Drafting Information

The drafters of this proposed regulation are Lieutenant M.F. Thurber, Project Officer for the Captain of the Port, and Lieutenant Commander Allen Lotz, Project Attorney, Eleventh Coast Guard District Legal Office.

Discussion of Proposed Regulation

This regulation is needed to eliminate the risk of accidents that could be caused by vessels bunkering in the vicinity of a main shipping channel and at the end of an active runway at the Naval Air Station. This additional restriction will provide the Captain of the Port with the authority necessary to help prevent situations where significant economic and environmental assets of the general public, industry, and the United States may come to harm. The safety of these assets is in the public interest and a restriction of specific operations within Anchorage No. 8 is justified to assist in protecting against these situations. This proposed change will make an existing "specific regulation" applicable to Anchorage No. 8, and will not affect regulations pertaining to any other anchorage grounds in San Francisco Bay. The waters of San Francisco Bay known as Anchorage No. 8 are not frequently used by vessels to conduct loading of cargoes or combustible liquids. The waters known as Anchorage No. 9, adjacent to Anchorage No. 8, are more suitable in that Anchorage No. 9 encompasses a larger area and is in an area transited by fewer vessels underway on major shipping channels.

Regulatory Evaluation

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulations and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Because the impact of this proposal is expected to minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposal contains no information collection or recordkeeping requirements.

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal and concluded that under section 2.B.2.c. of Commandant Instruction M16475.1B, it will have no significant environmental impact and it is categorically excluded from further environmental documentation.

Federalism Assessment

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

List of Subjects in 33 CFR Part 110

Special anchorage areas, Anchorage grounds.

Proposed Regulation

In consideration of the foregoing, the Coast Guard proposes to amend subpart B of part 110 of title 33, Code of Federal Regulations, as follows:

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

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

2. In § 110.224 Table 110.224(d)(1) is amended by revising lines 8 and 9 to read as follows:

Anchorage No.	General location	Purpose	Specific regulations
*	*	*	* *
8	do	do	Notes a,b,c.
9	do	do	Notes a,b.
*	*	*	* *

Dated: July 30, 1991.

M.E. Gilbert,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 91–19105 Filed 8–9–91; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 233

RIN 0970–AA94

Aid to Families with Dependent Children; Require Recoupment of Overpayments from Current Recipients

AGENCY: Office of Family Assistance, ACF, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the regulations to require States to use recoupment from the assistance payment to collect outstanding overpayments from current recipients. Regulations currently permit States to recover such overpayments through recoupment from the assistance payment, repayment directly from the family, or a combination of both recoupment and repayment. Under these proposed rules, repayment, as a method to collect overpayments would continue to be permitted as a supplement to a recoupment.

This proposed rule would also amend regulations to permit States to recover an amount in excess of the current 10 percent limitation at the recipient's written request.

DATES: Interested persons and agencies are invited to submit written comments concerning these regulations no later than October 11, 1991.

ADDRESSES: Comments should be submitted in writing to the Director, OFA, Attention: Mr. Mack A. Storrs, Director, Division of Policy, 5th Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447 or delivered to the Administration for Children and Families, Office of Family Assistance, between 8 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Mr. Mack A. Storrs, Administration for Children and Families, Office of Family Assistance, 5th Floor, 370 L'Enfant Promenade, SW., Washington, DC 20447, Telephone (202) 401–9289.

SUPPLEMENTARY INFORMATION:

Background

Current regulations permit States the option of selecting the method for recovering overpayments from current recipients. States may recover overpayments through recoupment from each assistance payment (i.e., grant reduction), repayment (i.e., payment in full or by installments), or a combination of both recoupment and repayment. A March 1986 General Accounting Office (GAO) report (GAO/RCED–86–17) on AFDC overpayment collections found that recovering overpayments through recoupment from the AFDC grant was more effective, less expensive and required less monitoring and accounting than recovering these incorrect payments through repayment methods. The GAO interviewed AFDC officials in 11 states and these officials indicated that their overpayment collections increased after they began using recoupment.

The legislative history of section 402(a)(22) of the Social Security Act, the section that sets forth the provisions regarding recovery of overpayments, indicates that Congress considered the correctness of payments as crucial to maintaining continued public support for the AFDC program (Sen. Rep. No. 97–139, 97th Cong, 1st Sess. 519 (1981)). By requiring the prompt correction of all overpayments, Congress believed that recipients and welfare agencies would be encouraged to take greater responsibility for assuring payment accuracy. As a result, States were given the option in the implementing regulations to select at least one of two recovery methods. The first, which applies to current and former recipients, is repayment (i.e., the individual pays off the overpayment in full or by installment). The second method, applicable to current recipients only, including recipients whose overpayments occurred during a prior period of eligibility, is recoupment from the AFDC grant of the AFDC unit of which the overpaid individual is a member. Although the statute does not address the relationship between these two recovery methods, States' experiences as shown in the above cited GAO report, indicate that recoupment is more effective and requires less monitoring than over recovery methods. Accordingly, it is reasonable to expect and require States to use the recoupment method.

Therefore, the proposed regulations would amend § 233.20(a)(13)(i)(A)(1) to require States to use recoupment as the method of recovering overpayments from all current recipients. However, the repayment would continue to be permitted if the recipient elects to repay all or part of the overpayment either before recoupment from the grant is implemented or as an addition to the amount being recouped from the grant. The proposed regulations will lead to recovery systems that are more efficient, prompt, and effective.

Further, in response to questions we have received as to whether a State may recover an amount in excess of the 10 percent limitation on recoupment when a recipient voluntarily requests such an arrangement, regulations at § 233.20(a)(13)(i)(A)(2) are being clarified to specifically enunciate policy on this issue. The 10 percent limit on recoupment applies only to an AFDC family with no assets and no income. For example, where an overpaid individual has other income and/or resources, a State may recoup above the 10 percent limit as long as the recipient retains 90 percent of the combined assistance payment, income and resources. Section 402(a)(22)(A) of the Act states that recovery "* * * shall not result in the reduction of aid payable for any month, such that the aid, when added to such family's liquid resources and to its income * * * is less than 90 percent of the amount payable under the State Plan to a family of the same composition with no other income * * *." The legislative history of this provision indicates that Congress did not intend recipients to suffer undue hardship because of recovery (Sen. Rep. No. 97–139, 97th Cong. 1st Sess. 519 (1981)). Therefore, clearly, a State is permitted to recover from a current recipient with no assets and no income, an amount up to 10 percent of the AFDC assistance payment payable to that recipient for the month. However, since the statute does not prevent a recipient from returning to the State agency any portion of the overpayment received, be believe that a State may recoup in excess of the 10 percent limitation as long as the recipient voluntarily requests such an arrangement in writing. Recovering an amount in excess of 10 percent has the advantage of relieving the recipient from a long-term recoupment burden while enabling a State to collect the overpayment over a shorter period. Therefore, the proposed regulations would permit a State, at the recipient's written request, to recover a monthly amount above the 10 percent limitation. Since recovery above the 10 percent limit is voluntary, the recipient may terminate the arrangement of recoupment above this limit at any time. In such cases, the State must resume or continue recoupment at the rate prescribed by its otherwise applicable recoupment procedures.

We are also clarifying § 233.20(a)(13)(i)(A)(1) to make it compatible with the statutory language at section 402(a)(22)(A) by adding the word "future" to indicate that recoupment shall be made from any future aid payable.

In addition, we continue to receive questions as to whether a State can recover an amount in excess of the total AFDC overpayment, such as costs related to collections or penalties. We are taking this opportunity to restate the Federal policy on this issue. Neither the statute (section 402(a)(22)) nor the regulations permit a State to recover from the recipient an amount above the actual overpayment. The regulation at § 233.20(a)(13)(i) defines an overpayment as "* * * a financial assistance payment received by or for an assistance unit * * * which exceeds the amount for which that unit was eligible." Since collection fees and such similar costs are not part of the overpayment amount received by the assistance unit, the State cannot require an AFDC recipient to pay it. Federal financial participation is available for any costs related to the collection of an overpayment.

Also, for clarity, we are deleting the language that refers to recovery of overpayments under State law (a recovery method) at § 233.20(a)(13)(i)(B), revising it to indicate that repayment is no longer a recovery option and adding it to § 233.20(a)(13)(i)(A)(1) which addresses methods of recovery.

Finally, to promote prompt recovery of overpayments, including overpayments that occurred during a prior period of eligibility, we are revising

§ 233.20(a)(13)(i)(E) to require that the specific overpayment recovery action be taken by the end of the month following the month in which the overpayment amount is determined pursuant to § 205.10, or by the end of the month following the month the recipient returns to the rolls, rather than the end of the quarter following the quarter; and we are revising § 233.20(a)(13)(i)(E)(3) to indicate that the recovery action for a current recipient is recoupment.

Child care recoupment rules will be published in a separate regulatory package at a later date.

Regulatory Procedures

Executive Order 12291

These regulations do not meet any of the three criteria which require a regulatory impact analysis under Executive Order 12291. Specifically, the regulations will not have an annual effect on the economy of more than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; and will not have significant effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We estimate a nominal savings from the provision as a result of quicker collections of overpayments from those who, before recoupment from the grant is completed would die, move from the State and not be located, or become ineligible for AFDC (and the State elects not to recover because the overpayment is less than $35 or determines that collection would not be cost-effective).

Paperwork Reduction Act

There will be no new reporting or recordkeeping requirements imposed on the public or the States which would require clearance by the Office of Management and Budget.

Regulatory Flexibility Act

We certify that these regulations will not have significant impact on a substantial number of small entities because they primarily effect State governments and individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Catalog of Federal Domestic Assistance Program 13.808, Public Assistance Maintenance Assistance (State Aid)

List of Subjects in 45 CFR Part 233

Aid to families with dependent children, Aliens, Grant programs/social programs, Public assistance programs, Reporting and recordkeeping requirements.

Dated: May 9, 1991.

Jo Anne B. Barnhart,

Assistant Secretary for Children and Families.

Approved: June 27, 1991.

Louis W. Sullivan,

Secretary of Health and Human Services.

Accordingly, chapter II, title 45, Code of Federal Regulations is proposed to be amended as set forth below:

PART 233—COVERAGE AND CONDITIONS OF ELIGIBILITY IN FINANCIAL ASSISTANCE PROGRAMS

1. The authority citation for part 233 continues to read as follows:

Authority: Secs. 1, 402, 406, 407, 1002, 1102, 1402 and 1602, Social Security Act (42 U.S.C. 301, 602, 606, 607, 1202, 1302, 1602, and 1382 note); and sec. 6, Pub. L. 94–114, 89 Stat. 579 and part XXIII of Pub. L. 97–35, 95 Stat. 843, and Pub. L. 97–248, 96 Stat. 324, and Pub. L. 99–603, 100 Stat. 3359, sec. 221, Pub. L. 98–181, as amended by sec. 102, Pub. L. 98–479 (42 U.S.C. 602 note) and sec. 202, Pub. L. 100–485, 102 Stat. 2377.

§ 233.20 [Amended]

2. Section 233.20 is amended by revising paragraph (a)(13)(i)(A)(*1*), (*2*), (B), (E) introductory text and (E) (*3*) to read as follows:

(a) * * *

(13) * * *

(i) * * *

(A) * * *

(*1*) Any recovery of an overpayment from a current assistance unit, including a current assistance unit or recipient whose overpayment occurred during a prior period of eligibility, must be recovered by reducing the amount of any future aid payable to the assistance unit of which the overpaid individual is a member. The repayment method of recovery (payment in full or by installments) may also be applied provided that it is used prior to or concurrent with grant reduction. For individuals who are no longer recipients who refuse to repay the overpayment, recovery shall be made by appropriate action under State law against their income and resources.

(*2*) For a current assistance unit, including a recipient whose overpayment occurred during a prior period of eligibility, such recoupment shall result in the assistance unit retaining, for any payment month from the combined aid, income and liquid resources (without application of section 402(a)(8) of the Act), not less than 90 percent of the amount payable under the State plan to a family of the same composition with no other income. Where a State chooses to recoup at a rate less than the maximum, it must recover promptly. Where a recipient voluntarily requests in writing recoupment at a rate in excess of the maximum for a certain period, the State may recover for this period at the requested rate. If the recipient subsequently elects to terminate the arrangement to recover an amount in excess of the 10 percent limitation on recoupment, the State will apply its otherwise applicable recoupment procedures.

(B) The State shall recover an overpayment from.

(*1*) the assistance unit which was overpaid, or

(*2*) any assistance unit of which a member of the overpaid assistance unit has subsequently become a member, or

(*3*) any individual member(s) of the overpaid assistance unit whether or not currently a recipient.

(C) * * *

(D) * * *

(E) Prompt recovery of an overpayment: A State must take one of the following three actions (after notice and hearing requirements are met pursuant to § 205.10) by the end of the month following the month in which the overpayment amount is determined, and in the case of the recipient whose overpayment occurred during a prior period of eligibility, by the end of the month following the month the recipient returns to the rolls:

(*1*) * * *

(*2*) * * *

(*3*) Initiate recoupment from a current recipient's grant.

* * * * *

[FR Doc. 91–18955 Filed 8–9–91; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF ENERGY

48 CFR Parts 922, 937, 952 and 970

Acquisition Regulation; Arbitration in Collective Bargaining Agreements for Protective Services and Management and Operating Contracts

AGENCY: Department of Energy

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department is proposing to amend the Department of Energy Acquisition Regulation (DEAR) to add a new section 922.103–5 to implement the Federal Acquisition Regulation (FAR)

22.103–5 (48 CFR 22.103–5), both entitled Contract Clauses. The new section designates contracts for protective services as contracts requiring use of the clause at FAR 52.222–1, Notice to the Government of Labor Disputes. A new entitled Protection Services Contracting, is also added at 937.70. the amendment would require labor and management to resolve disputes by means other than lockouts, strikes, or other interruptions of normal operations for protective services contracts having collective bargaining agreements. The DOE proposes that these collective bargaining agreements should provide an effective grievance procedure with arbitration as the final step. The DOE believes that this change is necessary to maintain operational continuity at its facilities, especially in consideration of the public safety, property and national security interests at these sites. Part 952 is amended to include a contract clause for this purpose. Part 970 is also amended to adopt a similar clause for use in management and operating contracts consistent with long standing policy found at 970.2201(b)(5)(ii).

DATES: Written comments should be submitted no later than September 11, 1991.

ADDRESSES: Comments should be addressed to the Department of Energy, Procurement Policy Division, Procurement and Assistance Management PR–121, 1000 Independence Avenue, SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Richard B. Langston, Procurement, Assistance and Program Management (PR–121) Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–8247.

Laura Fullerton, Office of the Assistant General Counsel for Procurement and Finance (GC–34), Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–1900.

SUPPLEMENTARY INFORMATION:

I. Background
II. Procedural Requirements
A. Review Under Executive Order 12291
B. Review Under the Regulatory Flexibility Act
C. Review Under the Paperwork Reduction Act
D. Review Under Executive Order 12612
E. National Environmental Policy Act
F. Public Hearing
III. Public Comments

I. Background

Under section 644 of the Department of Energy Organization Act, Public Law 95–91 (42 U.S.C. 7254), the Secretary of Energy is authorization to prescribe such procedural rules and regulations as may be deemed necessary or appropriate to accomplish the functions vested in the position. Accordingly, the DEAR was promulgated with an effective date of April 1, 1984 (49 FR 11922, March 28, 1984), 48 CFR chapter 9.

The Department is proposing to amend the DEAR to specify a clause at 970.5204–57, Collective Bargaining Agreements, to be used in management and operating contracts, or subcontracts thereunder, for which continuity of services is imperative. A new final sentence is added to paragraph (b)(5)(ii) of 970.2201 to require use of the clause being added at 970.5204–57. Section 952.237–70, Collective Bargaining Agreements—protection services, is added to specify a clause to be used in contracts, other than management and operating contracts, calling for protective services at DOE-owned facilities. Also proposed is the addition of a new subpart 937.70, Protective Services Contracting, which will describe DOE policy and prescribe the use of the clause. A new subsection 922.103–5 is also added to implement FAR 22.103–5 to designate contracts for protective services at DOE-owned facilities as contracts requiring use of the clause entitled Notice to the Government of Labor Disputes at FAR 52.222–1.

II. Procedural Requirements

A. Review Under Executive Order 12291

This Executive Order, entitled "Federal Regulation," requires that certain regulations be reviewed by the Office of Management and Budget, (OMB) prior to their promulgation. The Director, OMB, by memorandum dated December 14, 1984, exempted certain agency procurement regulations for Executive Order 12291. The exemption applies to this rulemaking action.

B. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Public Law 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this proposed rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

D. Review Under Executive Order 12612

Executive Order 12612, entitled "Federalism," 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. Today's proposed rule, when finalized, will revise certain policy and procedural requirements. DOE has determined that none of the revisions will have a direct effect on the institutional interests or traditional functions of the States.

E. National Environmental Policy Act

DOE has concluded that promulgation of this rule would not represent a major Federal action having significant impact on the human environment under the National Environmntal Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*) (1976), the Council on Environmental Quality Regulations (40 CFR part 1500 1508), or the DOE Guidelines (10 CFR part 1021) and, therefore, does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

F. Public Hearing

The Department has concluded that this proposed rule does not involve a substantial issue of fact or law and that the rule should not have a substantial impact on the nation's economy or large numbers of individuals or businesses. Therefore, pursuant to Public Law 95–91, the DOE Organization Act, and the Administrative Procedures Act (5 U.S.C. 553), the Department does not plan to hold a public hearing on this proposed rule.

III. Public Comments

Interested persons are invited to participate by submitting data, views or arguments with respect to the proposed DEAR amendments set forth in this notice. Three copies of written comments should be submitted to the address indicated in the "**ADDRESS**" section of this notice. All comments received will be available for public inspection in the DOE Reading Room,

1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

All written comments received September 11, 1991 will be carefully assessed and fully considered prior to publication of the proposed amendment as a final rule. Any person submitting information which that person believes to be confidential and which may be exempt from public disclosure should submit one complete copy, as well as an additional copy from which the information claimed to be confidential has been deleted. DOE reserves the right to determine the confidential status of the information or data and to treat it according to its determination. DOE's generally applicable procedures for handling information, which has been submitted in a document and may be exempt from public disclosure, are set forth in 10 CFR 1004.11.

List of Subjects in 48 CFR Parts 922, 937, 952 and 970

Government procedure.

For reasons set out in the preamble, chapter 9 of title 48 of the Code of Federal Regulations is proposed to be amended as set forth below.

Issued in Washington, DC, on July 29, 1991.

Berton J. Roth,

Acting Director, Office of Procurement, Assistance and Program Management.

1. The authority citation for parts 922, 937 and 952 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

PART 922—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

2. Section 922.103–5 is added to read as follows:

922.103–5 Contract clauses.

In accordance with FAR 22.101–1(e) and FAR 22.103–5, the contracting officer shall insert the clause at FAR 52.222–1, Notice to the Government of Labor Disputes, in all solicitations and contracts for protective services at DOE owned facilities requiring continuity of services for public safety and national security reasons. The contracting officer may insert this clause in other solicitations and contracts where a significant need for continuity in contract performance exists. See 937.70, Protective Services Contracting, for policy guidance.

PART 937—SERVICE CONTRACTING

3. A new subpart 937.70, consisting of 937.7010 through 970.7040, is added to read as follows:

Subpart 937.70—Protective Services Contracting

970.7010 Scope of subpart.
970.7020 Policy.
970.7030 Procedures.
970.7040 Contract clauses.

Subpart 937.70 Protective Services Contracting

937.7010 Scope of subpart.

This subpart is applicable to contracts for the acquisition of protective services for DOE owned facilities requiring continuity of services for public safety and national security reasons.

937.7020 Policy.

Continuity of protective services at DOE owned facilities is vital to the safety of DOE and contractor personnel, public safety, the preservation of DOE property and national security. DOE policy is that contractors providing protective services, their employees, groups representing such employees, the Department, and DOE personnel shall cooperate to the maximum practical extent to assure continuity of such services.

937.7030 Procedures.

The importance of operational continuity at DOE owned facilities dictates that protective service contractors, when negotiating collective bargaining agreements with their personnel, provide that grievances and disputes involving the interpretation or application of the agreement be settled without resort to strike, lockout, or other interruption of normal operations. For this purpose, each collective bargaining agreement shall provide an effective grievance procedure with arbitration as its final step, unless the parties agree upon some other method of assuring continuity of operations for the term of the agreement. DOE expects its protective services employees and the unions representing contractor employees to cooperate fully with the Federal Mediation and Conciliation Service.

937.7040 Contract clauses.

The contracting officer shall insert the clause at 952.237–70, entitled *Collective Bargaining Agreements—Protective Services,* in all protective services solicitations and contracts involving DOE owned facilities. See also, 922.103–5, Contract Clauses, which prescribes use of the clause at FAR 52.222–1, Notice to the Government of Labor Disputes.

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 952.237–70 is added to read as follows:

952.237–70 Collective bargaining agreements—protective services.

As prescribed in 937.7040, insert the following clause:

Collective Bargaining Agreements—Protective Services (xxx 1991)

When negotiating collective bargaining agreements covering protective services under this contract, the Contractor shall use its best efforts to ensure such agreements contain provisions designed to assure continuity of services during the contract period of performance. All such agreements should provide that grievances and disputes involving the interpretation or application of the agreement will be settled without resorting to strike, lockout, or other interruption of normal operations. For this purpose, each collective bargaining agreement should provide an effective grievance procedure with arbitration as its final step, unless the parties mutually agree upon some other method of assuring continuity of operations for the period of performance of the contract. As part of such agreements, management and labor shall agree to cooperate fully with the Federal Mediation and Conciliation Service. The contractor shall include the substance of this clause in any subcontracts for protective services.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

5. The authority citation for part 970 continues to read:

Authority. Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254), sec. 201 of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985 (41 U.S.C. 420), and sec. 1534 of the Department of Defense Authorization Act, 1986, Pub. L. 99–145 (42 U.S.C. 7256a), as amended.

6. Section 970.2201 is amended by revising paragraph (b)(5)(ii) as follows:

970.2201 Basic labor policies.

* * * * *

(b) * * *

(5) * * *

(ii) In line with the policy of assuring continuity of operation of vital facilities, all collective bargaining agreements at Government-owned energy installations should provide that grievances and disputes involving the interpretation or application of the agreement will be settled without resorting to strike, lockout, or other interruption of normal operations. For this purpose, each collective bargaining agreement should provide an effective grievance procedure with arbitration as its final step, unless the parties mutually agree upon some other method of assuring continuity of operation for the term of the agreement. The contracting officer shall insert the clauses at FAR 52.222–1, Notice to the Government of Labor Disputes, and 970.5204–57, Collective bargaining agreements—management and operating contracts, in all management and operating contracts, and subcontracts thereunder, which require continuity of operation at a DOE-owned facility.

* * * * *

7. Section 970.5204–57 is added as follows:

970.5204–57 Collective bargaining agreements—management and operating contracts.

As prescribed in 970.2201(b)(5)(ii), insert the following clause:

Collective Bargaining Agreements—Management and Operating Contracts (XXX 1991)

When negotiating collective bargaining agreements under this contract, the Contractor shall use its best efforts to ensure such agreements contain provisions designed to assure continuity of services during the contract period of performance. All such agreements should provide that grievances and disputes involving the interpretation or application of the agreement will be settled without resorting to strike, lockout, or other interruption of normal operations. For this purpose, each collective bargaining agreement should provide an effective grievance procedure with arbitration as its final step, unless the parties mutually agree upon some other method of assuring continuity of operations for the period of performance of the contract. As part of such agreements, management and labor shall agree to cooperate fully with the Federal Mediation and Conciliation Service. The contractor shall include the substance of this clause in any subcontracts for protective services or other services performed on the DOE owned site which will affect the continuity or operation of the facility.

[FR Doc. 91–18389 Filed 8–9–91; 8:45 am]
BILLING CODE 6450–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 91–39; Notice 1]

RIN 2127–AE11

Federal Motor Vehicle Safety Standards; Windshield Wiping and Washing Systems

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Standard No. 104, Windshield Wiping and Washing Systems, to substitute the term "seating reference point" for the terms "manikin H point", "manikin H point with seat in rearmost position" and "H point" wherever any of these terms appear in any SAE Standard or Recommended Practice as that SAE document is incorporated by reference in the standard. Currently, the term "seating reference point" is substituted in Standard No. 104 for the terms "manikin H point" and "H point", but not "manikin H point with seat in rearmost position."

Elsewhere in today's edition of the Federal Register, NHTSA has published a final rule amending the definition of "seating reference point." The new definition clarifies that the "seating reference point" is not necessarily the absolute rearmost point to which a seat can be adjusted. Substitution of the term "seating reference point," as required by Standard No. 104, results in references in the incorporated SAE documents to "seating reference point with seat in rearmost position." That reference is contradictory under the new definition of SgRP when that point is other than the rearmost position of the seat. This proposal would eliminate such potentially contradictory references.

DATES: Comments must be received by October 11, 1991. If adopted, the proposed amendment would become effective on September 1, 1992.

ADDRESSES: Comments should refer to Docket No. 91–39; Notice 1 and submitted to: NHTSA Docket Section, room 5109, 400 Seventh Street, SW., Washington, DC 20590. (Docket hours are 9:30 a.m. to 4 p.m., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Mr. Jere Medlin, Crash Avoidance Division, NRM–11, room 5307, NHTSA, 400 Seventh Street, SW., Washington, DC 20590 (202–366–5276).

SUPPLEMENTARY INFORMATION: Standard No. 104, Windshield Wiping and Washing Systems, specifies requirements for windshield wiping and washing systems. Standard No. 104 references a variety of SAE Recommended Practices and Standards. In particular, the standard references Figure 1 of SAE J903a to establish the minimum windshield area(s) which must be wiped or washed in meeting the requirements of the standard. Standard No. 103, Windshield Defrosting and Defogging Systems, references this section of Standard No. 104 in establishing the minimum windshield area(s) which must be defrosted or defogged. These minimum areas are determined using the location of the seating reference point.

Elsewhere in today's edition of the Federal Register, NHTSA has published a final rule amending the definition of "seating reference point" (SgRP). "Seating reference point" identifies a single adjustment point for each seating position. The seating reference point for a particular seating position in a vehicle is used to determine whether that vehicle complies with requirements set forth in several of the safety standards. The final rule makes it clear in the definition that "seating reference point" is not necessarily the absolute rearmost point to which a seat can be adjusted.

In their comments submitted in response to the supplemental notice of proposed rulemaking (SNPRM) to amend the definition of "seating reference point," General Motors (GM) states:

> FMVSS No. 104 and, by reference, FMVSS No. 103 substitute the term "seating reference point" for the terms "manikin H point" and "H point" wherever either of those terms appears in any SAE Standard or Recommended Practice referred to in the standard. This substitution of terms results in references to "seating reference point with seat in rearmost position" (SAE Recommended Practice J903a, Figure 1). This terminology is potentially internally contradictory when the "seating reference point" is defined to permit a location at some point other than the rearmost position of the seat.

NHTSA agrees with GM that the amended definition of SgRP will create potentially contradictory references in Standard No. 104, and by reference Standard No. 103. To avoid any confusion this may cause, the agency is proposing to amend Standard No. 104 so that "seating reference point" is substituted for the terms "manikin H point", "manikin H point with seat in rearmost position" and "H point." The agency believes that this amendment will prevent the change in the SgRP definition from changing the areas of a vehicle subject to Standards No. 103 and 104, and should have no affect upon the

safety benefits which either standard provides. The agency also believes that this should not result in any increased or decreased cost for manufacturers as it is consistent with industry practice.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has examined the impact of this rulemaking action and determined that it is neither major within the meaning of E.O. 12291, nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The agency believes that this amendment would prevent the change in the SgRP definition from changing the areas of a vehicle subject to Standards No. 103 and 104, and should not result in any increased or decreased cost for manufacturers as it is consistent with industry practice.

Regulatory Flexibility Act

NHTSA has also considered the impacts of this proposal under the Regulatory Flexibility Act. I hereby certify that this rule would not have a significant economic impact on a substantial number of small entities. To the extent that any vehicle manufacturers qualify as small entities, their number would not be substantial. In any event, the agency does not anticipate any economic impacts from this rule, as explained above. Because of the lack of economic impacts of this rule, this new definition would not affect the purchase price of new motor vehicles purchased by small organizations and small governmental units.

National Environmental Policy Act

NHTSA has also analyzed this proposal under the National Environmental Policy Act and determined that it would not have a significant impact on the human environment.

Executive Order 12612 (Federalism)

Finally, NHTSA has analyzed this proposal in accordance with the principles and criteria contained in E.O. 12612, and has determined that this rule would not have significant federalism implications to warrant the preparation of a Federalism Assessment.

Submission of Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulations. 49 CFR part 12.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after the date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, NHTSA proposes to amend part 571 of title 49 of the Code of Federal Regulations as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 would continue to read as follows:

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

§ 571.104 [Amended]

2. S3 would be amended to read as follows:

S3. *Definitions.*

The terms *seating reference point* is substituted for the terms *manikin H point, manikin H point with seat in rearmost position* and *H point* wherever any of these terms appears in any SAE Standard or SAE Recommended Practice referred to in this standard.

* * * * *

Issued on: August 6, 1991.

Stanley R. Scheiner,

Acting Associate Administrator for Rulemaking.

[FR Doc. 91-19017 Filed 8-9-91; 8:45 am]

BILLING CODE 4910-59-M

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49 CFR Part 571

[Docket No. 87-6; Notice 4]

RIN 2127-AD84

Federal Motor Vehicle Safety Standards Lamps, Reflective Devices, and Associated Equipment

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

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice reopens rulemaking which would allow daytime running lamps (DRLs) as an item of optional motor vehicle lighting equipment. This action is taken in implementation of the grant of a petition for rulemaking submitted by General Motors Corporation, which wants to offer DRLs as a customer option, and which believes that certain State laws may inadvertently prevent it from doing so. The purpose of NHTSA's proposal is to ensure that manufacturers may offer DRLs, and that specifications are adopted so that DRLs do not reduce the current level of highway safety. Accordingly, NHTSA is proposing to amend Standard No. 108 so that any lamp on the front of a vehicle, whether or not required by Standard No. 108, could perform as a DRL by automatically operating during daylight providing that its maximum candela output does not exceed 2,600, and that steps are taken to prevent its light from masking turn and hazard warning signals.

DATES: Comment closing date for the proposal is October 11, 1991. Effective date of the final rule would be 30 days after publication of the final rule in the Federal Register.

ADDRESSES: Comments should refer to the docket number and the notice number, and be submitted to: Docket Section, room 5109, Nassif Building, 400 Seventh Street SW., Washington, DC

20590. Docket Hours are from 9:30 to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Jere Medlin, Office of Rulemaking, NHTSA, Washington, DC (202–366–5276).

SUPPLEMENTARY INFORMATION: On March 24, 1987, NHTSA opened Docket 87–6, to receive comments on a notice of proposed rulemaking under which Motor Vehicle Safety Standard No. 108 would be amended to permit daytime running lights (DRLs) as optional front lighting equipment on passenger cars, multipurpose passenger vehicles, trucks, and buses (Notice 1). The following year, NHTSA announced that it was terminating rulemaking on the subject without an amendment (Notice 2), and it subsequently denied a petition for reconsideration of the termination (published without docket or notice number, but referred to as Notice 3). The reader is referred to these notices for background information on this topic (52 FR 8316, 53 FR 23673, and 53 FR 40921).

New Rulemaking Petition for DRLs

On November 19, 1990, General Motors Corporation (GM) filed a petition asking the agency to propose an amendment of Standard No. 108 to allow motor vehicles to be equipped with DRLs. The purpose of its request was that such an amendment "would allow manufacturers to install DRLs on new vehicles without being in violation of the multitude of state laws which currently have the unintended effect of prohibiting them." Having supported the termination of rulemaking in 1988, GM had in the interim received requests from prospective truck fleet purchasers that it bid on fleet vehicles equipped with DRLs. Reluctant to be in possible violation of State laws, GM did not make DRLs available as a special equipment option. In the meantime, discussions are underway within GM to evaluate offering DRLs as either special equipment or regular production options for U.S. trucks and at least some passenger car models.

However, GM does not believe that DRLs are justified as standard equipment because there is not yet evidence of a "national safety need" in the United States, and because their use results in a penalty on fuel economy. Because DRLs are more effective in Northern latitudes where ambient daytime light levels differ from those of the South, they would appear to have a greater likelihood of assisting in crash prevention in Alaska or Maine, rather than Florida or Hawaii. Further, as GM had noted in 1987, fuel economy may be lessened by up to a quarter mile per gallon when some DRLs are used. The petitioner argued that the ability to test DRLs on vehicles in the U.S. could enable it to assess the potential safety benefits of DRLs in this country, and at the same time, their limited use would minimize the penalty of overall fleet fuel economy.

For the reasons discussed below, NHTSA is granting this petition for rulemaking, and is issuing this proposal in implementation of the grant.

Events Since the 1988 Termination of Rulemaking

The agency's primary justification for termination of rulemaking three years ago was that manufacturers tended to oppose, rather than support, the proposal, and that none of the manufacturers and trade organizations that NHTSA contacted planned to offer DRLs. That situation has obviously changed when the largest domestic manufacturer of motor vehicles has petitioned the agency for rulemaking to allow DRLs. If DRLs are allowed and GM takes advantage of the opportunity to offer them, other manufacturers are likely to follow. In fact, NHTSA understands that Saab is already offering DRLs as an option in the United States in the absence of any specific amendment to Standard No. 108.

Existing State Laws That Could Prohibit DRLs

NHTSA is not aware of any State laws that prohibit DRLs *per se*. However, GM is concerned that frontal lighting laws might inadvertently prohibit their use. GM brings to the agency's attention State laws requiring pre-approval of supplemental lighting devices, and the fact that there is currently no SAE standard for DRLs on which such approval could be based. As a further example, GM has found 35 States with regulations prohibiting supplemental lighting from projecting light that strikes the roadway at a specified distance in front of the vehicle. There are State laws which prohibit the use of lights in tunnels, the use of the parking lamps without headlamps when the car is being driven, and the illumination of fog lamps without the headlamps. GM has found it impossible to determine whether a particular DRL design that it uses in Canada would be prohibited under certain State laws. It concludes that DRLs are potentially affected by the laws of 40 to 45 States.

Having identified potential problem areas, GM claims that it is not a viable option to work for change through State regulatory officials. In some States, amendments are the prerogative of State motor vehicle officials, while in others, only the legislatures can change lighting requirements. GM believes that it would be virtually impossible to get all States to separately agree on standardized requirements for DRLs. Although the American Association of Motor Vehicle Administrators (AAMVA) has adopted a resolution in favor of DRLs, GM claims that no State has responded by amending its lighting requirements.

GM also argues that the trend in State lighting laws is towards increasing the daytime conspicuity of vehicles, and that the allowance of DRLs would be consistent with this trend. Several jurisdictions (Cape Cod and the State of Washington are referenced) now require 24-hour a day headlamp use on some roads. Connecticut has introduced legislation to mandate DRLs. California now specifically provides for optionally installed DRLs. Thus, GM argues that a DRL provision in Standard No. 108 would not contravene the spirit of Executive Order 12612 (Federalism).

NHTSA has reviewed these arguments. In the notice of termination (Notice 2), NHTSA stated that it had taken the Executive Order into consideration. The purpose of the Executive Order was to "limit Federal preemption of State laws unless preemption is necessary to address a national safety need." Notice 2 found no national safety need that warranted mandating DRLs, and that "an amendment would have a preemptive effect". Thus, NHTSA found a "further reason" in 1988 not to adopt the proposal.

In issuing the present proposal, NHTSA has reconsidered its position on this matter. It believes that manufacturers who wish to offer this option should not be precluded from doing so, provided that their DRLs do not derogate from existing levels of highway safety. For example, the agency believes that it is necessary to act to prevent States from allowing DRLs which have an intensity that may cause excessive glare. Thus, NHTSA has tentatively concluded that it can amend Standard No. 108 in a manner that ensures the maintenance of safety.

The Executive Order on Federalism recognizes the right of a Federal agency to preempt a State where Congress has provided express preemption authority, such as exists in 15 U.S.C. 1392(d). Nonetheless, NHTSA has taken care to minimize, to the extent consistent with safety, the preemptive effect of its regulations in accordance with the regulatory philosophy behind the Executive Order. It believes that the Executive Order on Federalism is primarily concerned with Federal

preemption of State laws that differ in a fundamental manner from Federal requirements. In this instance, there is no State law that prohibits DRLs *per se*. Thus, a Federal standard whose effect is to allow DRLs would not be directly preemptive of existing State laws, since there is no State standard that expressly prohibits DRLs.

The regulatory philosophy of the Executive Order requires NHTSA to examine the indirect preemptive effect of its regulations as well. NHTSA has also considered the issue whether an amendment allowing DRLs would, as a matter of law, preempt State laws that do not deal with DRLs, but whose provisions might be construed to prohibit them. The agency finds that its preemption authority appears to address this possibility as well. Under section 1592(d), NHTSA's safety standards preempt those State standards covering "the same aspect of performance". This is a broad phrase, and to be interpreted broadly in the fulfillment of the agency's mission. Therefore, to the extent that any State standard might affect the operation and performance of front lamps used as DRLs, NHTSA considers that, to the same extent, such a State standard may be viewed as covering the same aspect of performance as NHTSA's DRL specifications. For example, if Standard No. 108 allows lamps to be wired to operate automatically as DRLs, and to be specifically marked "DRL", the performance of that lamp is no longer subject to State restrictions on daytime use. As a further example, if the DRL is provided by a new lamp, and not one of the existing lamps required by Standard No. 108, NHTSA believes that such a lamp would be covered by Standard No. 108, rather than be considered a supplementary lighting device subject to state approval programs for supplemental equipment. Given the apparent trend in the States toward greater daytime conspicuity for motor vehicles, NHTSA believes that preempting the indirect effects of State regulations would be acceptable under the regulatory philosophy of Executive Order 12612.

However, NHTSA does not wish to proceed to a final rule without offering States an opportunity to comment on the safety rationale of statutes and regulations that might be preempted by NHTSA action. For example, comments are invited on the effects that might be attendant on overriding the prohibition against headlight use in tunnels, or use of parking lamps alone.

Front Lamps Likely to be Used as DRLs

On some vehicles, the DRL may be optically combined with a headlamp, *i.e.*, provided by the lower headlamp beam in a reduced intensity mode, and, on others, by the upper headlamp beam in a reduced intensity mode. On a few vehicles, DRLs may be optically combined with the turn signal lamps and used at the same operational intensity. Others may use DRLs optically combined with original-equipment fog lamps at operational or reduced intensity to provide the DRL. In this instance, fog lamps, otherwise unregulated by Standard No. 108, would be regulated for their DRL function. DRLs could also be provided by a pair of front lamps specifically designed for this purpose.

Appropriate Performance Requirements for DRLs—GM's Recommendation

GM calls the agency's attention to three possible sources of DRL requirements. These are the ones adopted by Canada, those proposed by NHTSA in Notice 1, and those currently under consideration by the SAE in its draft Recommended Practice J2087 Daytime Running Lamps for Use on Motor Vehicles. GM strongly supports adoption of the Canadian requirements on the basis that it would facilitate transfer of existing DRL designs to U.S. production with minimum cost and delay, and that the U.S. standard should harmonize with the Canadian one. With respect to the agency's proposal contained in Notice 1, GM asks NHTSA to consider the remarks it made in response to the notice, as it continues to have reservations about the proposal. Finally, it has no fundamental objections to the SAE document and believes that the design criteria it contains are sufficiently flexible to accommodate many of the DRL designs presently used in Canada.

The agency believes that GM has not fully recognized safety issues that both the Canadian and the SAE specifications present. Canada allows a maximum upper intensity limit of 7,000 candela. The SAE is interested in increasing its recommended upper limit from 5,000 to 7,000 candela (draft SAE Recommended Practice J2087). NHTSA believes that these intensities have the potential for creating glare. In addition, the SAE specification addresses lamp performance without regard to lamp location; thus, a lamp utilizing SAE DRL intensity values and which is located in proximity to a turn lamp could mask the turn signal lamp's signal.

NHTSA's 1991 Proposal

NHTSA's new proposal is based upon several considerations. First, a large manufacturer wishes to offer DRLs, and a smaller manufacturer may already be offering them. It is only a matter of time before other manufacturers are likely to want to offer them. Since DRLs are coming on stream, some regulation of them appears necessary to ensure that they perform in a manner that does not detract from existing levels of highway safety. The two chief considerations in this regard are that the lamps not create excessive glare, and that their use not mask the ability of the front turn signal to send its message. Thus, the new proposal is very simple. It would establish a maximum candela limitation, a minimum spacing requirement affecting the distance of a DRL from the turn signal lamp, and a requirement that the lens of any lamp used as a DRL, other than a headlamp, be marked "DRL". It would also specify a range of permissible colors, and that DRLs be provided in pairs, instead of as a single lamp. The specific characteristics of a DRL system are discussed below.

A. Number of DRLs

For some years, the single headlamp with which the great majority of motorcycles are equipped has been wired to turn on when the ignition is on. This has provided a DRL for motorcycles. In order to avoid possible misidentification of four-wheeled vehicles as motorcycles, NHTSA has tentatively concluded that the DRL "signature" for vehicles other than motorcycles should be comprised of two symmetrically located lamps. However, it seeks comments from interested persons on whether the provision of a single DRL on four-wheeled vehicles would decrease the effectiveness of motorcycle conspicuity that is provided by the daytime operation of their headlamps.

B. Lamp Color

Required lighting equipment under Standard No. 108 may be red, white, or yellow (paragraph S5.1.5) as defined by SAE Standard J578c, February 1977. Standard No. 108 reserves the use of red to rear lighting devices. In addition, red (and blue) are used by States to denote emergency, police, or towing vehicles. Green is a color that is unfamiliar to the public as a motor vehicle light. NHTSA has tentatively concluded that the color of a DRL should be one that the motoring public associates with the front of a vehicle, that is to say, either white or yellow. Thus, if a headlamp, parking lamp, or turn signal lamp is used

as a DRL, the light from the DRL would be the same color as the light from the lamp. If a front lamp other than one of these is used as a DRL, the agency is proposing that manufacturers choose among the following color range: white, white to yellow, white to selective yellow, yellow, or selective yellow, as defined in SAE Standard J587 MAY88. The agency is suggesting the latest version of the SAE standard because it includes light colors for fog lamps.

C. Lamp Intensity

The effectiveness of interior and exterior rear view mirrors is essential for safe vehicle operation in traffic during daylight, the time that the DRL is in operation. NHTSA has completed three research programs to determine acceptable limits of intensity. The most recent, "Evaluation of Glare from Daytime Running Lights", October 1989 (DOT–HS–807–502), is the basis for NHTSA's proposal. (See also "Evaluation of the Conspicuity of Daytime Running Lights", April 1990 (DOT–HS–807–613), and "A Study of Daytime Running Light Design Factors", August 1987 (DOT–HS–807–193). Copies of the three Reports are available in NHTSA's Technical Reference Library). The 1989 Report indicates that the probability of mirror adjustment by a driver to eliminate perceived glare increases as the intensity of a DRL increases, and that there is a 50 percent probability that a driver will adjust the interior rearview mirror if the DRL has an intensity of 2,600 candela. Further, there is a 50 percent probability of adjustment of the side mirror in response to a DRL intensity of 3,600 candela. These percentages are based upon data derived from passenger car mirrors reflecting headlamps of passenger cars behind; the higher mounted front lamps on trucks would only increase the glare. Separate experiments covered by this Report provided subjective data which indicated that approximately 2,800 candela can be tolerated before the "Just Acceptable" De Boer glare rating is exceeded. Above this value, vehicle operators would be distracted from the driving task for the time required to adjust their mirrors to eliminate or lessen the glare. Under Standard No. 108, the maximum allowable intensity of a complying lower beam is 2,700 candela, and the effect of the proposal is that a lower beam that provides the maximum allowable candela could not function as a DRL. Thus, NHTSA has tentatively concluded that 2,600 candela appears to be an appropriate value regardless of whether the DRL is provided by the lower beam of a headlamp, or other front lamp. It should be noted that some European countries have or are proposing an upper limit of 1,200 candela because of their concern for preventing glare. NHTSA is also concerned about glare, but is willing to set a somewhat higher maximum because U.S. drivers are more accustomed to higher glare levels than Europeans. Thus, an upper limit compatible with the U.S. lower beam should be acceptable to U.S. drivers.

Photometry would be tested in accordance with SAE J575 DEC88, when a test voltage of 12.8 +/− 0.20 mV is applied to the input terminals of the DRL lamp switch module or voltage-reducing equipment, whichever is closer to the electrical source on the vehicle. The test distance from the DRL to the photometer would be not less than 60 feet if the DRL is optically combined with a headlamp, or 10 feet if the DRL is a lamp, or is optically combined with a lamp other than a headlamp.

D. Turn Signal Masking Effect

The 1987 proposal prohibited operation of a DRL when a turn signal or hazard warning signal is activated if the distance from the lighted edge of the DRL to the optical axis of the turn signal lamp were less than 4 inches. NHTSA continues to be concerned about the potential of a DRL to "mask" the turn or hazard warning signal. Under the new proposal, the distance from the lighted edge of the DRL to the optical axis (filament center) of the front turn signal lamp must be not less than 4 inches, except if the turn signal lamp complies with the increased intensity specifications of S5.3.1.7 of Standard No. 108, or, alternatively, if the DRL is deactivated when the turn or hazard warning signal is on.

E. Lens Marking

Under the 1987 proposal, there would have been no requirement to identify the lamps used as DRLs. However, in commenting on that proposal, States asked for a lens marking requirement. In their view, State enforcement and vehicle inspection officials would be unable to distinguish between legal and illegal lamps and lamp combinations in the absence of marking. States such as Nebraska and South Dakota, which do not allow use of parking lamps alone, may penalize vehicle operators if parking lamps are used as DRLs. NHTSA has tentatively concluded that these arguments have merit, and, further, that resolution of preemption questions would be assisted by a clear designation of the lamps used as DRLs. These lamps would be marked "DRL" in letters not less than 4mm high. A lamp that optically combines a DRL with a headlamp would be exempt from this requirement.

Other Issues on Which Comment is Requested

Standard No. 108 presently requires the taillamps and side marker lamps to be activated simultaneously with the headlamps. The question arises whether, when a DRL is optically combined with a headlamp, the taillamps and side marker lamps must also be activated. Because there is a fuel economy penalty associated with side and rear lamp use, it is possible that manufacturers combining DRLs with headlamps will not wish to activate simultaneously the side and rear lamps. Furthermore, data exist from some studies conducted on high mounted stop lamps that indicate a negative safety effect can exist when the taillamps are activated. This occurred because the stop lamps were not as readily perceived on some cars when the taillamps were on. NHTSA requests comments on whether a prohibition against activation of the taillamps and side marker lamps is appropriate when a DRL is optically combined with a headlamp.

NHTSA is concerned about the possible increases in rear crashes from the effect of daytime taillamp operation upon the efficacy of the stop lamp signal. The presence of the CHMSL ought to provide an unmistakable signal, even if the taillamps and other stop lamps are combined in the same lamp housing. However, the NHTSA Report "An Evaluation of Center High Mounted Stoplamps" (DOT–HS–807442) showed that the greatest accident reduction benefit occurred during daylight (a 20 percent reduction, compared with an 8 percent reduction during dusk, nighttime, and dawn). The CHMSL may provide greater benefits when the taillamps are off. Thus, NHTSA requests that commenters address the issue of whether daytime taillamp operation could also lessen the effectiveness of the center stop lamp.

One intent of this rulemaking action is that a final rule would assist the States in adopting their own laws regarding use of DRLs, so that State and Federal standards would be identical. If and when there are data to prove DRLs have significant safety benefits, NHTSA will set a minimum performance level for them. NHTSA's research shows that 1600 candela is required to provide a significant improvement in peripheral detection at the high ambient light levels found in the U.S. NHTSA remains concerned over State laws that may

inadvertently preempt DRLs, and is interested in receiving comments from States which may disagree with the tentative preemption conclusions expressed by NHTSA in this notice.

This proposed regulation indirectly affects States which now have or are considering enacting laws to require operation of the headlamps when the windshield wipers are activated. The intent of these laws is to improve vehicle detection in low light levels, an intent that may be fulfilled by DRLs. NHTSA wants to encourage States to allow DRLs as an alternative to headlamps in their wiper use laws. States are requested to comment on the impact of DRLs on such laws.

Finally, a rule based upon this proposal would allow DRLs on vehicles throughout the United States. As GM mentioned, this would afford an opportunity to evaluate DRL performance under the broad geographic and road conditions throughout the country. However, past DRL studies indicate that unless evaluation studies are carefully controlled, the results are likely to be misleading or inconclusive. NHTSA is interested in evaluating the effectiveness of DRLs in the U.S. and requests that commenters submit suggestions as to how this might best be accomplished.

Rulemaking Analyses

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has preliminarily considered the economic impacts of this proposal and has made a tentative determination that it is not major within the meaning of E.O. 12291 nor significant under Department of Transportation policies and procedures. The regulation proposed is not mandatory upon persons otherwise regulated by Standard No. 108, therefore there is no cost impact upon any manufacturer who does not choose to offer a DRL. NHTSA has no information on whether other manufacturers would avail themselves of the option, but believes that the simple modifications required to wire existing front lamps for use as DRLs would be slight. Therefore, preparation of a full regulatory evaluation is not warranted.

National Environmental Policy Act

NHTSA has analyzed this proposal for the purposes of the National Environmental Policy Act. It is not anticipated that a rule based on the proposal would have a significant effect upon the environment, because there is no requirement that a manufacturer provide DRLs. As noted previously in this notice, there could be a fuel economy penalty of up to one quarter mile per gallon, depending on the type of DRL.

Regulatory Flexibility Act

The agency has also considered the impacts of this proposal in relation to the Regulatory Flexibility Act. I certify that this proposal would not have a significant economic impact upon a substantial number of small entities, because its adoption would not establish a mandatory requirement on regulated persons. Accordingly, no initial regulatory flexibility analysis has been prepared.

Executive Order 12612 (Federalism)

This proposal has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and NHTSA has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Request for Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted. All comments must be limited not to exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the docket section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation (49 CFR part 512).

All comments received before the close of business on the closing date indicated above, will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date, and comments received after the closing date and too late for consideration in regard to the action will be treated as suggestions for future rulemaking. The NHTSA will continue to file relevant material as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571 [AMENDED]

In consideration of the foregoing, it is proposed that 49 CFR 571.108 Motor Vehicle Safety Standard No. 108, *Lamps, Reflective Devices, and Associated Equipment* be amended as follows:

1. The authority citation for part 571 would continue to read as follows:

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

§ 571.108 [Amended]

2. Paragraph S5.5.3 would be revised to read:

S5.5.3 The tail lamps on each vehicle shall be activated when the headlamps are activated in a steady-burning state, but need not be activated if the headlamps are activated at less than full intensity as permitted by paragraph S5.5.11(a).

3. New paragraph S5.5.11 would be added to read:

S5.5.11 (a) Any pair of lamps on the front of a passenger car, multipurpose passenger vehicle, truck, or bus, whether or not required by this standard, may be wired to be activated in a steady burning state as daytime running lamps (DRLs) when the transmission is in any position other than park or neutral, and to be deactivated when the headlamp control is in the "headlamp on" position, provided that each such lamp:

(1) Does not have a beam intensity that exceeds 2,600 candela when tested in accordance with Section S11 of this standard;

(2) Is permanently marked "DRL" on its lens in letters not less than 4mm high, unless optically combined with a headlamp;

(3) Is designed to provide the same color, and that it is one of the following colors as defined in SAE Standard J578 MAY88: white, white to yellow, white to

selective yellow, selective yellow, or yellow;

(4) If other than optically combined with a turn signal lamp, is located so that the distance from the edge of the illuminated surface of its lens to the optical axis (filament center) of the turn signal lamp is not less than 4 inches (100 mm), unless the lamp is deactivated when the turn signal lamp is activated or unless the turn signal lamp conforms to paragraph S5.3.1.7 of this standard; and

(5) If optically combined with a turn signal lamp, performs in accordance with requirements for a turn signal lamp or hazard warning system lamp when the turn signal switch or hazard warning switch is activated.

(b) Any pair of lamps that are not required by this standard but are used to fulfill the specifications of subparagraph (a) of this paragraph shall be mounted at the same height, which shall be not more than 83 inches above the road surface measured from the center of the lamp on the vehicle at curb weight, and shall be symmetrically disposed about the vertical centerline of the vehicle.

5. New Section S11 would be added to read:

S11. *Photometric Test Specified in Paragraph S5.5.11(b).* A lamp that is wired in accordance with paragraph S5.5.11 of this standard, shall be tested for compliance with subparagraph (b) of that paragraph in accordance with SAE Standard J575 DEC88 when a test voltage of 12.8 +/− 0.20 mV is applied to the input terminals of the lamp switch module or voltage-reducing equipment, whichever is closer to the electrical source on the vehicle. The test distance from the lamp to the photometer shall be not less than 18.3 meters, if the lamp is optically combined with a headlamp, or is a separate lamp, and not less than 3 meters, if the lamp is optically combined with a lamp, other than a headlamp, that is required by this standard.

Issued on: August 6, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91–19016 Filed 8–9–91; 8:45 am]

BILLING CODE 4910–59–M

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49 CFR Part 571

[Docket No. 74–09; Notice 23]

RIN 2127–AD45

Child Restraint Systems

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend Standard 213, *Child Restraint Systems.* The standard currently does not require that a child restraint comply with its occupant excursion and seat inversion limits in a particular adjustment position if the restraint's manufacturer warns consumers that the restraint is not intended for use in motor vehicles or aircraft when it is in that position. NHTSA would amend the standard so that a warning could no longer be used to exclude an adjustment position from the occupant excursion and seat inversion limits. To clarify the effect of removing the exclusion, the agency proposes also to add language expressly requiring restraint systems for use in motor vehicles or aircraft to meet the requirements of the standard while adjusted to any adjustment position (including seat back angle adjustment positions and restraint belt anchorage and routing positions). These amendments would improve safety by removing the possibility that child restraints adjusted to positions inappropriate for use in motor vehicles or aircraft are used in those positions when transporting children.

DATES: Comments on this notice must be received by the agency no later than September 26, 1991. The proposed effective date is 180 days after the date of publication of the final rule.

ADDRESSES: Comments should refer to the docket number and notice number and be submitted in writing to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC, 20590. Telephone: (202) 366–5267. Docket hours are 9:30 a.m. to 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. George Mouchahoir, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC, 20590. Telephone: (202) 366–4919.

SUPPLEMENTARY INFORMATION: This notice proposes to amend the occupant excursion (S5.1.3) and seat inversion (S8.2) requirements of Standard 213, Child Restraint Systems, which currently do not apply to any seat adjustment position that the restraint's manufacturer warns consumers against using in motor vehicles or aircraft. NHTSA would amend the standard so that such a warning would not exclude an adjustment position from the occupant excursion and seat inversion limits. Additionally, this notice proposes to remove the provision that specifies how such a warning is to be provided. In addition, to clarify the effect of removing the exclusion, the agency would amend S5 to expressly require child restraint systems for use in motor vehicles or aircraft or both to meet the requirements of the standard while adjusted to any adjustment position.

The agency is issuing this notice in response to a petition for rulemaking from Consumer Action (CA) and the Center for Auto Safety (CAS).

Background

This rulemaking highlights the relationship between the test procedures specified in Standard 213 and the performance required of a safety seat. The National Traffic and Motor Vehicle Safety Act requires child safety seat manufacturers to certify each seat as complying with Standard 213. NHTSA checks the validity of the certification by evaluating the seat's performance when tested in accordance with the procedures (S6, S8) specified in the standard. The procedures for the dynamic sled and seat inversion test generally specify that NHTSA will install the child seat on a simulated car or aircraft passenger seat "in accordance with the manufacturer's instructions" provided to the consumer. The consumer instructions provide languge and diagrams on installing the seat in motor vehicles or aircraft, positioning a child in the seat and adjusting the seat to fit the child. The child safety seat must be capable of meeting Standard 213's requirements at all adjustment positions that the manufacturer intends for use in motor vehicles or aircraft, as evidenced by the manufacturer's instructions to the consumer.

A manufacturer is permitted to manufacture a child safety seat with adjustable positions that may be suitable for use in a place such as a home, but not inside a motor vehicle or aircraft. Such a child safety seat will not be subjected to the occupant excursion limit or the inversion test while adjusted to those positions if the child safety seat is accompanied by appropriate warnings.

With regard to motor vehicle use, the following warning is required by S5.5.2(i) of the standard to appear on the child safety seat's label:

> In the case of each child restraint system which is not intended for use in motor vehicles at certain adjustment positions, (label the restraint with) the following statement, inserting the manufacturer's adjustment restrictions.

DO NOT USE THE _____ ADJUSTMENT POSITION(S) OF THIS CHILD RESTRAINT IN A MOTOR VEHICLE.

A similar warning is required by S8.1 for aircraft. That section states:

In the case of child restraint which is not intended for use in aircraft at certain adjustment positions, the following statement, with the manufacturer's restrictions inserted, shall be included in the instructions.

DO NOT USE THE _____ ADJUSTMENT POSITION(S) OF THIS CHILD RESTRAINT IN AIRCRAFT.

The Petition

CA and CAS petitioned to remove S5.5.2(i) from the standard. They sought the amendment because the petitioners believed that the warning label required by S5.5.2(i) is insufficient to ensure that a child restraint system will not be used in the restricted positions in a motor vehicle. The petitioners believed that warning labels generally "do not produce desired consumer behavior" for a variety of reasons: Consumers may believe that the warning does not apply to them; the warning may lose its effectiveness over time; the warning may not impart sufficient information on safety risks; or a consumer may not notice or read the warning. Also, the petitioners believed that S5.5.2(i) provides a "loophole" that permits manufacturers to limit the application of the standard by means of a warning label.

The agency granted the petition in March 1990 to further evaluate the issues raised by the petition.

Agency Decision

Motor Vehicle Use

NHTSA has tentatively decided to remove S5.1.3's exclusion of restricted adjustment positions from the occupant excursion requirements, and to remove paragraph S5.5.2(i) regarding the warning against motor vehicle use. Since amending S5.1.3 and removing S5.5.2(i) alone may not clearly indicate what performance is required of each adjustment position, NHTSA has also tentatively decided to clarify the introductory paragraph of S5 to state that each child restraint shall meet the requirements of Standard 213 "at all adjustment positions (including, but not limited to each seat back angle adjustment position and each restraint belt anchorage and routine position), when tested in accordance with S6.1." The effect of this amendment to S5 would be to ensure that each adjustment position is capable of providing an acceptable level of occupant safety.

When the agency upgraded Standard 213 in 1979 to specify 30-mph sled testing of child safety seats, the agency permitted manufacturers to warn consumers that a child seat may have a particular position to which it should not be adjusted and used in a motor vehicle. At the same time, NHTSA urged manufacturers, in the preamble to the 1979 rule, not to include any adjustment positions for their restraints which should not be used in a motor vehicle. 44 FR 72133 (December 13, 1979). The agency believed it was unnecessary to specify that a child seat is to be tested in all adjustment positions, regardless of whether the manufacturer intended that all of those positions be used when the seat is in a motor vehicle because NHTSA believed manufacturers would take voluntary steps to eliminate those positions.

Based on available information, the agency believes that most manufacturers have eliminated adjustment positions that are not intended for motor vehicle use. In an informal survey of 15 child safety seats, the agency did not find any seat currently being manufactured that is labeled with a warning not to use an adjustment position (e.g., the fully reclined position) in a motor vehicle.

Although the seats currently in production are being manufactured to meet Standard 213 in all adjustment positions, the agency believes the amendments proposed in this NPRM are needed to ensure that no restricted position will be included in future seats. NHTSA is especially concerned that, in the past, some seats were manufactured with the fully reclined position designated as a restricted position. Some parents are likely to conclude that that position is the one most confortable for the child (especially if the child is sleepy or asleep) and the most convenient for the parent. A parent might therefore choose to use the restricted position without realizing that the position was not intended to provide occupant protection in a crash or even if the parent knows about the limitation on that position. The agency is unaware of a justification for the restricted adjustment positions that sufficiently outweighs the likelihood that the seat will be misused and the risk to safety unacceptably increased.

Aircraft

Similarly, the agency tentatively concludes that adjustment positions that are not intended to be used in aircraft should not be allowed, because these positions seem to be ones likely to be used. NHTSA believes that most manufacturers have eliminated adjustment positions that are not intended for aircraft use. Nevertheless, the agency seeks to ensure that no child seats with a restricted position will be manufactured in the future. Thus, NHTSA proposes to amend S8.1 and 8.2 of Standard 213.

Need For Warnings

However, the agency does not agree with the petitioners' belief that warning labels are generally insufficient to produce desired behaviors in the persons to whom the labels are addressed. Labels and instructional manuals that impart safety warnings and other information are required by Standard 213 to inform consumers how they can obtain the maximum level of safety from the seat. Labels and manuals help inform users about aspects of child safety seats that may not be known to the consumer or evident from the configuration of the seats, and help remind users about the correct use of the seat. The agency believes consumers will use the information to their and their children's benefit.

Further, warning labels and instructional manuals help facilitate the manufacture of a wide variety of child safety seat designs, such as the "convertible" child safety seat, which satisfies a consumer demand for the seats. A convertible seat is one designed for use by both infants and toddlers. Many consumers prefer to purchase a convertible child safety seat for the cost savings; one seat (a convertible child seat) need be purchased instead of two (an infant restraint and a toddler seat). For most convertible seats, certain adjustment positions on the seat are designed only for toddlers, while others of its adjustment positions are suitable only for infants. Manufacturers are able to produce convertible seats because they can label the seat with information about which positions are intended for use with children of different ages. (As stated above, NHTSA considers these instructions in determining how the agency will test the seat.) Due to the popularity of convertible seats with consumers, NHTSA believes the usage rate for child safety seats in general is as high as it is (80 percent for infants and toddlers under 5 year old) because of the availability of covertible seats.

NHTSA emphasizes that, by amending S5, S5.1.3, S8.1 and S8.2 and removing S5.5.2(i), the agency intends to prohibit the manufacture of child safety seats with adjustment positions that should not be used by any child in a motor vehicle or aircraft. The agency does not intend to prohibit the manufacture of convertible seats, and the agency does not believe the proposed amendment would have that

result. This is because the proosed amendment of S5 would continue to allow a manufacturer to specify in the installation instructions how the seat should be installed for children of different sizes and how the child occupant should be positioned, as long as each position to which the seat can be adjusted is intended for use in a motor vehicle. The agency does not believe convertible seats should be prohibited. While a convertible seat may have restrictions on the use of an adjustment position with children of certain ages, the restrictions do not prohibit the use of the position for all children. Thus, the position serves a motor vehicle safety need for a population of children, unlike a position that is designed without such safety in mind for any population.

Typographical Correction

NHTSA would correct S5.3.1 of Standard 213. That paragraph states: "Each add-on child restraint system shall have no means designed for attaching the system to a vehicle *seat cushion and vehicle seat back* and no component (except belts) that is designed to be inserted between the vehicle seat cushion and vehicle seat back." (Emphasis added.)

The language emphasized above should read: "seat cushion or vehicle seat back." The word "and" was submitted for "or" by the **Federal Register** in a January 22, 1988 amendment of Standard 213 (53 FR 1783). Until that amendment, the standard had used "or," and the agency's intent was to continue to use "or." The corrected paragraph would read: "Each add-on child restraint system shall have no means designed for attaching the system to a vehicle seat cushion or vehicle seat back and no component (except belts) that is designed to be inserted between the vehicle seat cushion and vehicle seat back."

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has examined the impact of this rulemaking action and determined that it is not major within the meaning of Executive Order 12291 or significant within the meaning of the Department of Transportation's regulatory policies and procedures. NHTSA has further determined that the effects of this rulemaking are minor and that preparation of a full preliminary regulatory evaluation is not warranted. The agency does not anticipate that manufacturers would be significantly affected. Based on available data, NHTSA believes that all child safety seats currently in production are being manufactured to meet the requirements of Standard 213 in all adjustment positions. Thus, the agency estimates that no additional costs would be incurred by manufacturers if the proposed amendment were adopted.

Because all currently manufactured safety seats already meet the proposed requirements, the agency does not anticipate a potential reduction in injuries or fatalities if the proposal is adopted. However, NHTSA believes amending S5, S5.1.3, S8.1 and S8.2, and removing S5.52(i) would ensure that the current level of safety provided by seats is maintained by preventing the manufacture of adjustment positions that are incapable of providing proper protection in a motor vehicle or aircraft.

Regulatory Flexibility Act

NHTSA has considered the effects of this rulemaking action under the Regulatory Flexibility Act. I hereby certify that it would not have a significant economic impact on a substantial number of small entities. Six of the eight manufacturers currently producing child safety seats are not small businesses. Regardless of the number of small entities, NHTSA believes the economic impact on them would not be significant, since the agency believes that currently, all child safety seats are being manufactured to meet the proposed amendments. The agency believes that there would not be any impact on the cost of most child seats, and that small organizations and governmental jurisdictions that purchase these seats would not be significantly affected by the proposals. In view of the above, the agency has not prepared an initial regulatory flexibility analysis.

Executive Order 12612

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and the agency has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

National Environmental Policy Act

NHTSA has analyzed this rulemaking action for the purposes of the National Environmental Policy Act. The agency has determined that implementation of this action would not have any significant impact on the quality of the human environment.

Comments on the Proposal

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—[AMENDED]

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 571 as set forth below.

1. The authority citation for part 571 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50 and 49 CFR 501.8.

§ 571.213 [Amended]

2. Standard No. 213 would be amended by revising S5 (introductory text), S5.1.3, S5.3.1, S8.1, and S8.2, and by removing and reserving S5.5.2(i), to read as follows:

* * * * *

S5. *Requirements for child restraint systems certified for use in motor vehicles.* Each child restraint system certified for use in motor vehicles shall meet the requirements in this section at all adjustment positions (including, but not limited to each seat back angle adjustment position and each restraint belt anchorage and routing position), when tested in accordance with S6.1.

* * * * *

S5.1.3 *Occupant excursion.* When tested in accordance with S6.1, each child restraint system shall meet the applicable excursion limit requirements specified in S5.1.3.1–S5.1.3.3.

* * * * *

S5.3.1 Each add-on child restraint system shall have no means designed for attaching the system to a vehicle seat cushion or vehicle seat back and no component (except belts) that is designed to be inserted between the vehicle seat cushion and vehicle seat back.

* * * * *

S5.5.2(i) [Reserved].

* * * * *

S8. *Requirements, test conditions, and procedures for child restraint systems manufactured for use in aircraft.*

* * * * *

S8.1 *Installation instructions.* Each child restraint system manufactured for use in aircraft shall be accompanied by printed instructions in the English language that provide a step-by-step procedure, including diagrams, for installing the system in aircraft passenger seats, securing the system to the seat, positioning a child in the system when it is installed in aircraft, and adjusting the system to fit the child.

S8.2 *Inversion test.* When tested in accordance with S8.2.1 through S8.2.5, each child restraint system manufactured for use in aircraft shall meet the requirements of S8.2.1 through S8.2.6. The manufacturer may, at its option, use any seat which is a representative aircraft passenger seat within the meaning of S4.

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Issued on: August 6, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91–19020 Filed 8–9–91; 8:45 am]

BILLING CODE 4910–59–M

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49 CFR Part 572

[Docket No. 91–27; Notice 01]

RIN 2127–AC87

Anthropomorphic Test Dummies, Infant Test Dummy

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes specifications for a newborn infant test dummy to be used in testing infant restraints. NHTSA believes that standardizing the dummy used to represent newborn infants in testing infant restraints would enable NHTSA and the child passenger safety community to evaluate those restraints in a fuller and more uniform manner. Adding the dummy to part 572 would be the first step toward using the dummy to test the compliance of infant restraints with the Federal motor vehicle safety standards (FMVSS) for child restraint systems (FMVSS 213). The issue of using the dummy in FMVSS 213 testing will be explored in future rulemaking.

DATES: Comments on this proposal must be received by NHTSA no later than September 26, 1991. If adopted in a final rule, these amendments would take effect 180 days after publication of the final rule in the **Federal Register**.

ADDRESSES: Comments should refer to the docket number and notice number and be submitted to: Docket Section, room 5109, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. The docket section is open from 9:30 am to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Sam Daniel, Pedestrian, Heavy Truck, and Child Crash Protection Division, NRM–15, room 5320, NHTSA, 400 Seventh Street SW., Washington, DC 20590 (202–366–4921).

SUPPLEMENTARY INFORMATION: This notice proposes to amend part 572, Anthropomorphic Test Dummies, to establish specifications for a test dummy representing a newborn infant. (49 CFR part 572). Child test dummies enable NHTSA to dynamically test child restraint systems in a manner that is both measurable and repeatable. The proposed newborn infant dummy would encourage testing of infant restraint systems in a standardized manner.

On July 14, 1988, Mr. D. Friedman petitioned the agency to amend Standard No. 213, *Child Restraint Systems* (49 CFR 571.213), and part 572 to specify the use of a dummy representing a newborn infant in conducting compliance testing of newborn infant restraint systems. Currently, these regulations specify the use of a dummy representing a six-month-old infant in testing the restraint systems. Mr. Friedman has developed two child restraint systems designed for newborn infants which cannot, he contends, be effectively tested for compliance using the part 572 six-month-old infant test dummy (49 CFR 572.25) because that dummy cannot be physically accommodated by his restraint systems.

The agency granted the petition by letter dated June 7, 1989. The agency stated that it would "consider revising FMVSS No. 213 and part 572 to allow use of the 'newborn' dummy in the compliance testing of child safety restraints designed for newborn and low weight infants."

The subject of developing a new infant test dummy for infant restrains was among the issues discussed at two public meetings on child passenger protection NHTSA sponsored in 1988. Several participants in the meetings, including Mr. Friedman, expressed concerns that the part 572 six-month-old infant test dummy was too large for use in evaluating restraint systems designed for newborn infants. Participants suggested that these systems could be more accurately evaluated using a dummy weighing from seven to 10 pounds, instead of the six-month-old dummy which weighs 17.4 pounds.

In response to the Friedman petition and the comments received at the public meetings, the agency is today proposing an infant test dummy for use in evaluating the performance of infant restraints. The proposed dummy is 20 inches in length and weighs 7.5 pounds. The dummy would be specified by descriptive design specifications that assure that each dummy would vary little from other dummies in its construction and performance. The dummy would be used as an inertial loading device in tests of infant restraint systems. It would not be instrumented to record either load or acceleration data during a crash simulation, because the dummy is not large enough for installation of the instrumentation.

Detailed design drawings for the proposed newborn infant dummy are available for examination in the NHTSA

Docket Section. Copies of those materials can be obtained from Rowley-Scher Reprographics, Inc., 1111 14th Street, NW., Washington, DC, 20005, telephone (202) 628–6667 or (202) 408–8789. The construction methods for the proposed newborn infant dummy would be identical to those for the six-month-old dummy.

The purpose of today's notice is to seek comment on standardized specifications for a test dummy representing a newborn child. Adopting the specifications would enable NHTSA and the child passenger safety community to test infant restraints in a fuller and more uniform manner. If today's proposal is adopted, NHTSA would subsequently initiate rulemaking to consider whether to amend FMVSS 213 to specify the use of the dummy in compliance test of infant restraint systems.

Selection of the Proposed Newborn Infant Dummy

In developing the proposal for an infant dummy, the agency obtained and tested two newborn infant dummies that were available in the marketplace to determine whether they were suitable for adoption in part 572. The two dummies were the "P–O" dummy developed by Institute Voor Wegtransportmiddelen (TNO), of the Netherlands and the "Baby Anne," which is a dummy used for training obstetric nurses in the care and feeding of newborns. The agency's evaluation of the dummies is discussed in NHTSA's report "Newborn Infant Dummy Development and Evaluation," VRTC–80–0168, March 1991. The report is available from the National Technical Information Service, Springfield, Virginia, 22161.

NHTSA determined that the P–O dummy would be unsuitable as a test dummy because its legs are fixed in a seated position, which prevents placing the dummy in a supine position. Since newborn infants cannot set up by themselves some restraint systems are designed to position the infant in a supine position. The inability of the P–O dummy to lie flat like an infant in the restraint prevents the dummy from adequately representing an infant in dynamic testing of car bed type infant restraints.

The Baby Anne dummy was unsuitable for a variety of reasons. First, the dummy is not built to exacting engineering standards, which are needed to assure testing repeatability. Moreover, at 6.05 pounds the dummy is 1.3 pounds lighter than a 50th percentile newborn, which raises some question about its biofidelity. (Biofidelity is a measure of how human-like a test dummy would be in an impact.) The Baby Anne was also undesirable as a test instrument because it lacks the durability necessary for repeated use in crash testing, and it is not designed to be repaired. Importantly also, the Baby Anne dummy is not readily available because its manufacturer has ceased its production.

Because neither of the two available newborn dummies was suitable, the agency developed a newborn infant dummy by scaling down the design of the six-month-old test dummy currently specified in part 572. The six-month-old dummy, developed by the Federal Aviation Administration's Civil Aeromedical Institute, has been used successfully to test child restraint systems since the mid-1970's.

The agency believes the new dummy has acceptable biofidelity for use as a test dummy. The dummy has accurate anthropometry and mass distribution representative of a 50th percentile newborn infant. These features are necessary to simulate the inertial and kinematic responses of an infant during sled testing of a child restraint. Although the dummy has stiffer joints and less joint articulation (to improve its durability for repeated testing) than a new born infant, NHTSA believes the difference is of minimal importance. The dummy would be used to assess the child restraint's ability to retain the head and torso of an infant, to maintain its structural integrity, and to provide adequate back support. NHTSA believes that the measurement of these features of a child restraint would not be affected by the dummy's joint articulation.

Since the construction methods for the proposed newborn dummy would be identical to those for the six-mont-hold dummy, NHTSA believes the six-month-old dummy construction manual could be used for the newborn dummy. The agency specifically requests comments on the necessity for a separate construction manual for the newborn dummy.

The agency has tentatively determined that the newborn dummy's Kinematic responses in a dynamic test are repeatable and reproducible. (Repeatability refers to the degree to which the dummy's responses vary for the same dummy would be build to exacting engineering standards that would be almost identical to those for the part 572 six-month-old dummy. The six-month-old dummy has shown repeatable and reproducible results in child restraint testing. Because the newborn and six-month-old dummies would be very similar material and construction, the agency believes the newborn dummy's Kinematic responses would be repeatable and reproducible. Also, the repeatability of the dummy was demonstrated in NHTSA's crash simulation tests. The dummy was tested twice in two child restraints, a rear-facing infant restraint and a car bed, where maximum seat belt load, child restraint seat back angle and child seat excursion data were recorded. The data showed that the dummy's performance did not vary by more than 11.5 percent between tests, which the agency believes is acceptable.

The agency tested the dummy's ability to fit various seat designs by placing it in six different restraint systems. The six restraints were Kolcraft's Rock-N-Ride, Cosco's TLC Infant Seat and Dreamride Car Bed (both the car bed and rear-facing seat modes), Evenflo's Joyride, the Century 580 and Fisher Price's Infant Seat. The dummy appeared to adequately fit the seats and showed no indication of positioning problems.

NHTSA believes current infant restraints would be able to meet the requirements of Standard 213 when tested with the new dummy. The agency conducted two 30 mile per hour crash tests with the dummy in a rearward facing seat (in a Fisher Price Infant Seat) and a car bed (in a Cosco Dreamride Infant Car Bed). Both restraint systems appeared to adequately restrain the dummy and experience no structural damage in the impact.

Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures.

The agency has analyzed the economic and other effects of this proposal and tentatively determined that they are neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The proposed specifications for the newborn dummy are intended to facilitate the evaluation of crash protection for newborn children for research purposes only. The proposal would not require any manufacturer to produce or use the dummy. The dummy would not be used in Standard 213 compliance testing unless the agency decided to do so after thoroughly evaluating and discussing such use and its costs and other impacts in a separate rulemaking.

The agency estimates that the proposed newborn test dummy could be manufactured for $2,500 to $5,000 per

unit, depending on the manufacturer. Since the dummy is designed to be reusable, its cost can be amortized over a number of tests. The materials used in the dummy are commercially obtainable and are similar to the material used in the six-month-old dummy described in subpart D of part 572. For these reasons, the agency has tentatively determined that the economic effects of the proposed amendments are so minimal that a full regulatory evaluation is not required.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act NHTSA has evaluated the effects of this proposed action on small entities. There is only one anthropomorphic test device manufacturer currently operating in this county. The manufacturer does not produce dummies of the type and size of the one proposed in this notice. This notice neither requires newborn dummies to comply with the proposed specifications, nor requires the use of the proposed dummy in child restraint testing. However, the agency anticipates that the existence of the specifications would cause purchasers to select only those newborn dummies that meet those specifications. NHTSA believes that use of the proposed dummy would not affect the sales or use of other currently-specified part 572 child dummies, since those dummies would continue to be used in testing child restraint systems.

Small organizations and small governmental jurisdictions that deal with automotive child safety should not be significantly affected since the potential cost increments associated with this proposed action should have negligible effects on the purchase price of applicable child restraint systems, if at all. Based upon this evaluation, I certify that the proposed amendment to part 572 would not have a significant economic impact on a substantial number of small entities. Accordingly, no preliminary regulatory flexibility analysis has been prepared.

Executive Order 12612

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

National Environmental Policy Act

The agency has also analyzed this proposed rule for the purpose of the National Environmental Policy Act, and tentatively determined that it would not have any significant impact on the quality of the human environment.

Procedures for Filing Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted. All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Regulatory Information Number (RIN)

A RIN is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 572

Motor vehicle safety.

In consideration of the foregoing, NHTSA proposes to amend 49 CFR part 572 as follows:

PART 572—[AMENDED]

1. The authority citation for part 572 would continue to read as follows:

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

2. A new subpart K consisting of §§ 572.90 through 572.91 would be added to read as follows:

Subpart K—Newborn Infant

572.90 Incorporated materials
572.91 General description

Subpart K—Newborn Infant

§ 572.90 Incorporated materials.

The drawings and specifications referred to in this regulation that are not set forth in full are hereby incorporated in this party by reference. These materials are thereby made part of this regulation. The Director of the Federal Register approved the materials incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the materials may be obtained from Rowley-Scher Reprographics, Inc., 1216 K Street, NW., Washington, DC 20002, telephone (202) 628–6667. Copies are available for inspection in the general reference section of Docket 91–27, Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW. Washington, DC, or at the Office of the Federal Register, 1100 L Street, NW., room 8401, Washington, DC.

§ 572.91 General description.

(a) The newborn infant dummy is specified in its entirety by means of 26 drawings designated NBI 126, 5 assembly drawings designated SA 1001, and a construction manual dated July 2, 1974, which describes in detail the procedures involved in the manufacture of this dummy.

(b) The structural properties of the dummy are such that the dummy conforms to this Part in every respect both before and after being used in dynamic tests specified in Standard No. 213 of this Chapter (§ 571.213).

Issued on: August 6, 1991.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 91–19019 Filed 8–9–91; 8:45 am]

BILLING CODE 4910–59–M

Notices

Federal Register
Vol. 56, No. 155
Monday, August 12, 1991

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1991 Company Organization Survey.

Form Number(s): NC–9901, NC–9907.

Agency Approval Number: 0607–0444.

Type of Request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Burden: 76,899 hours.

Number of Respondents: 93,000.

Avg Hours Per Response: 50 minutes.

Needs and Uses: The Bureau conducts the Company Organization Survey (COS) annually to update and maintain the Standard Statistical Establishment List (SSEL). The SSEL is a computerized list of companies containing such information as name, address, physical location, Standard Industrial Classification (SIC) code, employment size code, and company affiliation. It provides a single universe for the selection and maintenance of statistical samples of establishments, legal entities, or enterprises; provides a standard basis for assigning SIC codes; and provides establishment level data from multi–establishment companies that are summarized and published in the annual County Business Patterns series of reports. The updated SSEL provides a current directory of business locations for use in economic current surveys and economic censuses.

Affected Public: Businesses or other for–profit organizations; Non–profit institutions; Small businesses or organizations.

Frequency: Annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Marshall Mills, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 7, 1991.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 91–19107 Filed 8–9–91; 8:45 am]

BILLING CODE 3510–07–F

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Questionnaire Pretesting Research.

Form Number(s): Will vary by survey.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 3,000 hours.

Number of Respondents: 3,000.

Avg Hours Per Response: 1 hour.

Needs and Uses: This is a request for a generic clearance to conduct extended cognitive and questionnaire design research as part of testing for the Census Bureau's censuses and surveys. This submission will provide a vehicle for testing questionnaires and procedures using state–of–the–art methods, including administration of respondent debriefing forms, split ballot experiments, and small–scale field tests involving behavior coding of respondent/ interviewer interaction.

Affected Public: Individuals or households; Farms; Businesses or other for–profit organizations; Small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Marshall Mills, 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 377–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Marshall Mills, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: August 7, 1991.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 91–19108 Filed 8–9–91; 8:45 am]

BILLING CODE 3510–07–F

International Conference on Environmental Technologies

AGENCY: Office of Technology Commercialization, U.S. Department of Energy, Environmental Protection Agency.

ACTION: Notice of conference.

SUMMARY: The Department of Commerce will conduct a conference on environmental technologies on September 5–6, 1991. The conference, entitled "Protecting the Environment: New Technologies * * * New Markets," will be held at the Sheraton Reston in Reston, Virginia, close to the Dulles International Airport. The agenda will focus on new markets for selling environmental technologies in Poland, Czechoslovakia, and Hungary, and on opportunities for commercializing federal environmental research. Representatives of the Department of Energy and the Environmental Protection Agency, along with industry co-sponsors, will participate.

FOR FURTHER INFORMATION CONTACT: Office of Technology Commercialization, room 4418, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230, (202) 377–8100.

SUPPLEMENTARY INFORMATION: The conference will inform participants of the opportunities for collaboration in commercially important environmental research in progress in the laboratories of the Department of Commerce (the National Oceanic and Atmospheric

Administration and the National Institute of Standards and Technology), the Department of Energy with its system of national laboratories, and the Environmental Protection Agency.

The conference will also provide the audience with detailed information concerning trade and investment opportunities, as well as financing options, for environmental products and services in Eastern Europe.

The National Association of Manufacturers, the U.S. Chamber of Commerce, the Industrial Research Institute, the American Petroleum Institute, and five other trade associations are co-sponsors of the event. The agenda for the event is intended to address concerns of U.S. industry in this critically important area. The conference will provide a unique opportunity for industry representatives to learn about two complementary aspects of the environmental field:

- Opportunities for commercializing environmental research under way in the federal laboratories, and
- Opportunities for selling environmental products and services in Poland, Hungary, and Czechoslovakia.

A fee to cover costs will be required for participation in this event.

Deborah L. Wince-Smith,

Assistant Secretary for Technology Policy.

[FR Doc. 91-19109 Filed 8-9-91; 8:45 am]

BILLING CODE 3510-18-M

Foreign-Trade Zones Board

[Docket 27-91]

Foreign-Trade Zone 56—Oakland, CA; Amendment of Application To Include Request for Manufacturing Authority, Advanced Blending Corp., Food Products Operation

The application submitted to the Foreign-Trade Zones Board (the Board) by the City of Oakland, California, grantee of FTZ 56, for expansion of FTZ 56 (Docket 27-91, 56 FR 22842, 05-17-91) has been amended to include a request for authority on behalf of Advanced Blending Corporation (ABC), to manufacture milk-based infant formula for export under zone procedures within FTZ 56. The request was amended on July 8, 1991.

ABC plans to lease some 15,000 square feet of space within the Oakland Commerce Center complex, located at 9401 San Leandro Street in Oakland. The complex is within the proposed new site for FTZ 56. ABC will produce infant formula at the site by the cold-process blending of ex-quota foreign sugar and ex-quota foreign non-fat dry milk with domestic protein and whey powder. The finished product would be exported to Asian markets. ABC produces infant formula for the domestic market at other sites (Modesto, CA).

Zone procedures would allow ABC to purchase world-price sugar and milk for use in products that are exported. They would also exempt the company from Customs duty payments on the foreign materials used in export production. The applicant indicates that zone procedures are important in its efforts to compete in foreign markets.

Comments concerning the manufacturing proposal are invited from interested parties. They should be addressed to the Board's Executive Secretary at the address below and postmarked on or before September 9, 1991.

A copy of the application is available for public inspection at the following locations:

U.S. Department of Commerce, District Office, Box 6013, Federal Building, room 15205, 450 Golden Gate Avenue, San Francisco, California 94102.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Dated: August 5, 1991.

John J. Da Ponte, Jr.

Executive Secretary.

[FR Doc. 91-19110 Filed 8-9-91; 8:45 am]

BILLING CODE 3510-DS-M

International Trade Administration

[A-588-019]

Termination of Antidumping Administrative Review on Dichloro Isocyanurates from Japan

AGENCY: International Trade Administration/Import Administration/ Department of Commerce.

EFFECTIVE DATES: August 12, 1991.

FOR FURTHER INFORMATION CONTACT: Kristal A. Eldredge or Rick Herring, Office of Countervailing Investigations, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-0631 or 377-3530, respectively.

Termination of Review

On May 24, 1989, we published a notice initiating the administrative review of the antidumping duty order on Cyanuric Acid from Japan for the period April 1, 1988 through March 31, 1989 and its Chlorinated Derivatives for the period April 1, 1988 through November 20, 1988 (54 FR 22465). On June 1, 1990, we published the notice initiating the review of Cyanuric Acid and its Chlorinated Derivatives covering Nissan Chemical Industries, Ltd., and Shikoku Chemicals Corp., Ltd., for the period April 1, 1989 through March 31, 1990 (55 FR 22366).

We subsequently published a notice of "Final Results of Antidumping Administrative Reviews and Revocation on Trichloro Isocyanuric Acid, and Revocation, in Part, on Dichloro Isocyanurates" (56 FR 19338, April 26, 1991). The revocation was effective November 21, 1988. As a result, on June 26, 1991, we published a notice of "Termination of Antidumping Administrative Review on Trichloro Isocyanuric Acid, and Termination, in Part, on Dichloro Isocyanurates" (56 FR 29215). This termination did not affect the reviews for Shikoku Chemicals Corporation and Mitsubishi Corporation (trading company), but did terminate the reviews with respect to Nissan Chemical Industries, Ltd.

On July 26 and July 29, 1991, we received letters from Shikoku Chemicals Corporation and Mitsubishi Corporation, and Monsanto Company, respectively, withdrawing their request for review for the periods November 22, 1988 through March 31, 1989 and April 1, 1989 through March 31, 1990 and requesting that the Department terminate the review of these periods.

Therefore, we are terminating the review for all companies with respect to dichloro isocyanurates for the periods November 22, 1988 through March 31, 1989 and April 1, 1989 through March 31, 1990.

This termination of review and notice are in accordance with section 751(a)(1) of the Tariff Act of 1930 (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(a)(5).

Dated: August 6, 1991.

Francis J. Sailer,

Deputy Assistant Secretary for Investigations, Import Administration.

[FR Doc. 91-19111 Filed 8-9-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-428-037]

Drycleaning Machinery From Germany; Preliminary Results of Antidumping Duty Administrative Review.

AGENCY: Import Administration/ International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request from the petitioner, the Department of Commerce has conducted an administrative review of the antidumping finding on drycleaning machinery from Germany. The review covers two manufacturers/exporters of this merchandise to the United States and the period November 1, 1989 through October 31, 1990. One of the companies, Seco Maschinenbau & Co. GmbH (Seco), failed to respond to our questionnaire. For Seco we used the best information available (BIA).

In this review we preliminarily found margins of 6.00 percent for Boewe Passat Reinigungs und Waschereitechnik GmbH (Boewe) and for Seco.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATES: August 12, 1991.

FOR FURTHER INFORMATION CONTACT: Arthur N. DuBois or John R. Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone (202) 377–8312/3601.

SUPPLEMENTARY INFORMATION:

Background

On November 13, 1990, the Department of Commerce (the Department) published a notice of "Opportunity to Request an Administrative Review" (56 FR 47370) of the antidumping finding on drycleaning machinery from Germany (37 FR 23715, November 8, 1972). On November 30, 1990, the petitioner, Vic Division of Waltron, Inc., requested an administrative review of the antidumping finding. We initiated the review, covering November 1, 1989 through October 31, 1990, on December 12, 1990 (56 FR 51742). The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930 (the Tariff Act). The final results of the last administrative review in this case were published in the Federal Register on January 25, 1991 (56 FR 2901).

Scope of the Review

Imports covered by the review are shipments of drycleaning machinery currently classifiable under item number 8451.10.10 of the Harmonized Tariff Schedule (HTS). HTS item numbers are provided for convenience and for Customs purposes. The written descriptions remain dispositive.

The review covers two German manufacturers/exporters of this merchandise to the United States and the period November 1, 1989 through October 31, 1990. Since one of the companies, Seco, failed to respond to our questionnaire, for Seco we used 6.00 percent as BIA, the highest rate in this review, which is higher than any of Seco's prior rates.

United States Price

In calculating United States price, we used purchase price (PP) or exporter's sales price (ESP), both as defined in section 772 of the Tariff Act, as appropriate. PP and ESP were based on the delivered, packed price to unrelated purchasers in the United States. We made adjustments for foreign inland freight, ocean freight and marine insurance, U.S. inland freight, U.S. customs duties, brokerage charges, and when applicable for commissions to unrelated parties, and the U.S. subsidiary's direct and indirect selling expenses. In accordance with section 772(e)(2) of the Tariff Act, we made further deductions, where appropriate, for packing expenses incurred in the United States. No other adjustments were claimed or allowed.

Foreign Market Value

In calculating foreign market value the Department used either home market price (when sufficient quantities of such or similar merchandise were sold in the home market) or constructed value, as defined in section 773 of the Tariff Act.

Constructed value was calculated as the sum of materials and fabrication costs, general expenses, profit, and U.S. packing. Because U.S. packing was not provided, we used data on U.S. packing from the previous review as BIA. For general expenses the Department used actual general expenses because they were higher than the statutory minimum of ten percent of the sum of materials and fabrication costs. Because actual profit was less than eight percent, the Department used the statutory minimum of eight percent of the sum of materials, fabrication costs, and general expenses.

Home market price was based on the packed ex-factory or delivered price to unrelated purchasers. We made adjustments, where appropriate, for foreign inland freight, early payment discounts where actually taken, guarantees, certain directly-related sales office expenses, technical service expenses, and certain miscellaneous expenses incurred on behalf of the customer. We also made adjustments for differences in credit expenses, commissions to unrelated parties, differences in packing costs, and, where appropriate in the case of ESP calculations, for indirect selling expenses to offset U.S. indirect selling expenses.

When there were no identical products in the home market with which to compare products sold to the United States, we made adjustments to similar merchandise to account for options or other differences in the physical characteristics of the merchandise. These adjustments were based on the costs of direct materials, direct labor, and direct factory overhead.

We allowed bad debt and indirect sales office expenses as level-of-trade (LOT) adjustments. We disallowed trade-in losses, indirect warranty, order entry and control, and headquarters sales office expenses as LOT expenses because we do not believe them to be a measure of LOT differences in this case.

We disallowed Boewe's claim for direct circumstance-of-sale (COS) adjustments for advertising, traffic department, management, order entry and control, technical publications, headquarters sales department, research and development, and general and administrative expenses because these claimed adjustments either were not directly related to the sales used for comparison purposes or were not selling expenses.

We allowed advertising, order entry and control, headquarters sales department, technical publications, and indirect warranty expenses as indirect selling expenses to the extent that they did not exceed indirect selling expenses to the extent that they did not exceed indirect selling expenses for ESP sales. We disallowed research and development, traffic department, management, and general and administrative expenses, as indirect selling expenses because they are not selling expenses.

We disallowed claimed adjustments for "trade-in losses" as price reductions. We do not consider the amounts deducted from the price of a new machine for a trade-in to be a discount. We also denied trade-in losses as a COS adjustment, as an indirect selling expense, or as a LOT adjustment.

No other adjustments were claimed or allowed.

Preliminary Results of the Review

As a result of our review, we preliminarily found the following margins:

Manufacturer/exporter	Time period	Margin (percent)
Boewe	11/1/89–10/31/90	6.00
Seco	11/1/89–10/31/90	6.00

Interested parties may submit written comments on these preliminary results

within 30 days of the date of publication of this notice, may request disclosure within 5 days of the date of publication, and may request a hearing within 10 days of the date of publication. Any hearing, if requested, will be held as early as convenient for the parties but not later than 44 days after the date of publication or the first workday thereafter. Pre-hearing briefs from interested parties may be submitted not later than 14 days before the date of the hearing or the first workday thereafter. Rebuttal briefs and rebuttal comments, limited to issues raised in the initial round of comments, may be filed not later than 7 days after submission of the initial round of comments. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of our final results of review for all shipments of this merchandise from Germany entered, or withdrawn from warehouse, for consumption on or after that publication date, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for any shipment of this merchandise exported by any of the reviewed companies will be that established in the final results of this review; (2) if the exporter is not a firm covered in this review or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer in the final results of this review; (3) the cash deposit rate for all other manufacturers/exporters shall be 6.00 percent. This is the highest non-BIA rate in this review.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22(1991).

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91-19112 Filed 8-9-91; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-601]

Certain Stainless Steel Cooking Ware from the Republic of Korea; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of final results of antidumping Duty Administrative Review.

SUMMARY: On March 5, 1991, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on certain stainless steel cooking ware from the Republic of Korea. The review covers one manufacturer/exporter of the subject merchandise to the United States, Namil Ltd., and the review period January 1, 1989 through December 31, 1989. We have now completed that review and determine the weighted average dumping margin to be 1.69 percent *ad valorem.*

EFFECTIVE DATE: August 12, 1991.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Anne D'Alauro, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On March 5, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 9195) the preliminary results of its administrative review of the antidumping duty order on certain stainless steel cooking ware from the Republic of Korea (52 FR 2139; January 20, 1987). We have now completed that review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

Imports covered by this review are shipments of certain Korean stainless steel cooking ware. Such merchandise is classifiable under Harmonized Tariff Schedule (HTS) item number 7323.93.000. The products covered by this order are skillets, frying pans, omelette pans, saucepans, double boilers, stock pots, dutch ovens, casseroles, steamers, and other stainless steel vessels, all for cooking on stove top burners, except tea kettles and fish poachers. Excluded from the scope are stainless steel kitchen ware. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter of the subject merchandise to the United States, Namil Ltd., and the period January 1, 1989 through December 31, 1989.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received case and rebuttal briefs from the petitioner, Fair Trade Committee of the Cookware Manufacturers Association, and the respondent, Namil Ltd.

Comment 1: The petitioner states that many of the comparisons between similar third country merchandise and U.S. merchandise had substantial differences in merchandise (difmer) adjustments, in excess of 20 percent of the cost of manufacturing the U.S. merchandise. Pursuant to 19 U.S.C. 1677(16)(C)(iii), the Department has adopted a guideline to identify similar merchandise which may reasonably be compared to the subject merchandise sold in the United States. Any merchandise that requires a difmer adjustment above 20 percent of the cost of manufacturing the U.S. product is not considered a reasonable comparison. In Final Determination of Sales At Less Than Fair Value; Certain Small Business Telephone Systems and Subassemblies Thereof from Korea, (54 FR 53145; December 27, 1989), the Department stated that it found it necessary to adopt a 20 percent guideline in order to minimize the effect of certain distortions created in calculations caused by making a difmer adjustment of that magnitude.

The petitioner argues that the Department should follow its normal practice and limit the use of similar merchandise in making fair value comparisons to those comparisons where the difmer adjustment is less than or equal to 20 percent of the cost of manufacturing the U.S. merchandise. See, e.g., Tapered Roller Bearings Four Inches or Less in Outside Diameter and Certain Components Thereof from Japan; Final Results of Antidumping Duty Administrative Review, (55 FR 38720; September 20, 1990) and Cellular Mobile Telephones and Subassemblies from Japan; Final Results of Antidumping Duty Administrative Review, (55 FR 29395; July 19, 1990). For those comparisons where the difmer adjustment exceeds 20 percent of the cost of manufacturing the U.S. merchandise, the Department should use constructed value (CV) as the basis for

determining foreign market value (FMV) for the fair value comparison.

Namil replies that the Department used 811 difmer comparisons. Only 154 of these were greater than 20 percent. Of these 154, exactly half (77) are attributable solely to the use of high value copper bottom inserts rather than aluminum. Of the remaining 77, 54 are the result of other material differences resulting from differences in the diameter of the vessel, its height, the thickness of the bottom or different handles and knobs. Of the remaining 23, 12 involve comparisons of a vessel with a cover to a vessel without a cover or with a glass (rather than a steel) cover. Namil argues that, in the cases cited by the petitioner, the Department utilized a 20 percent limit on difmers due to the type of products being compared. However, because of the nature of the subject merchandise in this review, the guideline is inappropriate. Here, the Department is dealing with a fairly simple product, with relatively straightforward manufacturing operations, where the cost of alternative materials for the bottom "sandwich," or for handles and knobs is extremely significant. Therefore, the Department should use the verified difmers, even if they exceed 20 percent.

Department's Position: We disagree with the petitioner that the 20 percent guideline should be strictly followed in this case. At verification, we visually examined the comparison products and found them to be reasonably similar. As noted by Namil, in many of the cases where the difmer was greater than 20 percent, there were clearly identifiable and easily quantifiable material cost differences between otherwise identical or nearly identical products. Therefore, it is logical that these products are reasonably compared in spite of having a difmer higher than 20 percent. See, e.g., Final Determination of Sales at Less Than Fair Value; Certain Small Business Telephone Systems and Subassemblies Thereof from Taiwan, (54 FR 42543; October 17, 1989).

Comment 2: The petitioner argues that, in the event that difmer adjustments are permitted for CV comparisons, best information available (BIA) should be used where the proposed difmer adjustment to CV is more than 20 percent of the cost of manufacturing the U.S. merchandise. The BIA should be the highest final margin determined for any product.

Department's Position: We disagree. As discussed in the Department's Position in response to Comment 1, we have determined that because of the nature of the subject merchandise, these products are reasonably comparable in spite of difmers higher than 20 percent.

Comment 3: The petitioner states that in calculating SG&A and profit, the Department understated the profit adjustment. Instead of first multiplying by ten percent to account for SG&A and then multiplying the result by eight percent to account for profit, the Department simply multiplied cost of manufacturing by 18 percent (10 percent for general expenses and 8 percent for profit).

Department's Position: We agree with the petitioner and have adjusted our calculations accordingly.

Comment 4: The petitioner asserts that the Department should use BIA to determine the margins on the sale of woks to the United States. The Department discovered at verification that Namil sold woks to the United States during the review period, but these wok sales were not reported in its questionnaire response. Namil also did not report data for sales of woks in the home market or to third countries. Because of Namil's failure to provide the sales or CV information necessary for making fair value comparisons, the Department should use, as BIA in its final margin calculations, the highest margin that it calculates for any U.S. sale.

Namil replies that the omission of the sale of woks to the United States from the questionnaire response was inadvertent. The Department's use of the weighted average of all other products as BIA is acceptable given this unintentional omission.

Department's Position: We agree with the petitioner. Because the respondent did not provide sales information on the sale of woks to the United States in its questionnaire response, we used BIA. As BIA, we have applied the highest margin found on any U.S. sale to the total net value of all sales of woks to the United States during the review period. We have used the highest margin found on any U.S. sale rather than the weighted-average margin because the omission encompassed all sales to all markets of a particular type of stainless steel cookware, and not just one or two transactions in one of Namil's markets.

Comment 5: The petitioner states that the Department should not use any of the reported non-operating income as an offset to general and administrative expenses (G&A). Income unrelated to the production of the merchandise subject to review should not be used to offset G&A expenses.

Namil replies that the Department should be consistent and if it were to include on-operating items in the G&A, then it should offset G&A upon the sale of the non-operating items.

Department's Position: We did not include non-operating income in G&A. We did not offset G&A expenses with non-operating income since it was unrelated to the production of the subject merchandise.

Comment 6: The petitioner states that it is illegal and unfair for the Department to change the cash deposit rate established in the original order for unnamed or new manufacturers/exporters based on a review of only one of the five manufacturers investigated during the original investigation. It is particularly unfair in this case where the single manufacturer had the lowest rate in the original investigation and the fact that the manufacturer had very little impact on the weighted-average calculation of the "all others" rate in the original order. The review of Namil was requested because petitioner believed that the low rate established for Namil in the original investigation was not representative of the actual dumping margin for the firm.

The petitioner further states that the Department's position is unjust because the increase in Namil's rate still results in decreasing the rate for new manufacturers/exporters and all other manufacturers/exporters not named in the original investigation.

Given the Department's current position, it would have been better if a review of a company with a higher rate in the original investigation had been requested because it is more likely that the new "all others" rate would have been much higher than 8.10 percent.

Namil replies that the "all others" rate determined in the investigation stands a a surrogate for non-investigated companies involved in the trade at that time. The rationale is that the weighted average of investigated companies is a reasonable estimate of the situation for other manufacturers/exporters as it exists during the period of investigation.

Department's Position: We disagree with the petitioner. The petitioner had the option to request reviews of any of the exporters of the subject merchandise to the United States but only chose to request a review of one exporter. Therefore, the rate that will be applied to any new manufacturers/exporters whose first shipments occurred after December 31, 1989 (i.e., "new shippers") will be the highest calculated rate in this review, which is the rate calculated for the single respondent. This new shipper rate is not applicable to companies which have a previously assigned rate from the investigation or which shipped

to the United States prior to December 31, 1989.

Although the Department recently modified its policy to the calculation and application of the "new shippers" rate (see, Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany; Preliminary Results of Antidumping Duty Administrative Reviews) (56 FR 11200, March 5, 1991), this modification was made subsequent to the issuance of the preliminary results of this review. As such, it would be inappropriate to apply the revised methodology in these final results because the interested parties did not have the opportunity between the issuance of the preliminary and final results to assess the implications of the revised policy in the context of this review.

Final Results of Review

As a result of our review, we determine the weighted-average dumping margin to be:

Manufacturer/ exporter	Time period	Margin (percent)
Namil Ltd.	1/1/89–12/31/89	1.69

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Further, as provided for by section 751(a)(1) of the Tariff Act, the cash deposit of estimated antidumping duties based on the above margin will be required for Namil Ltd. For any shipments of this merchandise manufactured or exported by the remaining known manufacturers and/or exporters not covered by this review, the cash deposit rates will continue to be at the latest rate applicable to each of these firms.

For any future entries of this merchandise from a new exporter, not covered in this or prior administrative reviews, whose first shipments of certain stainless steel cooking ware occurred after December 31, 1989, and who is unrelated to the reviewed firm or any previously reviewed firm, a cash deposit of 1.69 shall be required. These deposit requirements are effective for all shipments of certain Korean stainless steel cooking ware entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

This administrative review and notice are in accordance with sections 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: August 1, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–19113 Filed 8–9–91; 8:45 am]

BILLING CODE 3510–DS–M

[C–357–403]

Oil Country Tubular Goods from Argentina; Final Results of Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of final results of countervailing duty administrative reviews.

SUMMARY: On January 24, 1991, the Department of Commerce published the preliminary results of its administrative reviews of the countervailing duty order on oil country tubular goods from Argentina. We have now completed the reviews and determine the total bounty or grant to be 0.09 percent *ad valorem* for the period January 1, 1987 through December 31, 1987, and 0.93 percent *ad valorem* for the period January 1, 1988 through December 31, 1988. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*.

EFFECTIVE DATE: August 12, 1991.

FOR FURTHER INFORMATION CONTACT: Laurie Goldman or Barbara Tillman, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377–2786.

SUPPLEMENTARY INFORMATION:

Background

On January 24, 1991, the Department of Commerce (the Department) published in the **Federal Register** (56 FR 2752) the preliminary results of its administrative reviews of the countervailing duty order on oil country tubular goods from Argentina (49 FR 46564; November 27, 1984). The Department has now completed these administrative reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of Review

Imports covered by these reviews are shipments of Argentine oil country tubular goods. These products include finished or unfinished oil country tubular goods, which are hollow steel products of circular cross section intended for use in the drilling of oil or gas, and oil well casing, tubing and drill pipe of carbon or alloy steel, whether welded or seamless, manufactured to either American Petroleum Institute (API) or proprietary specifications. During the review periods this merchandise was classifiable under item numbers 610.3216, 610.3219, 610.3233, 610.3234, 610.3242, 610.3243, 610.3249, 610.3252, 610.3254, 610.3256, 610.3258, 610.3262, 610.3264, 610.3721, 610.3722, 610.3751, 610.3925, 610.3935, 610.4025, 610.4035, 610.4210, 610.4220, 610.4230, 610.4240, 610.4310, 610.4320, 610.4335, 610.4942, 610.4944, 610.4946, 610.4954, 610.4955, 610.4956, 610.4957, 610.4966, 610.4967, 610.4968, 610.4969, 610.4970, 610.5221, 610.5222, 610.5226, 610.5234, 610.5240, 610.5242, 610.5243 and 610.5244 of the Tariff Schedules of the United States Annotated (TSUSA).

Such merchandise is currently classifiable under the following item numbers of the Harmonized Tariff Schedule (HTS): 7304.20.20, 7304.20.40, 7304.20.50, 7304.20.60, 7304.20.70, 7304.20.80, 7304.39.00, 7304.51.50, 7304.59.60, 7304.59.80, 7304.90.70, 7305.20.40, 7305.20.60, 7305.20.80, 7305.31.40, 7305.31.60, 7305.39.10, 7305.39.50, 7305.90.10, 7305.90.50, 7306.20.20, 7306.20.30, 7306.20.40, 7306.20.60, 7306.20.80, 7306.30.50, 7306.50.50, 7306.60.70 and 7306.90.10.

While the TSUSA and HTS numbers are provided for convenience and Customs purposes, the written description remains dispositive.

The reviews cover the periods January 1, 1987 through December 31, 1987, and January 1, 1988 through December 31, 1988, and twelve programs.

Analysis of Comments Received

We gave interested parties an opportunity to comment on the preliminary results. We received comments and rebuttals to comments from North Star Steel Ohio and Lone Star Steel Company, both petitioners, and Siderca S.A., a respondent. We also received rebuttal to petitioners' comments from the Government of Argentina.

Comment 1: Siderca states that, although loans were reported to the Department by invoice number, this was done only to facilitate the Department's identification of sales of subject merchandise to the United States. Siderca contends that loan calculations should correspond with loan reference numbers, and that such calculations

should not be analyzed according to subgroups of those reference numbers. Siderca further maintains that, because pre-export financing finances production, as opposed to specific sales, of the subject merchandise, there is no way to tie specific invoices to actual financing.

Siderca also claims that the Department's loan-by-loan analysis overstates the benefits received by Siderca. Siderca urges the Department to look at the totality of its financing arrangements to determine whether benefits were conferred. Because of the extreme volatility of interest rates in Argentina during 1987 and 1988, and the consequent difficulty in forecasting whether RF–153 or regular commercial loans would be more beneficial, Siderca negotiated a mixed package of financing in order to hedge against devaluation. Siderca states that it negotiated loans in 1987 and 1988 with two banks and was granted a line of credit from each bank from which they could draw down funds, as needed. Respondent argues that the Department should not treat each draw-down as a separate loan, but should treat the entire package of loans from each bank as a single line of credit. Benchmark interest rates should reflect the rate in effect at the time each draw-down and repayment occurred. Siderca states that, throughout both the 1987 and 1988 periods of review, the total cost of RF–153 financing was more expensive than comparable commercial financing. Therefore, the Department should find that there was no benefit conferred from RF–153 loans.

Petitioners contend that the Department should reject Siderca's argument that RF–153 loans be repackaged into "reference numbers" and credit lines. The repackaging proposed by Siderca only serves to include "negative" benefits in the Department's calculations and thus reduce the overall benefit calculated. The Department should remain consistent in its methodology and not consider the less favorable terms of one loan as an offset to another, preferential loan. Furthermore, petitioners maintain that it is clear that, in order to secure pre-export financing, the company must present proof of future export. The verification report for the 1987 review confirms this point and the fact that the Government of Argentina grants loans based on proof of export, not on the basis of production cycles.

Department's Position: We agree with petitioners. While the funds received from RF–153 loans may be used to finance production, it is clear that the financing is contingent on specific export sales. Siderca was required to present proof of sale and an irrevocable letter of credit for each loan received. At verification, we saw that specific loans accounted for 70 percent of actual invoice values. Therefore, because the evidence clearly shows that RF–153 loans are tied to specific exports, the Department has determined that it would be inappropriate to treat "subgroups" that are tied to specific invoice numbers as one loan.

Additionally, the Department only examines loans received under programs that may potentially be counteravailable if the interest rate is preferential when compared with the benchmark interest rate. We do not consolidate these preferential loans with non-counteravailable commercial loans to examine whether the aggregate interest rate paid on a series of loans is preferential. It is not the Department's practice to offset the less favorable terms of one loan as an offset to another, preferential loan. The Department will continue to analyze each individual loan in the RF–153 pre-export loan program separately.

Comment 2: Petitioners claim that the Department failed to select an appropriate benchmark to calculate the benefit from the RF–153 loan program. Petitioners argue that, because it neglected to find the predominant alternative source of short-term financing, (*i.e.*, the source of commercial loans that would represent the most likely commercial alternative and best mirror the RF–153 program), the Department did not follow its standard methodology. Petitioners claim that the Department should have first considered a benchmark that comprised at least 50 percent of total short-term financing in local currency prior to constructing a composite benchmark interest rate. Specifically, the Department should have examined commercially available 180-day, dollar-indexed, pre-export loans as it did in Leather from Argentina; Final Determination and Countervailing Duty Order (55 FR 40212; October 2, 1990). This methodology should have been used consistently in both the 1987 and 1988 periods of review as it was in Argentina during the 1989 investigative period.

Siderca contends that petitioners' argument is incorrect and that the benchmark used by the Department need not be a "mirror" of the actual loan, but must be a commercial alternative available to the exporter. Siderca cites Standard Pipe, Line Pipe, Light-Walled Rectangular Tubing and Heavy-Walled Rectangular Tubing from Malaysia; Final Negative Countervailing Duty Determination (53 FR 46904; November 21, 1988), wherein the Department stated its practice of using, as a benchmark rate, "the most comparable, predominent commercial rate for short-term financing." Petitioners' suggestion that the Department use dollar-indexed, 180-day financing should not be accepted by the Department because it was not a commercially viable alternative in 1987 and 1988, as verified by the Department.

Siderca states that, the dollar benchmark used in Leather from Argentina was used for the 1989 investigative period. During that time, austral financing practically disappeared and exporters began to obtain dollar-based financing. These changes in the economic situation in Argentina necessitated a deviation from the Department's longstanding methodology. Moreover, in 1989, the RF–153 program itself was modified to allow exporters to seek dollar-based financing These conditions, Siderca claims, were not applicable during 1987 and 1988, the periods covered by the current reviews.

Department's Position: We disagree with petitioners that the Department should use a 180-day, dollar-indexed benchmark. At verification, we examined the lending situation in Argentina. We are satisfied that the Central Bank information provided by the Fundacion de Investigaciones Economicas Latinoamericanas (FIEL), a private research organization, is the appropriate benchmark to use. We have used Central Bank information on commercial interest rates in other administrative reviews of Argentine cases; See, generally, Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina (1987 and 1988). Central Bank and commercial bank sources demonstrated that these rates represented the predominent alternative short-term commercial financing rates during the review period. Leather from Argentina does not speak to the conditions that existed in 1987 and 1988, but only to the 1989 period when the lending situation in Argentina changed dramatically, and different sources and types of short-term commercial financing prevailed. We have, therefore, used as our benchmark the published average unregulated commercial rate. This information was part of the Government of Argentina's questionnaire response for the 1987 period of review and was independently obtained by the Department for the 1988 period of review.

Comment 3: Siderca contends that the Department erred by using an interest rate provided by one state-owned bank

as its benchmark rate for the 1988 period of review. Siderca states that it was in error in providing rates from the Banco de la Nacion Argentina in the 1988 questionnaire response, and that Central Bank rates, as published by the FIEL, should have been provided as they were for the 1987 review period. The Central Bank rates are based on the average lending rates of major banks. Siderca argues that the rate provided by the Banco de la Nacion Argentina for 180-day discounts of commercial paper is not an average commercial rate, but is an index provided by only one source. Further, respondent claims that the Department should not use a 180-day rate but a 30-day interest rate, since loans in Argentina require payment of interest every 30 days, even though principal may be rolled over.

Siderca also disagrees with petitioners' argument that a two percent spread should be added to the Central Bank rates used by the Department. Siderca contends that petitioners' argument misinterprets the verification report, which describes how the Central Bank arrives at financing rates by adding a spread to either its cost of funds or interest rates on deposits. The rates published by the Central Bank are actual average commercial lending rates and not the cost of funds to the bank or the rates charged to commercial banks by the Central Bank; therefore, it is precisely those rates that should be used by the Department.

Petitioners contend that the Department should continue to use the Banco de la Nacion Argentina rate for 180-day loans as the 1988 benchmark. This was the rate provided by respondent in the questionnaire response. Petitioners state that respondent had ample time, prior to publication of the preliminary results of review, to submit new information correcting the original submission. Therefore, the Department should disregard Siderca's submission of new information on Central Bank rates and continue to use the Banco de la Nacion Argentina rates provided by respondent for the 1988 period of review.

Petitioners also contend that whereas FIEL rates averaged 9.51 percent in 1987, the more appropriate Central Bank rate was 10.34 percent, plus a two percent spread.

Department's Positions: We agree with respondent. The Department has consistently used Central Bank rates provided by FIEL and will change the benchmark for 1988 to reflect those rates. Using a rate charged by a single bank as the benchmark rate would be inappropriate because it does not reflect the predominant commercial alternative source of credit. Since FIEL information is public, the Department independently obtained the 1988 rates and, therefore, did not use the information submitted by respondent on FIEL rates that was untimely.

We also agree with respondent that a two percent spread should not be added to the Central Bank rates. The information contained in the verification report merely explained the manner in which the Central Bank determined lending rates. The information disseminated by the Central Bank and published by FIEL reflects actual lending rates which already include a spread above the cost of funds.

Comment 4: Petitioners claim that the Department used an inappropriate benchmark for the 1987 review period. The Department used a simple average of the regulated and unregulated rates available in Argentina in 1987, but since the regulated rate was not available to commercial enterprises, it should not have been used as part of the benchmark calculation. The Department should only have used a monthly average of the rates published by the Central Bank of Argentina.

Department's Positions: We agree with petitioners that the Central Bank regulated rate was not available to businesses in 1987, as indicated in our verification report. We have, therefore, recalculated the 1987 benchmark rate to exclude that rate from the semi-annual averages. The total bounty or grant from this program remains *de minimis* for the 1987 review period and has been adjusted to 0.93 percent *ad valorem* for the 1988 review period.

Comment 5: Siderca contends that the Department should not have used single average annual interest rates for the 1987 and 1988 periods of review. Siderca argues that because short-term interest rates in Argentina fluctuated greatly in 1987 and 1988, use of a single average rate is distortive. The Department has previously used semi-annual averages in the 1987 investigation of Certain Welded Carbon-Steel Pipe and Tube Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order (Pipe and Tube) (53 FR 37619; September 27, 1988). Siderca claims that because the loans in the instant reviews are clustered in the two halves of the year, and are short-term loans of less than 180 days, they fit the same conditions as in the Pipe and Tube investigation. Thus, the Department should apply the same methodology in the present reviews.

Department's Position: The Department agrees with respondent that semi-annual average benchmark rates should be used. During both the 1987 and 1988, the average short-term monthly interest rate varied significantly between the first and second halves of the year. Although we generally use an average annual rate for our benchmark, we are using the semi-annual averages as our benchmark in these reviews because: (1) The loans are clustered (in terms of total amount received) within either the first or second half of 1987 and 1988; (2) RF–153 loans are generally extended for 180 days or less; and (3) an average annual rate would have been distorted by the compounding of very high monthly interest rates which varied widely from the first to the second half of the year in question. As noted by respondent, this is consistent with the methodology previously employed by the Department in Pipe and Tube.

Comment 6: Petitioners claim that the Department erred in determining that Siderca did not receive price premiums on its sales of OCTG to the Government of Argentina. Petitioners argue that the Department's original determination was in error because the Department examined comparable prices in the domestic market instead of world market prices.

Petitioners claim that prices in Argentina are an inappropriate basis for comparison as they are distorted and, therefore, inconsistent with commercial considerations. In support of their claim, petitioners assert that the internal market in Argentina is characterized by artificially high domestic prices. Import barriers, the "Buy Argentina" law, and exchange controls allowed prices in the domestic market to remain at levels 30 to 50 percent higher than prices in the United States, in addition to being higher than world market prices generally. In support of this point, petitioners cite Industrial Nitrocellulose from France; Final Affirmative Countervailing Duty Determination (48 FR 11971; March 22, 1983) wherein, petitioners claim, it was determined that the French military was effectively subsidizing a company by paying a higher price than the company would have obtained in the world market.

To further support the use of world market prices as a commercial standard, petitioners cite the dominance of the state-owned oil company, YPF, in the domestic marketplace. Insofar as YPF is the principal purchaser of OCTG in Argentina, and Siderca is the sole Argentina OCTG producer, both companies effectively were able to set the price of OCTG in the domestic market in a manner which would benefit Siderca.

Siderca claims that the petitioners are merely rehashing an argument that has

been around since the original investigation in 1984. Siderca insists that the Department should continue to use the methodology established in the original investigation and used in other cases (Certain Steel Products from the Republic of Korea; Final Affirmative Countervailing Duty Determination (47 FR 57535; December 27, 1982)). Siderca claims that to evaluate whether price premiums are being received from government purchases of OCTG, the Department must compare the prices paid by the government to prices paid by private, unrelated companies in arm's length transactions. The Department performed and verified those price comparisons, concluding that price premiums were not being provided. Since there are commercial prices available for comparison within Argentina, the Department need not make a comparison to world market prices. Siderca also distinguishes petitioners' reference to Nitrocellulose from France on the grounds that the Department in that case never called for a comparison to world market prices, but merely concluded that excessive prices paid by the government constituted a countervailable benefit (Industrial Nitrocellulose from France; Final Affirmative Countervailing Duty Determination (48 FR 11971; October 2, 1983)).

Department's Position: We concur with respondent. The Department continues to use the same methodology in this review as that used in the original investigation. A government cannot be found to be providing a subsidy when independent, arm's length prices within the same jurisdiction are actually higher. The Department undertook a thorough analysis, including verification of price documentation, which showed that the Government of Argentina actually paid a lower price for OCTG than did private companies.

Furthermore, petitioners' reference to Nitrocellulose from France is inapposite because the methodology employed in that case did not involve a comparison to world market prices. The determination in Nitrocellulose from France was based on the "best information available" because of the failure of the French government to cooperate and provide the Department with the information necessary to evaluate the program. In the subsequent administrative review (Industrial Nitrocellulose from France; Final Results of Countervailing Duty Administrative Review (52 FR 833; January 9, 1987)), the Department received more complete information and analyzed the prices paid by the government in relation to the cost of producing the product, not world market prices. As a result of its analysis, the Department found that there was an insufficient basis to conclude that excessive prices were being paid by the government.

Comment 7: Petitioners contend that the administrative record is insufficient because the Department failed to include certain invoices requested by petitioners. By excluding certain documents from the record, the Department has denied petitioners an opportunity to comment on all the information contained in the record. The Department did not verify enough information to conclude that price premiums were not being paid by the Argentine government. The Department only looked at invoices of sales to three private companies, which were based on sales of much smaller quantities than purchases made by YPF. Further, there is no evidence that the Department verified receipt of payment for these sales.

Petitioners also contend that they were unable to analyze the record adequately because the Department denied them access to invoices requested by petitioner. Petitioners cite Acetylsalicylic Acid from Turkey; Final Affirmative Countervailing Duty Determination (52 FR 24494; July 1, 1987), wherein the Department noted that "the statutory and regulatory scheme of a countervailing duty investigation requires that petitioner be provided with an opportunity to comment on all information submitted to the Department."

Siderca objects to petitioners' request that the Department include verified invoices as exhibits to the verification report. Siderca states that the Department uses its discretion in determining which documents to take back and use as exhibits. Furthermore, the Department provided a complete verification report detailing exactly which documents were examined and evaluated. The Departmeent is under no legal obligation to provide petitioners with each and every document verified.

Department's Position: We concur with respondent regarding the sufficiency of the administrative record. The Department has maintained a complete and open administrative record in this case. Verification is a process in which the Department examines programs and eligibility requirements, respondent's use of the programs, and government and company accounting records (including ledgers, invoices, purchase orders, etc.), as well as other documents in order to determine the accuracy of the questionnaire response. We do not request verification exhibits on every item or program that is verified. Exhibits that are collected serve to clarify or further explain the text of the verification report. Documents, such as invoices, which are self-explanatory, are usually not included as exhibits. The documents cited by petitioners were thoroughly examined by the Department and complete information concerning these documents was included in the verification report. All exhibits collected by the Department are included in the record.

Comment 8: Petitioners claim that a counterguarantee provided by the Ministry of Economy on an internationally-funded loan from the Inter-American Development Bank (IADB) under the "BANADE" loan program conferred a countervailable benefit that was ignored by the Department. According to petitioners, there is no evidence that any company other than Siderca obtained such a counterguarantee. Petitioners argue further that, since this loan was obtained after the period covered by the last administrative review, there was no prior opportunity for the Department to review the terms of the project for which the IADB loan provided funding. Petitioners mention that neither the questionnaire, nor the verification report, nor the preliminary results of review contained any reference to either the BANADE guarantee or the Ministry of Economy's counterguarantee of the IADB loan. While acknowledging that the Department found the BANADE loan guarantee program not countervailable in the original investigation, petitioners suggest that there could have been substantial changes in the years since the investigation. Without any facts on the record of these reviews regarding the guarantee and the counterguarantee of the IADB loan, petitioners assert that the Department cannot properly determine that there is no countervailable benefit arising from the counterguarantee.

Petitioners further contend that the counterguarantee provided to Siderca by the Ministry of Economy was granted in order to procure financing aimed at expanding exports, and thus provides a countervailable export subsidy. Although admitting that they had not uncovered any explicit export requirement for obtaining the BANADE guarantee and the Ministry of Economy counterguarantee, petitioners cite X-Radial Steel Belted Tires from Canada; Liquidation of Duties (38 FR 1018; January 8, 1973) in support of their position. Petitioners maintain that in

that case the Treasury Department determined that benefits to Michelin for locating a plant in Nova Scotia primarily to serve the U.S. market amounted to an export subsidy, despite the absence of any provision in the program explicitly linking the subsidies to increased exports. Petitioners argue that there is substantial evidence indicatint that the Government of Argentina approved the dual guarantees because the modernization project would significantly increase exports. They further maintain that anticipated exports was the determinative factor in the government's granting these guarantees.

Siderca and the Government of Argentina reply that the BANADE guarantee and the Ministry of Economy counterguarantee programs were thoroughly investigated in the original investigation, and in the 1985 administrative review. In both instances the Department determined that these programs were not counteravailable because they were not provided to a specific enterprise or industry, or group of enterprises or industries. Respondents assert that petitioners have not provided any substantive basis for the Department to reinvestigate its earlier determinations with respect to these programs.

Department's Position: We disagree with petitioners. The Department thoroughly examined the BANADE program in the original investigation and in the 1985 administrative review. In both instances, the Department determined that the program did not provide a countervailable benefit because BANADE financing was made available to all industries in every province of Argentina, and none of the criteria laid out in BANADE regulations was industry- or region-specific. (Oil Country Tubular Goods from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order (49 FR 46564; November 27, 1984). In addition, the verification report from the original investigation states specifically that "the vast majority of BANADE loan guarantees were accompanied by a counterguarantee of the Secretariat of Finance." It is the Department's practice not to reinvestigate a program absent specific information indicating that there were changes in the program sufficient to warrant reinvestigation (See, *e.g., PPG Industries, Inc.* v. *United States,* 745 F. Supp. 119 (Ct. of Int'l Trade 1990)). Petitioners have provided no such information in this case, but claim merely that the counterguarantee is unique to Siderca and speculate, without any supporting evidence, that the BANADE program may have changed with the passage of time.

As for their argument that the counterguarantee provides an export subsidy, petitioners extrapolate from their claim that the program is unique to Siderca to conclude that a non-explicit requirement (the expansion of exports) of the program was the determinative factor in Siderca's receipt of the counterguarantee. Such a misunderstanding of the record and unsupported claims cannot provide the basis for the Department to reinvestigate a program that has already twice been determined to be non-countervailable.

Comment 9: Petitioners claim that tax exemptions authorized under Laws 21.608 and 23.614 provided a countervailable benefit to Siderca because the regulations governing import duty and tax exemptions were applied inconsistently from year to year. Petitioners contend that, because the rules governing tax exemptions were restrictive during some periods and more lax during others, the criteria governing the program were not administered uniformly. Moreover, petitioners maintain that the tax exemptions were limited to certain companies. Petitioners also argue that the fact that 2,400 companies used the program does not in itself preclude a determination that countervailable benefits were conferred. Petitioners cite *Roses, Inc.* v. *United States,* 743 F. Supp. 870, 881 (Ct. of Int'l Trade 1990), wherein the Court of International Trade ruled that the number of grantees is not determinative of the countervailability of a program. Rather, the court in that case indicated that the focus must be on "whether an advantage in international commerce has been bestowed on a discrete class of grantees." According to petitioners, because companies were granted benefits on a differential basis, the program provided a competitive benefit to a discrete class of beneficiaries and, therefore, must be countervailed.

Siderca and the Government of Argentina assert that the Department's verification of this program was not merely head-counting. The Department obtained complete information regarding the operation of the program and verified that the program provided benefits throughout many regions and sectors. Siderca argues that the reduction of the level of overall benefits during certain periods was not done on a selective basis, but rather on a general basis for fiscal reasons.

Department's Position: Petitioners have not substantiated their allegation that tax exemptions under Laws 21.608 and 23.614 conferred a countervailable benefit upon a discrete class of beneficiaries. In any given year, the Government of Argentina adhered to the guidelines of the program, which included periodic audits of companies claiming benefits under the program as well as cost and technical viability studies for approved projects under which companies could claim certain of the tax and duty exemptions.

The Department verified that the tax exemptions under this program were widely used in Argentina by many industries and across various regions of the country. Reductions in the amount of exemptions, as a result of fiscal exigencies, occurred uniformly across industries and regions. Moreover, the Department has previously determined that certain tax exemptions granted under Laws 21.608 and 23.614 do not provide bounties or grants. See, e.g., Cold-Rolled Carbon Steel Flat-Rolled Products from Argentina; Final Affirmative Countervailing Duty Determination and Countervailing Duty Order (49 FR 18006; April 26, 1984). because petitioners' arguments on this point do not present any new evidence, we have not reconsidered our position.

Comment 10: Siderca claims that indirect and final stage taxes on refractory bricks should be included in the allowable tax incidence on OCTG because refractory bricks are physically incorporated into OCTG. Siderca states that the Department allows indirect taxes on products that are worn away so long as they are incorporated into the final product. Siderca further maintains that the Department accepted refractory bricks as items which are physically incorporated into OCTG in the 1985 administrative review.

Petitioners concur with the Department decision in the preliminary results of administrative review that refractory bricks are not physically incorporated into OCTG. The production process is designed to remove impurities, including refractory brick particles, so that they do not become physically incorporated into OCTG. Refractory bricks erode during the production process and the particles are deposited in slag (the refuse from melting metals) that is designed specifically to flush such impurities from the molten steel. Any silicon from refractory bricks contained in the finished product would make it more brittle and unusable as OCTG.

Department's Position: We agree with petitioners. Although refractory bricks are consumed in the production process, they are not physically incorporated into

OCTG. Therefore, the rebate of indirect taxes on refractory bricks is not allowable.

Comment 11. Petitioners assert that natural gas is not physically incorporated in OCTG and argue that the Department should not have considered indirect taxes on natural gas as allowable for rebate under the reembolso. Petitioners cite Ferroalloys from Spain, Notice of Countervailing Duty Order (Ferroalloys I) (45 FR 25; January 2, 1980) wherein the Department rules that the indirect taxes on coal were not allowable because carbon from coal, although present in the final product, was incidental to the manufacture of ferroalloys and did not add to their value. Petitioners, likewise, regard the carbon from natural gas as a catalyst, and not physically incorporated into OCTG, and assert that there is absolutely no evidence on the record of physical incorporation of natural gas into Siderca's OCTG.

Siderca points out that this issue was previously addressed in this case, as well as in other cases, and the Department accepted the physical incorporation of natural gas resulting from the Midrex process. See, *e.g.*, Carbon Steel Wire Rod from Argentina; Preliminary Affirmative Countervailing Duty Determination (47 FR 30539; July 14, 1982) and Final Affimative Countervailing Duty Determination and countervailing Duty Order; Oil Country Tubular Goods from Argentina (OCTG Final Determination) (46 FR 46564; November 27, 1984). Siderca claims that it is well documented that, in the Midrex production process, carbon from natural gas becomes physically incorporated into OCTG. Furthermore, at verification, a technical engineer from Siderca explained the relevant details of the Midrex process to Department of Commerce officials: natural gas used for carburization in the Midrex process is physically incorporated and is not a catalyst.

Department's Position: We agree with respondent. In the OCTG Final Determination, the Department determined that natural gas used in the Midrex process is physcially incorporated into OCTG. The Department made a distinction between natural gas used in the Midrex process and natural gas used as energy to fuel the production process. In the Midrex process, carbon from natural gas becomes physically incorporated and, as such, any indirect taxes paid on the natural gas used in that process may be rebated; the Department has not allowed the rebate of taxes on natural gas used as fuel.

In citing Ferroalloys I, petitioners neglect to mention the Department's further elaboration of its position in Ferroalloys from Spain; Final Results of Administrative Review of Countervailing Duty Order (Ferroalloys II) (48 FR 34493; July 29, 1983). The Department determined that carbon from coal was used as a reducing agent, *i.e.*, as a catalyst in the manufacturing process, and not as an element to by physically incorporated. Moreover, exporters of ferroalloys did not provide the Department with evidence to distinguish carbon used as a reducing agent and carbon serving as "necessary waste." Since the Department could not determine how much carbon was used as a reducing agent, and how much was physically incorporated, the Department did not consider any of the taxes on coal as an allowable rebate.

With OCTG, a clear distinction can be made between natural gas that is consumed in the production process, and that which is physically incorporated. The carbon derived from natural gas in the production of OCTG is neither a catalyst in the manufacturing process, nor an incidental element in the final product; it is necessarily incorporated in the finished carbon steel product. Therefore, the facts in this case are distinguishable from the decision in Ferroalloys I.

Comment 12: Petitioners contend that the 1986 tax incidence study provided by Siderca, which is the basis for determining the amount of allowable indirect taxes rebated under the reembolso program, is seriously flawed and significantly overstates the indirect tax incidence on OCTG. Petitioners point out that the profit margin shown in the study is significantly lower than that shown in Siderca's income statement for March 31, 1986. Thus, not only is the study suspect of 1986, but the application of the 1986 study to subsequent years is entirely inappropriate. A comparison of the profit margin in the 1986 study to Siderca's profit margins reported in 1987 and 1988 reveals similar discrepancies.

According to petitioners, the discrepancy in the profit margins is important because it highlights the fact that an understated profit margin would increase the percentage of f.o.b. value attributed to other cost elements and thus overstate the tax incidence. Use of a higher profit margin would reduce the rate of tax incidence and show that Siderca had received an excessive rebate.

Siderca claims that petitioners' argument regarding the profit margins is erroneous. According to Siderca, it should not be expected that the information in the financial statements and in the tax incidence study will coincide because they were prepared in completely different ways for different purposes. The Department fully verified each element of the tax incidence study and established that it reflected Siderca's actual costs, f.o.b. values, and taxes paid.

Department's Position: We agree with Siderca. Our verification of the tax incidence study consisted of a thorough analysis of the source documents used in its preparation, including monthly mill reports, invoices, import documents and export documents, to ensure that the study was based on the actual cost of each input into the final product and the f.o.b. value of the exported merchandise. We also verified the rates of prior stage and final stage taxes, and that the amount rebated to Siderca did not exceed the amount of indirect taxes that it had actually paid. The verification process for the tax incidence study was explained in detail in the verification report. Because the study calculates actual costs and expenses as a percentage of the f.o.b. value of exports, the figure for profit in the study represents the difference between the actual costs and the f.o.b. invoice price of exports of seamless tube. The profit margin shown in the study is, therefore, a specifically derived figure for this merchandise and has no necessary relationship to the profit figure reported in the financial statements, which includes profit from the domestic and export sales of all products produced by Siderca as well as other plant income. Thus, there is no reason to expect the profit figure from the tax incidence study and the profit figure from the financial statement to match.

Comment 13: Petitioners argue that use of the 1986 study for subsequent periods completely ignores the significant changes in the Argentine economy. Because there is no evidence on the record supporting an assumption that a 1986 study is valid for 1987 and 1988, the Government of Argentina has failed the linkage test requiring periodic examinations of the tax incidence.

Siderca claims that the Department does not require a study to be conducted yearly, but does ask for updated information to ensure that the tax rebate remains at or below the levels allowed. That updated information was supplied to the Department and verified.

Department's Position: The petitioners' contention that the linkage test is not met because the 1986 tax incidence study is not valid for subsequent periods is without merit. We

are applying the 1986 study, in this case, to 1987 and 1988, a period not exceeding two years from the time frame of the study. Moreover, petitioners have not given us any reason to believe that significant changes in cost structure have occurred since that time. We determined in Final Affirmative Countervailing Duty Determination and Countervailing Duty Order; Oil Country Tubular Goods from Argentina (49 FR 46564; November 27, 1984) that the reembolso for OCTG met the three requirements of the linkage test: (1) The system is intended to operate as a rebate of both indirect taxes and import duties; (2) the government properly ascertained the level of the rebate; and (3) the rebate schedules are revised periodically in order to determine if the rebate amount reflects the amount of actual duties and indirect taxes paid. Therefore, the only issue pertinent to these reviews is whether there was an overdue of indirect taxes.

In order to make that determination, we verified the 1986 tax incidence study and all changes that have occurred since its completion. Because each cost element of the tax incidence study was calculated as a percentage of the total f.o.b. value of seamless tube, inflation and other volatilities in the economy would have no significant impact on the results of the study unless the cost ratios of these inputs changed dramatically from one year to the next. We verified that increases in tax rates were the only significant changes in the cost structure, and increases in the percentage of indirect taxes would only serve to increase the amount of the allowable rebate. Thus, we have no reason to believe that the 1986 study is invalid for 1987 and 1988.

Comment 14: Petitioners claim that because the tax incidence study was prepared by Siderca, and not the Government of Argentina, the study is self-serving and not a neutral analysis. Therefore, it should not be accepted by the Department. Petitioners also argue that the study is not valid because it is not confined to an analysis of OCTG; but is based on an analysis of all seamless tubes. Since OCTG is at the higher end of the pipe market in price terms, the study overstates the tax incidence on OCTG.

Siderca and the Government of Argentina reply that the petitioners' arguments show a fundamental misunderstanding of the reembolso program and the Department's requirements for ensuring that there is no overrebate of indirect taxes. Contrary to the petitioners' claim, the Government of Argentina does not normally prepare these studies, but requires, in accordance with Decree 1555, that the industries involved prepare the studies as a precondition to receiving any reembolso payment. The Government reviews the studies to ensure their accuracy and to establish appropriate rebate rates. The Department's responsibility is to ensure that the Government of Argentina acted reasonably and that the level of rebate of indirect taxes does not exceed actual taxes paid.

Department's Position: We agree with the respondents. Petitioners' claim, that the study prepared by Siderca is not objective and does not follow standard procedures, misinterprets the requirements of the countervailing duty law with respect to the Department's linkage test.

The Department does not require that tax incidence studies be conducted by the government, only that a verifiable industry study be completed which meets acceptable norms established by the government. The Government of Argentina's procedures for determining the rate of reembolso satisfy the Department's requirements for linkage because they meet the criteria discussed in Comment 13. However, to ensure objectivity, the Government of Argentina retained an independent consulting firm to verify independently the accuracy of Siderca's study. We verified both Siderca's study and the independent study performed by the Steel Industry Chamber and determined that the rate of indirect tax incidence was reasonably calculated.

Finally, we disagree with petitioners' argument that a study on seamless tube is not valid for OCTG. The Department has always considered sectoral studies as a valid yardstick by which to measure indirect tax rebate programs. The only requirement of the Department's linkage test is that the government establish an adequate methodology for ascertaining indirect tax incidence and rebate levels. We do not require that a study be prepared for each and every exported product.

Comment 15: Petitioners contend that the differential between the 12 percent tax rate on freight costs for imports and the 2 percent tax rate on freight costs for exports creates a countervailable subsidy. To support this contention, petitioners cite Ferrochrome from the Republic of South Africa; Notice of Countervailing Duty Order (46 FR 21155; April 9, 1981) and *Macalloy Corp* v. *United States,* 1 CIT 199 (1981), and item (c) of the Illustrative List of Export Subsidies, which establish that government creation of such rate differentials may constitute a countervailable benefit. Petitioners further claim that they only became aware of this program through the verification report and assert that the Department should gather more information to make a proper determination of the amount of the benefit.

Siderca contends that petitioners have misapplied the relevant standard by claiming that disparities in taxes on freight rates for imports and exports provided countervailable benefits. Item (c) of the Illustrative List states that an export subsidy arises when internal transport and freight charges are provided on more favorable terms for export shipments than for domestic shipments. The Department's determination in Ferrochrome was consistent with item (c), because the government of South Africa had established lower freight rates for shipments destined for export. Furthermore, *Macalloy Corp* v. *United States* merely upheld the Department's decision in the Ferrochrome proceeding. Because the Govenrment of Argentina is taxing export and import freight charges at different rates, and is not providing lower freight rates for shipments destined for export, respondents claim that the instant case is not comparable to Ferrochrome. The appropriate standard is whether the government is giving preferential treatment based on whether an export or sale is involved; the fact that freight taxes on exports are lower than on imports is irrelevant.

Department's Position: We agree with respondent. Item (c) of the Illustrative List considers preferential freight rates provided for the export of a product to be an export subsidy. This case, however, does not involve a situation in which there is a differential freight rate, but merely a differential tax rate. Nowhere does item (c) speak to issues involving differential tax rates. Additionally, in Argentina, the higher tax on freight applies to imports irrespective of whether such imports are used to produce merchandise for domestic consumption or for export. Furthermore, because the Illustrative List allows the non-excessive rebate of indirect taxes on physically-incorporated inputs as well as on indirect final stage taxes, a tax rate differential would not provide a countervailable benefit because it does not, *per se,* create an incentive to export.

Finally, the difference in these tax rates did not first become apparent at verification, as petitioners contend. This information was part of the reembolso study provided in the Argentine

government's questionnaire response, which listed the rates and types of all indirect taxes and their rate of incidence on OCTG. Under the circumstances, the Department did not need to elicit further information.

Final Results of Review

As a result of our review, we determine the total bounty or grant to be 0.09 percent *ad valorem* for the period January 1, 1987 through December 31, 1987, and 0.93 percent *ad valorem* for the period January 1, 1988 through December 31, 1988. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is considered to be *de minimis*. After reviewing all of the comments received, we recommend changing the rate from the preliminary results of review because of recalculations in the RF–153 program.

The Department will instruct the Customs Service to liquidate, without regard to countervailing duties, all shipments of this merchandise exported on or after January 1, 1987 and on or before December 31, 1987, and to assess countervailing duties of 0.93 percent of the f.o.b. invoice price on all shipments of this merchandise exported on or after January 1, 1988, and on or before December 31, 1988.

Further, the Department will instruct the Customs Service to collect cash deposits of estimated countervailing duties, as provided by section 751(a)(1) of the Tariff Act, of 0.93 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of these final results of administrative review. This deposit requirement shall remain in effect until publication of the final results of the next administrative review.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: August 6, 1991.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 91–19114 Filed 8–9–91; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council will hold a public meeting on August 15, 1991, at the Ramada Inn (telephone: 617–569–5250), 225 McClellan Highway, East Boston, MA. The meeting will begin at 10 a.m.

The purpose of the meeting is to develop an industry consensus recommendation on an amendment to the American Lobster Fishery Management Plan. The discussion will address long-term management issues in the lobster fishery.

The Lobster Committee Chairman Philip Coates has invited a small group of lobster industry leaders to participate in preliminary discussions on future lobster management. It is not the council's intent to control or influence industry input, but it is seeking a consensus recommendation on lobster management. The timetable for completion of a consensus recommendation is six months after implementation of the amendment to delay the further gauge increases.

For more information contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906; telephone: (617) 231–0422.

Dated: August 6, 1991.

Joe P. Clem,

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

[FR Doc. 91–19037 Filed 8–9–91; 8:45 am]

BILLING CODE 3510–22–M

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The New England Fishery Management Council will hold a public meeting on August 13–14, 1991, at the King's Grant Inn (telephone: 508–774–6800), route 128 at Trask Lane, Danvers, MA. The meeting will begin at 10 a.m., on August 13. The meeting will reconvene on August 14 at 9 a.m.

On the first day, there will be announcements and an election of new officers. Next, there will be a presentation on the most recent Stock Assessment Workshop by Dr. Andrew Rosenberg of the Northeast Fisheries Center, Woods Hole, MA. The Groundfish and Sea Scallop Committees will report just prior to and after the lunch break.

On the second day, the agenda will begin with reports from the past year Council Chairman; the Council Executive Director; the Regional Director, Northeast Fisheries Center; the Department of State; the Coast Guard; the Fish and Wildlife Service; the Atlantic States Marine Fisheries Commission; and the Mid-Atlantic Council liaison. Next, there will be a review of the Mid-Atlantic Council's proposed Summer Flounder Fishery Management Plan (FMP), followed by a status report on Amendment #4 to the Lobster FMP. Additionally, there will be a discussion of the upcoming August 15 lobster industry management meeting.

Just prior to lunch, the staff will give a presentation on technical fisheries management terminology and methods. The Habitat and Herring Committees will then report during the final afternoon of the meeting.

For more information contact Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906; telephone: (617) 231–0422.

Dated: August 6, 1991.

Joe P. Clem,

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

[FR Doc. 91–19038 Filed 8–9–91; 8:45 am]

BILLING CODE 3510–22–M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Proposed Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Chicago Board of Trade (CBT or Exchange) has applied for designation as a contract market in homeowners insurance futures. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before September 11, 1991.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the CBT homeowners insurance futures contract.

FOR FURTHER INFORMATION CONTACT: Please contact Joseph Storer of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW.,

Washington, DC 20581, at (202) 254–7303.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions of the proposed contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CBT in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views or argument on the terms and conditions of the proposed contract, or with respect to other materials submitted by the CBT in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, by the specified date.

Issued in Washington, DC on August 6, 1991.

Gerald Gay,

Director.

[FR Doc. 91–19049 Filed 8–9–91; 8:45 am]

BILLING CODE 6351–01–M

Chicago Board of Trade Proposed Option Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures option contract.

SUMMARY: The Chicago Board of Trade (CBT or Exchange) has applied for designation as a contract market in major market index (MMI) futures options. The Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before September 11, 1991.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the CBT major market index futures option contract.

FOR FURTHER INFORMATION CONTACT: Please contact Stephen Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone 202–254–7303.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions of the proposed contract will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the CBT in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the terms and conditions of the proposed contract, or with respect to other materials submitted by the CBT in support of the application, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on August 6, 1991.

Gerald Gay,

Director.

[FR Doc. 91–19050 Filed 8–9–91; 8:45 am]

BILLING CODE 6351–01–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 91–C0007]

Black & Decker (U.S.), Inc., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional Acceptance of a Settlement Agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **FEDERAL REGISTER** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Black & Decker (U.S.), Inc., a corporation.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by August 27, 1991.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 91–C0007, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Melissa V. Hampshire, Attorney, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 492–6980.

SUPPLEMENTARY INFORMATION: (Attached).

Dated: August 6, 1991.

Sadye E. Dunn,

Secretary, Office of the Secretary.

Settlement Agreement

1. This Settlement Agreement entered into between Black & Decker (U.S.), Inc. ("Black & Decker"), a corporation, and the staff of the Consumer Product Safety Commission ("Commission" or "CPSC"), is a compromise resolution of the matter described herein, without a hearing or determination of any issues of law or fact.

2. The provisions of this Settlement Agreement shall apply to Black & Decker and to each of its successors or assigns.

I. The Parties

3. The "staff" is the staff of the Consumer Product Safety Commission, an independent regulatory agency of the

United States of America, established by Congress pursuant to section 4 of the Consumer Product Safety Act ("CSPA"), 15 U.S.C. 2053, as amended.

4. Black & Decker is a corporation organized and existing under the laws of Maryland, with its principal place of business located at 701 East Joppa Road, Towson, Maryland.

II. The Product

5. Black & Decker manufactured and distributed in interstate commerce model 82209 types 1 and 2, and model 82210 types 1 and 2 electric weed trimmers ("weed trimmers").

III. Jurisdiction

6. Black & Decker distributed two models of weed trimmers (a) for sale to a consumer for use in or around a permanent or temporary household or residence, in reaction or otherwise or (b) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, in recreation or otherwise. The weed trimmers are consumer products within the meaning of section 3(a)(1) of the CPSA, 15 U.S.C. 2052(a)(1).

7. Black & Decker manufactured the weed trimmers for sale to consumers throughout the United States. Black & Decker therefore, is a "manufacturer" of a "consumer product" which is "distributed in commerce," as those terms are defined in sections 3(a)(1), (4), and (11) of the CPSA, 15 U.S.C. 2052(a)(1), (4) and (11).

IV. Staff Allegations

8. In October 1986, Black & Decker completed an engineering analysis on a model 82209 electric week trimmer which was allegedly involved in an incident of electric shock on July 14, 1986. The report stated: "[A]pparently a lead wire was misplaced during manufacture with the result that one of the internal conductors touched the metal handle tube. This condition could account for the reported electric shock received."

9. By or before January 1987, Black & Decker learned of a second alleged electric shock received incident received from a model 82209 electric weed trimmer, which occurred on June 20, 1986.

10. By or before August 1987, Black & Decker received notice of a third alleged electric shock incident received from a model 82210 electric weed trimmer, which occurred on August 3, 1987.

11. By or before August 1987, Black & Decker received notice of a fourth alleged electric shock incident received from a model 82210 electric weed trimmer, which occurred on or before September 3, 1987.

12. By or before September 11, 1987, Black & Decker had learned of a total of four incidents involving alleged electric shock from use of the model 82209 or 82210 electric weed trimmers.

13. Black & Decker had received sufficient information by October 1986 to reasonably support the conclusion that the weed trimmers may contain a defect which could create a substantial product hazard. Black & Decker did not report such information to the Commission, as required by section 15(b) of the CPSA, 15 U.S.C. 2064(b), in violation of section 19(a)(4) of the CPSA, 15 U.S.C. 2068(a)(4), until September 11, 1987.

V. Response of Black & Decker

14. Black & Decker denies each and all of the staff allegations with respect to its weed trimmers. It further and specifically denies that its products may contain a defect which creates or which could create a substantial product hazard within the meaning of section 15(a) of the CPSA, 15 U.S.C. 2064(a), and further specifically denies an obligation to report under section 15(b) of the CPSA, 15 U.S.C. 2064(b), with respect to the subject weed trimmers earlier than September 11, 1987, the date when Black & Decker had received and inspected the trimmers involved in the second and third incidents previously described.

VI. Agreement of the Parties

15. The staff and Black & Decker agree that the Commission has jurisdiction in this matter for purposes of entry and enforcement of this Settlement Agreement.

16. Black & Decker agrees to pay the Commission the amount of one hundred twenty-five thousand dollars ($125,000) within 20 days after service of the Final Order of the Commission accepting this Settlement Agreement. This payment is made in settlement of allegations by the staff that Black & Decker violated the reporting requirements of section 15(b) of the CPSA, 15 U.S.C. 2064(b), with respect to the subject weed trimmers manufactured and sold by Black & Decker between 1984 and 1986.

17. Black & Decker further agrees to continue through December 31, 1991 its previously implemented corrective action of placing a conspicuous and legible label on weed trimmer replacement string it manufactures or has in inventory for the corrected model 82209 weed trimmers following final acceptance of this agreement. The label shall state:

WARNING!!

The following Weed Trimmers were recalled in November 1987 due to an electric shock hazard: #82209 Type 1 and 2 and #82210 Type 1 and 2. If you have one of these models that has not been corrected, contact your nearest B & D Service Center for Authorized Service Center.

18. Black & Decker makes no admission of any fault, liability or statutory violation. The Commission staff does not make any determination that the weed trimmers described in the preceding paragraphs contain a defect which creates or could create a substantial product hazard or that a violation of the CPSA has occurred.

19. This Settlement Agreement constitutes a settlement of the disputed allegations of violations of the reporting requirements of section 15(b) of the CPSA, 15 U.S.C. 2064(b), based on information the Commission staff possesses currently concerning the electrical problem the weed trimmers are alleged to contain.

20. Upon provisional acceptance of the Settlement Agreement by the Commission, the Settlement Agreement shall be placed on the public record and in the **Federal Register** in accordance with the procedures of 16 CFR 1118.20(e). If the Commission fails to receive a written request not to accept the Settlement Agreement within 15 days, the Settlement Agreement will be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

21. Upon final acceptance of this Settlement Agreement by the Commission, Black & Decker knowingly, voluntarily and completely waives any rights it may have (1) to an administrative or judicial hearing with respect to the staff allegations cited herein, (2) to judicial review or to challenge or contest of the validity of the Commission's action with regard to the staff allegations cited herein, (3) to a determination by the Commission as to whether a violation of section 15(b) of the CPSA, 15 U.S.C. 2064(b), has occurred, and (4) to a statement of findings of fact and conclusions of law with regard to staff claims cited herein.

22. For purposes of section 6(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a Complaint had issued and the Settlement Agreement and Order will be made available to the public.

23. This Settlement Agreement is binding upon the Commission and Black & Decker, its successors or assigns.

24. The parties to this action further agree that the accompanying Order be

issued under the CPSA, 15 U.S.C. 2051 *et seq.*, and that a violation of the Order will subject Black & Decker to appropriate legal action.

25. This Settlement Agreement and accompanying Order contain the entire agreement, understanding, representation, or interpretation of the parties herein, and nothing else may by used to vary or contradict their terms.

For Black & Decker (U.S.), Inc.

By:

Charles Fenton,

Vice President and General Counsel.

By:

Richard P. Kidwell,

Miles and Stockbridge, Attorney for Black & Decker.

For the U.S. Consumer Product Safety Commission.

By:

David Schmeltzer,

Assistant Executive Director for Compliance and Enforcement.

By:

Alan H. Schoem,

Director, Division of Administrative Litigation.

By:

Melvin Kramer,

Trial Attorney, Division of Administrative Litigation.

By:

Alan Shakin,

Acting General Counsel.

By:

Melissa V. Hampshire,

Attorney.

Order

Upon consideration of the Settlement Agreement entered into between Black & Decker (U.S.), Inc., a corporation, and the staff of the Consumer Product Safety Commission, and the Commission having jurisdiction over the subject matter and over Black & Decker (U.S.), Inc.; and it appearing that the Settlement Agreement and Condition of Settlement is in the public interest, it is

Ordered, That the Settlement Agreement be and hereby is accepted, as indicated below: and it is

Further ordered, That upon final acceptance of the Settlement Agreement, Black & Decker (U.S.), Inc., shall pay to the Order of the Consumer Product Safety Commission a civil penalty in the amount of one hundred twenty-five thousands dollars ($125,000), within twenty (20) days after service of the Final Order in this matter, and it is

Further ordered, That upon final acceptance of the Settlement Agreement, Black & Decker (U.S.), Inc., through December 31, 1991, will place a legible and conspicuous label on every weed trimmer replacement string it manufactures or has in inventory, for its corrected model 82209 and 82210 weed trimmers, following final acceptance of this Order. The label shall state:

WARNING!

The following Weed Trimmers were recalled in November 1987 due to an electric shock hazard: #82209 Type 1 and 2 and #82210 Type 1 and 2. If you have one of these models that has not been corrected, contact your nearest B & D Service Center or Authorized Service Center.

Provisionally accepted and Provisional Order issued on the 6th day of August, 1991.

By Order of the Commission

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 91-19094 Filed 8-9-91; 8:45 am]

BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Lessons Learned During Operation Desert Shield/Desert Storm

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Lessons Learned During Operation Desert Shield/Desert Storm will meet in closed session on September 5–6 and October 16–17, 1991 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will examine the lessons learned during Operation Desert Shield/Desert Storm that may have potential impacts on future weapons acquisition decisions and approaches, technology, development, operational concepts, and U.S. qualitative combat advantages.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

Dated: August 7, 1991.

Linda M. Bynum,

Alternative OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-19071 Filed 8-9-91; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board Task Force on Anti-Submarine Warfare; Meeting

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Anti-Submarine Warfare will meet in closed session on 19 and 20 September, 1991, at the Center for Naval Analyses, Alexandria, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Task Force will discuss current and planned ASW programs.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law No. 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: August 7, 1991.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 91-19072 Filed 8-9-91; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: An expedited review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by August 20, 1991.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Mary P. Liggett, Department of Education, 400 Maryland Avenue SW., room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Mary P. Liggett (202) 708–5174.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice with the attached proposed information collection request prior to submission of this request to OMB. This notice contains the following information: (1) Type of review requested, e.g., expedited; (2) Title; (3) Abstract; (4) Additional Information; (5) Frequency of collection; (6) Affected public; and (7) Reporting and/or Recordkeeping burden. Because an expedited review is requested, a description of the information to be collected is also included as an attachment to this notice.

Dated: August 7, 1991.

Mary P. Liggett,

Acting Director, Office of Information Resources Management.

Office of Educational Research and Improvement

Type of Review: Expedited.

Title: Fast Response Survey System—Office for Civil Rights Feasibility.

Abstract: The purpose of the OCR Feasibility Survey is to examine the availability of information for new data items for their biennial Elementary and Secondary School Civil Rights Survey. The questionnaire request data relating to civil rights issues raised during oversight hearings and budget deliberations; to the National Education Goals; and to the Assistant Secretary for Civil Rights' National Enforcement Strategy for 1991 to 1992.

Additional Information: The Office of Educational Research and Improvement/National Center for Education Statistics is requesting an expedited review for the OCR Feasibility Survey in order to meet the schedule in a timely fashion.

Frequency: One-time, non-recurring.

Affected Public: State or Local Governments.

Reporting Burden: Responses: 800. *Burden Hours:* 400.

Recordkeeping Burden: Recordkeepers: 0. *Burden Hours:* 0.

BILLING CODE 4000-01-M

UNITED STATES DEPARTMENT OF EDUCATION
OFFICE OF THE ASSISTANT SECRETARY
FOR EDUCATIONAL RESEARCH AND IMPROVEMENT

September 1991

Dear Superintendent:

On behalf of the National Center for Education Statistics (NCES), we request your participation in the national OCR Feasibility Survey of school districts. The survey is designed to be completed by the person most knowledgeable about your district's student record systems.

The Office for Civil Rights (OCR) conducts the Elementary and Secondary School Civil Rights Survey, commonly called the E&S Survey, to provide OCR's regional offices with current data regarding compliance with civil rights laws. The E&S Survey is conducted on a biennial basis, and revisions to the 1992 and 1994 forms (ED101 and 102) are currently being considered.

New items are being considered in response to the National Goals for Education and to civil rights issues raised during oversight hearings and budget deliberations. The purpose of the enclosed FRSS Civil Rights Feasibility Survey is to inform the E&S Survey revision process by examining the availability of information for new items under consideration. It also will obtain information regarding the availability of information systems necessary to implement alternative data collection methods also under consideration for future E&S Surveys.

The survey has been approved by the Office of Management and Budget (OMB) and coordinated with the Council of Chief State School Officers through its Education Information Advisory Committee (EIAC).

Your participation in this survey, while voluntary, is vital to the development of national estimates. Data collected in the survey will be published in aggregate form only and will not identify individual districts. The survey is being conducted by our contractor, Westat, a research firm in Rockville, Maryland using the Fast Response Survey System (FRSS). In accordance with FRSS practice, Westat will send you a report of the survey findings when they are available.

We ask that you complete and return the enclosed questionnaire within three weeks, and that you keep a copy of the completed questionnaire for your files. If you have any questions about this survey, please call survey manager Wendy Mansfield at Westat's toll-free number, (800) 937-8281 or Judi Carpenter, the NCES Project Officer for FRSS, at (202) 219-1333.

Thank you very much for your assistance.

Sincerely,

Emerson J. Elliott
Acting Commissioner

U.S. DEPARTMENT OF EDUCATION NATIONAL CENTER FOR EDUCATION STATISTICS WASHINGTON, D.C. 20208-5651 OFFICE FOR CIVIL RIGHTS FEASIBILITY SURVEY FAST RESPONSE SURVEY SYSTEM	FORM APPROVED: O.M.B. No.: EXPIRATION DATE:
This survey is authorized by law (20 U.S.C. 1221e-1). While you are not required to respond, your cooperation is needed to make the results of this survey comprehensive, accurate, and timely.	

Background and Purpose of the Study

The Office for Civil Rights (OCR) is charged with ensuring compliance with civil rights laws prohibiting discrimination in federally assisted education programs on the basis of race (Title VI of the Civil Rights Act of 1964), handicap (Section 504 of the Rehabilitation Act of 1973), sex (Title IX of the Education Amendments of 1972), and age (Age Discrimination Act of 1975).

OCR conducts the Elementary and Secondary School Civil Rights Survey, commonly called the E&S Survey, to provide OCR's regional offices with current data regarding compliance with civil rights laws. The E&S Survey is conducted on a biennial basis and revisions to the forms (ED101 and 102) for 1992 and 1994 are currently under consideration.

The purpose of this FRSS Civil Rights Feasibility Survey is to inform the E&S Survey revision process by examining the availability of:

- information for new items being considered for the 1994 E&S Survey; and
- information systems necessary to implement alternative data collection methods for the 1992 E&S Survey.

If you have any questions please call survey manager Wendy Mansfield at Westat's toll-free number (800) 937-8281, or Judi Carpenter, the NCES Project Officer for FRSS at (202) 219-1333.

AFFIX LABEL HERE

IF ABOVE INFORMATION IS INCORRECT, PLEASE UPDATE DIRECTLY ON LABEL.

Name of Person Completing This Form:_____ Telephone Number:_____

Title/position:_____

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1850-New, Washington, D.C. 20503.

NCES Form No.

I. Information Systems

1a. Does your district have an automated student record system with access to individual student records?

☐ Yes, currently operational ☐ Planned operational by 1992 ☐ No

1b. Do your student records have a unique student identifier for each student (e.g., student ID, Social Security number, etc.)?

☐ Yes ☐ No

2. Does your district maintain the following types of individual student information on automated systems, on paper files, or not at all?

Information:	Automated systems	Paper files	Not at all
a. Race/ethnicity	1	2	3
b. Limited English proficiency status	1	2	3
c. Sex	1	2	3
d. Disability (handicap) category	1	2	3
e. Instructional setting for pregnant students	1	2	3
f. Participation in interscholastic athletic activities	1	2	3
g. Disciplinary actions	1	2	3
h. Reason for disciplinary actions (e.g., fighting, possession of drugs)	1	2	3

3. If given the option, how would your district prefer to provide data currently reported on OCR E&S Survey forms ED101 and ED102? *(Check all that apply)*

☐ Paper questionnaire ☐ Magnetic tape ☐ Diskette (specify type)_____
☐ Other (specify)_____

4. In order to report OCR information on diskettes or other automated means what kind(s) of assistance would your district require? (*Check all that apply*)

☐ Telephone hotline
☐ Written instructions
☐ Edit specifications
☐ Computer file specifications
☐ Other (specify)_____
☐ Reporting by automated means not possible in foreseeable future

II. School Discipline Data

5. In Column A, indicate whether your district administers each of the following disciplinary actions.

In Column B, for each action that is administered by your district, circle the number indicating the ease or difficulty for your district to report the frequency (number of times) the action was taken.

In Column C, for each action that is administered by your district, circle the number indicating the ease or difficulty for your district to report the unduplicated count of students disciplined.

For Columns B and C, use the following scale:
1 = Very easy; 2 = Somewhat easy; 3 = Somewhat difficult; 4 = Very difficult; UR = Unable to report.

	A. Action administered?		B. Ease of reporting frequency of action?	C. Ease of reporting unduplicated count of students?
a. Corporal punishment	☐ Yes	☐ No	1 2 3 4 UR	1 2 3 4 UR
b. In-school suspension	☐ Yes	☐ No	1 2 3 4 UR	1 2 3 4 UR
c. Out-of-school suspension	☐ Yes	☐ No	1 2 3 4 UR	1 2 3 4 UR
d. Expulsion	☐ Yes	☐ No	1 2 3 4 UR	1 2 3 4 UR

6. Can your district provide student discipline information resulting in actions such as out-of-school suspension, expulsion, and corporal punishment by:

a. Name of student or individual identifier such as student number, etc. ☐ Yes ☐ No
b. Race/ethnicity ☐ Yes ☐ No
c. Limited English proficiency status ☐ Yes ☐ No
d. Sex ☐ Yes ☐ No
e. Disability (handicap) ☐ Yes ☐ No

III. Special Academic Programs

7. Which of the following academic programs are available in your district? (*Check all that apply*)

☐ Magnet programs; ☐ Gifted and talented programs; ☐ Advanced Placement programs (AP); ☐ Honors programs; ☐ None (*If none, skip to Q9*)

8. For each program available in your district, please indicate whether your district can report enrollment by the following student characteristics. (*Check all that apply*)

Student category	Magnet programs	Gifted and talented programs	Advanced Placement programs	Honors programs
a. Enrollment by race/ethnicity	_____	_____	_____	_____
b. Enrollment by sex	_____	_____	_____	_____
c. Enrollment by disability (handicap)	_____	_____	_____	_____
d. Limited English proficient student enrollment	_____	_____	_____	

IV. Data For Special Populations

9. Can your district report information on the number of children with disabilities (handicaps) who are homeless?

☐ Yes ☐ No

10a. Do you classify your bi-racial students for district records as one race (i.e., using the 5 standard federal race categories: white, not of Hispanic origin; black, not of Hispanic origin; Asian or Pacific Islander; American Indian or Alaskan Native; Hispanic)?

☐ Yes ☐ No

10b. If no, check the primary method currently used to classify bi-racial students for district records. (*Check only one*)

☐ Separately as "Bi-racial" ☐ Another method (*specify*)_____
☐ Separately as "Other" ☐ No bi-racial students

11a. Is it possible to identify the disabled (handicapped) children enrolled in your district whose mothers were alcohol dependent during their pregnancy?

☐ Yes ☐ No

11b. Is it possible to identify the disabled (handicapped) children enrolled in your district whose mothers used illegal drugs during their pregnancy?

☐ Yes ☐ No

RETURN COMPLETED FORM TO:
WESTAT, INC.
1650 Research Boulevard
Rockville, Maryland 20850

[CFDA No.: 84.004C]

Desegregation of Public Education Program for State Educational Agencies

AGENCY: Department of Education.

ACTION: Correction notice.

SUMMARY: On July 25, 1991, a notice establishing the closing date for new awards under the Desegregation of Public Education Program for State Educational Agencies was published in the **Federal Register**. On page 34057, in the first column, the deadline for transmittal of applications should read October 1, 1991 instead of October 30, 1991, and the deadline for intergovernmental review should read November 30, 1991 instead of December 29, 1991.

FOR APPLICATIONS OR INFORMATION CONTACT: Sylvia Wright, U.S. Department of Education, 400 Maryland Avenue SW., room 2059, Washington, DC 20202–6246. Telephone: (202) 401–0358. Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

PROGRAM AUTHORITY: 42 U.S.C. 2000c–2000c–2, 2000c–5.

Dated: August 6, 1991.

John T. MacDonald,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 91–19013 Filed 8–9–91; 8:45 am]

BILLING CODE 4000–01–M

National Council on Education Standards and Testing; Amendment to Notice of Meeting

AGENCY: National Council on Education Standards and Testing; Education.

ACTION: Amendment to notice of meeting:

SUMMARY: This is an amendment to the notice of the August 15, 1991 meeting of the National Council on Education Standards and Testing that appeared in the **Federal Register** on Thursday, August 1, 1991, vol. 56, p. 36781. The meeting will begin at 9:30 instead of 10 a.m. There are no other changes.

Diane Ravitch,

Assistant Secretary and Counselor to the Secretary, Educational Research and Improvement.

[FR Doc. 91–19007 Filed 8–9–91; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Senior Executive Service; Performance Review Board

AGENCY: Department of Energy.

ACTION: SES Performance Review Board Standing Register.

SUMMARY: This notice provides the Performance Review Board Standing Register for the Department of Energy. This listing supersedes all previously published lists of PRB members.

EFFECTIVE DATE: These appointments are effective as of July 31, 1991.

Acharya, Sarbeswar
Adams, William D.
Adler, Ira M.
Ailshie, Stephen A.
Alessi, Victor E.
Allen, Grover L.
Amick, Richard C.
Andersen, Arthur T.
Annan, Robert H.
Anttonen, John H.
Aquilina, Nick C.
Baca, Frank A.
Bacher, Stephen E.
Bamberger, Craig S.
Barber, Robert W.
Barker, William L., Jr.
Barrett, Lake H.
Barrow, Raymond S.
Barry, John H.
Bartholomew, John W.
Bartley, William C.
Baublitz, John E.
Bay, Frank R.
Beach, Rebecca S.
Bean, Earl W.
Bechtel, Thomas F.
Beecy, David J.
Bell, George E.
Bellows, Jerry L.
Benedict, George W.
Bennett, John W.
Bergholz, Warren E., Jr.
Bernard, Peter A.
Berniklau, Vladimir V.
Berube, Raymond P.
Bibb, William R.
Bickel, James E.
Bingham, Carlton D.
Bishop, Yvonne M.
Bixby, Willis W.
Blackwood, Edward B.
Blush, Steven M.
Bobb, Sharon
Borgstrom, Howard G.
Borgstrom, Carol M.
Bradley, Theron M., Jr.
Bray, Donald L.
Bresee, James C.
Breznay, George
Brice, James F.
Brodman, John R.
Brogan, John J.
Broughton, James M.
Brown, Richard W.
Brown, Charles H., Jr.
Brown, Frederick R.
Brush, Peter N.
Bryant, McKinley E.
Buffum, Elizabeth
Carlson, Lynda T.
Caruso, Guy F.
Chapman, Naomi R.
Chappell, Gerald F.
Chaput, Ernest S.
Chesnes, Albert A.
Chiogioji, Melvin H.
Christensen, William J.
Christopher, Robert K.
Chun, Sun W.
Church, Bruce W.
Cipriano, Joseph R.
Clafin, Alan B.
Clagett, IV, William H.
Clark, Charles F.
Clausen, Max Jon
Coleman, Howard S.
Coleman, James S.
Coleman, David G.
Cone, Ronald E.
Constant, Richard E.
Cook, John S.
Cornwell, Thomas F.
Cowan, Stephen P.
Crandall, David H.
Crawford, Timothy S.
Cross, Robert J.
Culpepper, James W.
Cumesty, Edward G.
Curtis, David I.
DAgostino, Thomas S.
Daniel, Robert W., Jr.
Davies, James D.
Davies, Nelia A.
Davis, James T.
De Planque, E. Gail
Decker, James F.
DeHanas, Thomas W.
Dennison, William J.
Der, Victor K.
Detchon, Bryan
Diebold, Robert E.
Dieckhoner, James E.
Dienes, Nicholas S.
Difiglio, Carmen
Divone, Louis V.
Doane, E. David, III
Doherty, Donald P.
Dorsey, William A.
Dowling, Robert J.
Duffy, Leo P.
Dufour, Peggy
Durham, David C.
Durnan, Denis D.
Ebbecke, Charles W.
Edmondson, John J.
Egli, Richard
Elasasser, Thomas C.
Engel, Walter P.
Eppelmann, Andrew D.
Erb, Donald E.
Erdahl, Arlen I.
Esvelt, Terence G.
Fausett, Stephen A.
Feibus, Howard
Fisher, Silas B.
Fitzgerald, Joseph E., Jr.
Fitzsimmons, Allan R.
Fleming, Gene K.
Ford, John A.
Forsythe, Larry A.
Foster, Thomas L.
Frank, Clyde W.
Franklin, John R.
Frei, Mark W.
Frye, Keith N.
Furiga, Richard D.
Fygi, Eric J.
Gaddis, Carl K.
Garson, Henry K.
Gault, Polly L.
Geidl, John C.
Geisbush, Jon C.
Gertz, Carl P.
Gibbs, Garry W.
Gibson, William C., Jr.
Gilbert, Francis C.
Goldberg, Edward S.
Goldenberg, Neal
Goldenberg, Ralph D.
Goldman, David T.
Goldsmith, Robert
Gollomp, Lawrence A.
Graham, A. Diane
Greeves, Robert E.
Greiner, Lloyd M.
Griffith, Jerry D.
Grimm, Paul D.
Grundy, Thad, Jr.
Guidice, Carl W.
Guidice, Stephen J.
Guyer, Arthur E.
Haberman, Norton
Hacskaylo, Michael S.
Hahn, Richard D.
Hale, Douglas R.
Hall, James C.
Halstead, Charles G., Jr.
Hamric, Jon P.
Hanessian, Souren
Hanson, Ronald D.
Hardin, Michael G.
Haspel, Abraham E.
Haymond, George R.
Heath, Charles C.
Heenan, Thomas F.
Heitman, Thomas H.
Helland, George A., Jr.
Henderson, Lynwood H.
Hendrickson, Thomas
Hendrie, David L.
Hess, Wilmot N.
Heusser, Roger K.
Hickey, Sue F.
Hickok, Steven G.
Hine, Thomas A.
Hirahara, James S.
Hoffman, Alan R.
Hogan, Danny A.
Hopkins, T. J.
Hunt, Arlen E.
Hunter, Ray A.
Hunter, John R.
Hutzler, Mary Jean
Ianneillo, Louis C.
Inge, Edwin F., Jr.
Inlow, Rush O.
Isaacs, Thomas H.
Jaffe, Harold
Jameson, Mary Joy
Jamison, Warren L.
Jewett, David S.
Jicha, John J., Jr.
Johnson, Milton D.
Johnson, Owen B.
Johnston, Marc
Jones, C. Rick
Jones, James L.
Jones, David A.
Jordy, George Y.
Joseph, Antionette G.
Juckett, Donald A.
Jura, James J.
Kahalas, Sheldon L.
Kaiser, Ronald Lee
Karol, Michael S.
Karpinski, Joseph L.
Kaspar, Paul W.
Keating, John J.
Keheley, Wayne E.
Kennedy, John P.
Kessler, Roland R.
Key, William P.
Kight, Gene K.
Kilgore, Webster C.
Kingsbury, Robert L.
Klein, Keith A.
Knight, Gary
Knight, James P.
Knuth, Donald F.
Koontz, Max A.
Krenz, Dennis L.
Lagrone, Joe B.
Landers, James C.
Lane, Anthony R.
Lanes, Stephen J.
Langefeld, Cherri J.
Larson, Victor R., Jr.
Laughon, Kermit O.
Leclaire, David B.
Lee, Wayne R.
Lewis, Howard E., Jr.
Lewis, Lenora J.
Lightner, Ralph G.
Lique, E. Diane W.
Little, Leo E.
Longton, Joseph N.
Loose, Ronald R.
Lorenz, Milton C.
Louison, Deborah
Lowe, Owen W.
Lynch, Oliver D.T., Jr.
Lytle, Jill E.
Magruder, James K.
Maher, Joseph R.
Mangeno, James J.
Mann, Thomas O.
Manning, William F.
Marchese, Andrew R.
Marianelli, Robert S.
Marlay, Robert C.
Maroldo, James H.
Marquess, Paul T.
Marquez, Richard A.
Martin, Charles F.
Mason, Charles C.
May, Stephen L.
Mayhew, Delmar D.
McAllister, John A., Jr.
McCallum, Edward J.
McCammon, Helen M.
McCoy, Frank R., III
McGoff, David J.
Michelsen, Stephen J.
Miller, Clarence L.
Millhone, John P.
Miranda, Leonel V.
Mock, John E.
Monetta, Dominic J.
Moody, Marlene A.
Morris, Marcia L.
Mournighan, Stephen D.
Mravca, Andrew E.
Neilsen, Finn K.
Nelson, David B.
Nelson, Robert M., Jr.
Nelson, Rodney R.
Nettles, John J., Jr.
Newhouse, Alan R.
Newman, David G.
Nichols, Clayton R.
Nicks, James R.
Nolan, Elizabeth A.
Nulton, John D.
O'Brien, Robert A., Jr.
O'Donnell, Claire M.
O'Fallon, John R.
Oliver, Lawrence R.
Olson, Gary C.
Paoule, Alvin H.
Patrinos, Aristides A.

Patterson, John R., II
Patton, Gloria S.
Pearman, Donald W., Jr
Pearson, John D.
Perin, Stephen G.
Peters, Franklin G.
Petersen, Jimmie
Pettengill, Harry J.
Pettis, Lawrence A.
Pitrolo, Augustine A.
Plaisance, Paul J., Jr.
Podonsky, Glenn S.
Pollock, Walter E., III
Price, Robert S., Jr.
Pride, E. Engene
Prudom, Gerald H.
Pye, David B.
Rabben, Robert G.
Rader, Robert G.
Raiken, Howard H.
Ramey, Prince M.
Reddick, William C.
Redenius, Richard D.
Reid, James E.
Repke, Wolfgang C.
Resendez, Ignacio
Richardson, Steven D.
Roberts, Michael
Robertson, John S.
Robertson, Lawrence V
Rock, Bernard J.
Rodeheaver, Thomas N.
Rodekohr, Mark A.
Rollow, Thomas A.
Rooney, John M.
Rosen, Sol
Rosselli, Robert M.
Roth, Berton J.
Rousso, Samuel
Rudins George
Rudolph, John E.
Sabre, Randolph E.
Salm, Philip E.
Saltzman, Jerome D.
Salvador, Louis A.
Samber, Martin
San Martin, Robert L.
Scarborough, Muriel L.
Scheetz, Karl G.
Schmitt, Carl H.
Schmitt, William A.
Schmoker, Daniel N.
Schnapp, Robert
Schroeder, Mark C.
Schueler, Dorner T., Jr.
Scott, Randal
Scott, Donald E.
Scott, David G.
Season, Harry T., Jr.
Sewell, Phillip G.
Shafer, John M.
Shelor, Dwight E.
Shirley, Sr., John W.
Siebert, Arlie B., Jr.
Siegel, Jack S.
Sienkiewicz, E. W., Jr.
Silverman, Mark N.
Simon, Robert M.
Simonson, David P.
Singer, Marvin I.
Sjostrom, Leonard C.
Smedley, Elizabeth E.
Smith, Linda M.
Smithwick, Grover A.
Sohinki, Stephen M.
Spence, David R.
Spigal, Harvard P
Stagliano, Vito A.
Stallman, Robert M.
Starostecki, Richard W
Stello, Victor, Jr.
Stephens, Richard E.
Stevenson, F Dee
Stewart, John B.
Stewart, Frank M., Jr.
Stone, John C.
Stone, Philip M.
Stout, James A.
Strakey, Joseph P., Jr.
Streb, Alan J.
Stumbaugh, David C.
Stuntz, Linda G.
Swink, Denise F
Taboas, Anibal L.
Taillie, Dennis K.
Teclaw, Charles E.
Tedrow, Richard T
Thomas, Iran L.
Thompson, Jerry F
Tierney, Charles R.
Tiller, Robert E., Jr.
Tillman, Luther J.
Tseng, John C.
Tucker, William E.
Turner, James M.
Tuttle, Edward H., III
Twining, Bruce G.
Uhre, Lea J.
Upchurch, Tony Coleman
Uthus, Douglas B.
Vaeth, Terry A.
Vagts, Kenneth A.
Van Orman, Chandler
Voelker, Gary E.
Volpe, Frederick J.
Wagenhoffer, Thomas V.
Wagoner, John D.
Walsh, Robert J.
Walsh, Jeremiah E.
Walter, Donald K.
Walton, Howard L.
Warnick, Walter L.
Weaver, Thomas L.
Weiner, Lawrence A.
Weller, Robert L.
Westerbeck, Gerald W.
White, James K.
Whiteman, Albert E.
Whitfield, Roger P.
Wieker, Thomas L.
Wilcynski, John M.
Wilken, Daniel H.
Williams, Edward R.
Williams, Mark H.
Williamson, Richard H.
Willis, John W.
Wilmot, Edwin L.
Wilson, John S.
Witherill, Vern F.
Wolicki, Nancy F.
Wood, Robert W.
Wright, Julian M., Jr.
Yaffe, Barry

Issued in Washington, DC, on August 6, 1991.

John J. Nettles, Jr.,

Director of Administration and Human Resource Management.

[FR Doc. 91-19090 Filed 8-9-91; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Project Nos. 2711-001, et al.]

Hydroelectric Applications (Northern States Power Co., et al.); Notice of Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. *Type of Application:* License Subsequent.

b. *Project No.:* 2711-001.

c. *Date filed:* March 27, 1991.

d. *Applicant:* Northern States Power Company.

e. *Name of Project:* Trego Hydro Project.

f. *Location:* On the Namekagan River, Washburn County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791 (a)-825(r).

h. *Applicant Contact:* Mr. Anthony G. Schuster, Northern States Power Company, 100 North Barstow Street, P.O. Box 8, Eau Claire, WI 54702, (715) 839-2401.

i. *FERC Contact:* Mary C. Golato (202) 219-2804.

j. *Comment Date:* August 30, 1991.

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D2.

l. *Description of Project:* The license project consists of the following facilities: (1) A northeastern earth embankment section 380 feet long and about 30 feet in maximum height; (2) a southwestern earth embankment section 110 feet long and about 25 feet in maximum height; (3) a reinforced concrete hollow gravity spillway structure of the Ambursen type, 92 feet long, 53 feet wide at the base, and 26 feet high, surmounted with 3 tainter gates, each 25.5 feet long and 10 feet high, and a 6-foot-wide trashgate and sluiceway; (4) a reservoir about 6 miles long, with a surface area of 470 acres and a storage capacity of 4,700 acre-feet; (5) a reinforced concrete, steel and brick powerhouse 59.5 feet long, 58 feet wide, and 74 feet high above the foundation, located adjacent to the southwest end of the spillway structure; (6) generating equipment consisting of two open flume, vertical-axis Francis turbine-generator units, No. 1 rated 700 kilowatts (kW), and No. 2 rated 500 kW, for a total capacity of 1,200 kW; (7) a concrete stilling basin apron about 53 feet long and 150 feet wide; (8) transmission facilities; and (9) appurtenant facilities. The applicant proposes no new construction. The dam is owned by the Northern States Power Company The average annual generation is 7,575,898 kilowatthours.

m. *Purpose of Project:* All project energy generated would be utilized by the Applicant for sale to its customers.

n. This notice also consists of the following standard paragraphs: B1 and D2.

o. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208-1371. A copy is also available for inspection and reproduction at the address of Mr. Anthony G. Schuster, Northern States Power Company, 100 North Barstow Street, P.O. Box 8, Eau Claire, WI 54702, (715) 839-2401.

2 a. *Type of Filing:* Major License.

b. *Project No.:* 7802-005.

c. *Date Filed:* July 30, 1987.

d. *Applicant:* Natural Energy Resources Company.

e. *Name of Project:* Rocky Point Pumped Storage Project.

f. *Location:* Occupies lands within the Gunnison National Forest and lands administered by the Bureau of Land Management, on the Taylor River, near the town of Gunnison, in Gunnison and Chaffee Counties, Colorado.

g. *Filed pursuant:* Federal Power Act, 16 U.S.C., section 791(a)-825(r).

h. *Applicant Contacts:* David M. Lefebvre, Black & Veatch, Engineers Architects, P.O. Box 8405, Kansas City, MO 64114, (913) 339-2164. Glen Rockwell, EBASCO Services, Inc., 143 Union Blvd., Suite 1010, Lakewood, CO 80228, (303) 988-2202.

i. *FERC Contact:* Héctor M. Pérez, (202) 219-2843, or Kathleen Sherman, (202) 219-2834.

j. *Comment Date:* September 23, 1991

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached paragraph E.

l. *Description of the Project:* The proposed pumped storage project would utilize the existing U.S. Bureau of Reclamation's Taylor Park Reservoir as the lower reservoir, and would consist of: (1) The proposed Rocky Point Reservoir as upper reservoir with a maximum surface area of 50 acres at a maximum operating level of 11,658 feet

mean sea level (MSL), a total storage capacity of 4,750 acre-feet, and an active storage capacity of 3,900 acre-feet impounded by; (2) a 122-foot-high, 5,600-foot-long asphalt-faced rockfill oval dam with a crest elevation of 11,666 feet msl having a 150-foot-wide emergency concrete lined spillway with a crest elevation of 11,660 feet msl; (3) a 3,900-foot-long, 17.5-foot-diameter steel-lined tunnel leading to: (4) an 82-foot-wide by 455-foot-long buried powerhouse containing four generating units with a total installed capacity of 1,000 megawatts; (5) a 6,000-foot-long, 23-foot-diameter concrete-lined tailrace tunnel discharging water into Taylor Park Reservoir; (6) a 27-mile-long, 345-kilovolt double circuit transmission line; and (7) appurtenant facilities. The applicant estimates an average annual generation of 1,051,000 megawatthours.

Access to the upper reservoir would be by a new 30-foot-wide, 5.1-mile-long crushed rock road. Also, access to the buried powerhouse will be by a 7,400-foot-long horseshoe-shaped tunnel from the western shore of Taylor Park Reservoir.

m. *Purpose of the Project:* Applicant would sell project power for use within the Rocky Mountain Power Area.

n. This notice also consists of the following standard paragraphs: A2, A9, B2, and E.

o. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. Copies are also available for inspection and reproduction at the Gunnison Public Library, the Western State College Library, and at the locations stated in item h above.

a. *Type of Application:* Major License.

b. *Project No.:* 8864–007.

c. *Date filed:* June 10, 1991.

d. *Applicant:* Weyerhaeuser Company.

e. *Name of Project:* Calligan Creek Hydroelectric.

f. *Location:* On Calligan Creek, in King County, Washington; Sections 31 and 32, Township 25 North, Range 9 East, Willamette Meridian.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Mr. Michael S. Wright, Permit/Engineering Inc., 1300–114th Avenue, SE, Suite 220, Bellevue, WA 98004, (206) 451–7371.

i. *FERC Contact:* Mr. Surender M. Yepuri, (202) 219–2847.

j. *Deadline Date:* October 4, 1991.

k. *Status of Environmental Analysis:* This application is not ready for an environmental analysis at this time—see attached paragraph E.

l. *Description of Project:* The proposed project would consist of: (1) A 8-foot-high, 60-foot-long diversion dam with crest elevation at 2,221.0 feet; (2) a 23-foot-wide, 48-foot-long intake structure with fish screens; (3) a 42-inch diameter, 1,400-foot-long steel siphon which is filled with water at start-up times by an 18-inch-diameter, 1400-foot-long force main; (4) a 40-inch-diameter, 4,925-foot-long steel penstock; (5) a 42-foot-wide by 44-foot-long powerhouse containing a generating unit with a rated capacity of 5.4 MW; (6) a 148-foot-long tailrace returning the discharge into the creek; (7) a 4.25-mile-long, 35–kV transmission line tying into the substation of the Black Creek Project No. 6221; and (8) related facilities.

The project would have an estimated annual output of 21.68 Gwh and would cost $8,997,600 in 1990 dollars to construct.

m. *Purpose of Project:* Power generated would be sold to a local utility.

n. This notice also consists of the following standard paragraphs: A2, A9, B2, and E.

o. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at (1) Weyerhaeuser Company, Tacoma, Washington 98477; Telephone No. (206) 924–2932; and (2) King County Public Library, 126 East Fourth, North bend, WA 98045.

4 a. *Type of Application:* Major License.

b. *Project No.:* 9025–005.

c. *Date filed:* March 27, 1991.

d. *Applicant:* Weyerhaeuser Company.

e. *Name of Project:* Hancock Creek Hydroelectric.

f. *Location:* On Hancock Creek, in King County, Washington; Sections 7 and 8, Township 24 North, Range 9 East, Willamette Meridian.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)–825(r).

h. *Applicant Contact:* Mr. Michael S. Wright, Permit/Engineering Inc., 1300–114th Avenue, SE, Suite 220, Bellevue, WA 98004, (206) 451–7371.

i. *FERC Contact:* Mr. Surender M. Yepuri, (202) 219–2847.

j. *Comment Date:* September 24, 1991.

k. *Status of Environmental Analysis:* This application is not ready for an environmental analysis at this time—see attached paragraph E.

l. *Description of Project:* The proposed project would consist of: (1) A 7-foot-high, 62-foot-long diversion dam with crest elevation at 2,171.0 feet; (2) a 20-foot-wide, 12-foot-high, and 53-foot-long intake structure with fish screens; (3) a 45-inch diameter, 2,460-foot-long steel siphon which is filled with water at start-up times by an 18-inch-diameter, 2,460-foot-long force main; (4) a 40-inch-diameter, 5,060-foot-long steel penstock; (5) a 38-foot-wide by 40-foot-long powerhouse containing a generating unit with a rated capacity of 6.3 MW; (6) a 125-foot-long tailrace returning the discharge into the creek; (7) a 2.0-mile-long, 35–kV transmission line tying into the substation of the Black Creek Project No. 6221; and (8) related facilities.

The project would have an estimated annual output of 22.91 GWh and would cost $10,438,000 in 1990 dollars to construct.

m. *Purpose of Project:* Power generated would be sold to a local utility.

n. This notice also consists of the following standard paragraphs: A2, A9, B2, and E.

o. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at (1) Weyerhaeuser Company, Tacoma, Washington 98477; Telephone No. (206) 924–2932; and (2) King County Public Library, 126 East Fourth, North Bend, WA 98045.

5 a. *Type of Application:* Minor License.

b. *Project No.:* 11055–000.

c. *Date filed:* November 26, 1990.

d. *Applicant:* Wilton Hydro Electric Company, Inc.

e. *Name of Project:* Wilton.

f. *Location:* At the existing Abbott Machine Dam on the Souhegan River near Wilton in Hillsborough County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Mr. Jason M. Hines, P.O. Box 76, Amherst, NH 03031, (603) 654–2678.

i. *FERC Contact:* Ms. Julie Bernt, (202) 219–2814.

j. *Deadline Date:* September 20, 1991.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached paragraph E.

l. *Description of Project:* The existing run-of-river project would consist of: (1) An existing 17-foot-high concrete capped, split-stone gravity dam owned by the Gould Leetch Trust; (2) an existing reservoir with a normal surface elevation of 337.7 msl, a surface area of 4 acres and a storage area of 14 acre-feet with no usable storage capacity; (3) an existing 110-foot-long spillway; (4) an existing powerhouse containing one generating unit with an installed capacity of 150 kW; (5) a 175-foot-long transmission line; and (6) appurtenant facilities. The average annual energy generation is estimated to be 500,000 kWh which would be sold to a local power company. The estimated cost for the renovation of these facilities is $180,300.

m. *Purpose of Project:* Power produced would be sold to a local power company.

n. This notice also consists of the following standard paragraphs: A2, A9, B2, and E.

o. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction from Wilton Hydro Electric Company, Inc., RFD #1, Wilson Road, Wilton, New Hampshire 03086, or by calling (603) 654–2678.

a. *Type of Application:* Minor License.

b. *Project No.:* 11143–000.

c. *Date Filed:* May 6, 1991.

d. *Applicant:* Summit Hydropower.

e. *Name of Project:* Glen Falls.

f. *Location:* On the Moosup River, in Windham County, Connecticut.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791 (a)—825(r).

h. *Applicant Contact:* Duncan Broatch, Summit Hydropower, 92 Rocky Hill Road, Woodstock, CT 06281, (203) 974–1620.

i. *FERC Contact:* Mary C. Golato (202) 219–2804.

j. *Comment Date:* September 19, 1991.

k. *Status of Environmental Analysis :* This application is ready for environmental analysis at this time—see attached paragraph D3.

l. *Description of Project:* The project would consist of: (1) An existing 150-foot-long and 15-foot-high granite masonry gravity overflow dam; (2) a 43-acre reservoir with a pond elevation of 270.7 feet mean sea level; (3) a 70-foot-long and 7-foot-diameter penstock; (4) an 18.9-foot-wide and 23.2-foot-long powerhouse; (5) a 250-kilowatt Francis turbine connected to a generator operating at a hydraulic capacity of 222 cubic feet per second and 17.5 feet of head; (6) a 35-foot-long and 18-foot-wide tailrace; (7) a 135-foot-long ceiling mounted conduit; and (8) appurtenances. The owner of the dam is Summit Hydropower. The project would operate in a run-of-river mode and would generate approximately 839,000 kilowatthours per year.

m. *Purpose of Project:* Power generated would be sold to a local utility.

n. This notice also consists of the following standard paragraphs: A3, A9, B1, and D3.

o. *Available Locations of Applications:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the address of Mr. Duncan Broatch, Summit Hydropower, 92 Rocky Hill Road, Woodstock, CT 06281, (203) 974–1620, and at Aldrich Free Public Library, 299 Main Street, Moosup, CT 06354, (203) 564–8760.

a. *Type of Application:* Minor License.

b. *Project No.:* 11150–000.

c. *Date filed:* May 24, 1991.

d. *Applicant:* Cameron Gas and Electric, Inc.

e. *Name of Project:* Smithville and Mix Projects.

f. *Location:* On the Grand River, near Eaton Rapids, in Eaton County, Michigan.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791 (a)—825(r).

h. *Applicant Contact:* Ms. Jan Marie Evans, Cameron Gas and Electric, Inc., 4572 Sequoia Trail, Okemos, MI 48864, (517) 351–5400.

i. *FERC Contact:* Mary C. Golato (202) 219–2804.

j. *Comment Date:* September 26, 1991.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached paragraph E.

l. *Description of Project:* The proposed project would consist of: The Mix Development comprising (1) an existing dam 188 feet long; (2) an existing reservoir that has a surface area of 150 acres, a storage capacity of 500 acre-feet and an elevation of 184 feet mean sea level; (3) a powerhouse containing 2 units at a total installed capacity of 202 kilowatts; (4) an existing transmission line 100 yards long at 15 kilovolts; and (5) appurtenant facilities.

The Smithville Development comprising: (1) An existing dam 167 feet long; (2) an existing reservoir that has a surface area of 80 feet, a storage capacity of 300 acre-feet, and an elevation of 883.3 feet mean sea level; (3) a powerhouse containing 5 units at a total installed capacity of 500 kilowatts; (4) an existing transmission line 100 yards long at 15 kilovolts; and (5) appurtenant facilities..

The applicant estimates that the average annual generation would be approximately 3 million kilowatthours. The dams are owned by Cameron Gas and Electric, Inc. The application was filed under UL–87–11–12.

m. *Purpose of Project:* Power generated would be sold to a local utility.

n. This notice also consists of the following standard paragraphs: A2, A9, B2, and E.

o. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE, room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Mrs. Jan Marie Evans, Cameron Gas and Electric, Inc., 4572 Sequoia Trail, Okemas, MI 48864 (517) 351–5400.

8a. *Type of Application:* Major License.

b. *Project No.:* 11151–000.

c. *Date Filed:* May 28, 1991.

d. *Applicant:* Energy Alternatives of North America, Inc.

e. *Name of Project:* Williams Dam.

f. *Location:* On the East Fork of the White River near Bedford in Lawrence County, Indiana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Mr. C. Scott Hitchcock, P.O. Box 21, Kohler, WI 53044, (414) 452–2624.

i. *FERC Contact:* Ms. Julie Bernt, (202) 219–2814.

j. *Deadline Date:* September 26, 1991.

k. *Status of Environmental Analysis:* This application is not ready for environmental analysis at this time—see attached paragraph E.

l. *Description of Project:* The proposed project would consist of: (1) An existing 25-foot-high concrete dam owned by the State of Indiana; (2) a reservoir with a surface area of 200 acres at a surface

elevation of 475 feet m.s.l. and a storage capacity of 1,000 acre-feet; (3) a new powerhouse with intake openings at an existing powerhouse substructure containing four generating units each rated at 470 kW; (4) a 1¾-mile long transmission line; and (5) appurtenant facilities. The project would have an estimated annual output of 10,660 MWh and would cost $2,800,000 to construct.

m. *Purpose of Project:* The power produced would be sold to a local power company.

n. This notice also consists of the following standard paragraphs: A2, A9, B2, and E.

o. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NW., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction from Mr. Hitchcock at P.O. Box 21, Kohler, WI or by calling (414) 452–2624.

Standard Paragraphs

A2. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, the competing development application or a notice of intent to file such an application. Submitting a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for a preliminary permit will not be accepted in response to this notice.

A3. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular applications, the competing development application or a notice of intent to file such an application. Submitting a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for a preliminary permit will not be accepted in response to this notice.

A9. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

B1. Protests for Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedures, 18 CFR sections 385.210, .211 .214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified comment date for the particular application.

B2. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedures, 18 CFR sections 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceedings. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

D2. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 Fed. Reg. 23108 (May 20, 1991)), that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the date of this notice. All reply comments must be filled with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) Bear in all capital letters the title "PROTEST," "MOTION TO INTERVENE," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), 385.2010.

D3. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR23108 (May 20, 1991)), that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) Bear in all capital letters the title "PROTEST," "MOTION TO INTERVENE," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and

the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to: Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), 385.2010.

E. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

The Commission will notify all persons on the service list and affected resource agencies and Indian tribes when the application is ready for an environmental analysis. If any person wishes to be placed on the service list, a motion to intervene must be filed by the specified deadline date herein for such motions. All resource agencies and Indian tribes that have official responsibilities that may be affected by the issues addressed in this proceeding, and persons on the service list will be able to file comments, terms and conditions, and prescriptions within 60 days of the date the Commission issues a notification letter that the application is ready for an environmental analysis. All reply comments must be filed with the Commission within 105 days from the date of that letter.

All filings must: (1) Bear in all capital letters the title "PROTEST," or "MOTION TO INTERVENE," (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: August 6, 1991, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 91-19025 Filed 8-9-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-11-20-000]

Algonquin Gas Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

August 5, 1991.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on August 1, 1991, tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1, as set forth in the revised tariff sheets:

Proposed to be effective May 1, 1991
- Second Revised Sheet No. 41
- Second Revised Sheet No. 42

Proposed to be effective August 1, 1991
- Third Revised Sheet No. 42
- First Revised Sheet No. 63

Algonquin states that the revised tariff sheets listed above are being filed to flow through changes in the rates underlying Algonquin's Rate Schedules STB, SS-III and ATAP. Texas Eastern Transmission Corporation's ("Texas Eastern") Rate Schedules SS-2, SS-3 and FT-1 underlie these rate schedules. Pursuant to section 10 of Rate Schedule STB, section 9 of Rate Schedule SS-III and Section 4 of Rate Schedule ATAP in Algonquin's FERC Gas Tariff, Third Revised Volume No. 1, Algonquin is hereby filing the above sheets to track the latest changes proposed by Texas Eastern.

Algonquin states that Texas Eastern filed changes to its SS-II and SS-III rates on June 20, 1991 in Docket No. TM91-8-17-000 to be effective May 1, 1991. However, due to a clerical oversight this filing did not arrive at Algonquin until recently and was not tracked until the instant filing. On June 30, 1991, Texas Eastern filed its regularly scheduled Quarterly PGA in Docekt No. TQ91-4-17-000. to become effective August 1, 1991.

Algonquin states that pursuant to sections 10.3, 9.3 and 4.2 of Rate Schedules STB, SS-III and ATAP, respectively, the proposed effective dates for the listed revised tariff sheets are May 1, 1991 and August 1, 1991.

Algonquin further states that the effect of the May 1, 1991 change in Rate Schedules STB and SS-III is to decrease the injection charge by 0.03¢ per MMBtu. The August 1, 1991 changes decrease the SS-III Non-FDDQ withdrawal rate by 1.05¢ per MMBtu and the ATAP commodity rate by 1.61¢ per MMBtu.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 12, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 91-19029 Filed 8-9-91; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-12-20-000]

Algonquin Gas Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

August 5, 1991.

Take notice that Algonquin Gas Transmission Company ("Algonquin") on August 1, 1991, filed proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1, as set forth in the revised tariff sheets, to be effective August 31, 1991.

- Third Revised Sheet No. 91
- Third Revised Sheet No. 92
- Second Revised Sheet No. 93
- Second Revised Sheet No. 674A
- Third Revised Sheet No. 674D
- Second Revised Sheet No. 674G
- Second Revised Sheet No. 674K
- Second Revised Sheet No. 674L

Second Revised Sheet No. 674M
Second Revised Sheet No. 674N
Second Revised Sheet No. 674O

Algonquin states that the purpose of this filing is to update the amount of take-or-pay charges to be billed to Algonquin by Texas Eastern Transmission Corporation, CNG Transmission Corporation, and National Fuel Gas Supply to be recovered by Algonquin by operation of section 33.7 of the General Terms and Conditions to Algonquin's FERC Gas Tariff, Third Revised Volume No. 1. Algonquin also states that the revised take-or-pay surcharges are the result of revised allocation methods imposed by its pipeline suppliers in response to the Commission's Order No. 528 and 528–A.

Algonquin notes that copies of this filing were served upon each affected party and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 12, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–19030 Filed 8–9–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–204–000]

East Tennessee Natural Gas Co.; Proposed Changes in FERC Gas Tariff

August 5, 1991.

Take notice that on August 1, 1991, East Tennessee Natural Gas Company ("East Tennessee") tendered for filing revisions to the following tariff sheets of its FERC Gas Tariff to be effective September 1, 1991:

First Revised Volume No. 1

Eighth Revised Sheet Nos. 4 and 5
First Revised Sheet Nos. 30 Through 32
First Revised Sheet Nos. 33
Original Sheet Nos. 34 and 35
Original Sheet Nos. 36 Through 39
First Revised Sheet Nos. 97 and 98
Original Sheet No. 97A
First Revised Sheet Nos. 117 Through 119
First/Sheet Nos. 120 Through 129

Original Volume No. 1A

Second Revised Sheet Nos. 6 and 7
Third Revised Sheet No. 20
First Revised Sheet No. 25
First Revised Sheet No. 44
Second Revised Sheet No. 131
First Revised Sheet No. 132
First Revised Sheet No. 133
First Revised Sheet No. 134
First/Sheet Nos. 135 Through 149

East Tennessee states that the purpose of the filing is to reflect increased costs necessitated by, *inter alia*, an expansion of gas plant and related expenses pursuant to the certificate of public convenience and necessity issued on June 27, 1991 in Docket No. CP90–1111–000, an increase in general operating costs, an increase in non-gas costs to be assessed East Tennessee by Tennessee Gas Pipeline Company ("Tennessee") under Tennessee's new contract storage service contained in the Stipulation and Agreement in Docket No. RP88–228, *et al.*, and increased costs arising as a result of FASB Standard No. 106. The proposed rates reflect an increase in East Tennessee's overall annual revenue level of $16.9 million.

East Tennessee states that the proposed tariff sheets implement sales and transportation rates which effectuate the objectives expressed in the Commission's Policy Statement on Rate Design in Docket No. PL89–2–000. Among other matters, the rate design methods underlying the filing utilize the fixed variable method with one-part demand rates, allocate demand costs on the basis of customer maximum daily quantities for firm services, maintain mileage sensitive rates, allocate demand costs to Rate Schedule SMS on a 100 percent loan factor basis and to Rate Schedule IT on a 100 percent load factor basis for the winter season and a 150 percent load factor basis for the summer season, and design rates under Rate Schedule AOS on the basis of the applicable commodity rate.

East Tennessee states that the tariff sheets also provide for transportation and storage cost rate adjustments; revise the PGA to eliminate any uncertainty as to recovery as demand costs, for PGA purposes, of certain fixed purchased gas transitional costs and demand charges associated with a Gas Inventory Charge that may be billed to East Tennessee by Tennessee Gas Pipeline Company; impose a reconciliation charge for firm sales customers converting to firm transportation service; clarify an ambiguity between §§ 2.2 and 5.2 of East Tennessee's firm and interruptible transportation rate schedules with regard to the construction of facilities; and provide small general service customers with the option of receiving service under the historical one-part rate structure or under a two-part rate structure not subject to a full requirements obligation.

East Tennessee states that copies of the filing were served upon East Tennessee's affected customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 12, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91–19035 Filed 8–9–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ91–7–24–000]

Equitrans Inc.; Notice of Proposed Change in FERC Gas Tariff

August 5, 1991.

Take notice that Equitrans, Inc. (Equitrans) on July 31, 1991, tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1, to become effective August 1, 1991:

First Revised Twenty-Seventh Revised Sheet No. 10
First Revised Eighteenth Revised Sheet No. 34

Equitrans states that the purpose of the filing is to reflect changes in Equitrans' rates and services that became effective on August 1, 1991 pursuant to the Commission's Order approving the March 22, 1991 "Joint Stipulation and Agreement" filed in Docket Nos. RP90–70, *et al.*

Equitrans further states that the changes proposed in the filing to the purchased gas adjustment under Rate Schedule PLS is an increase in the demand cost of $0.8787 per dekatherm (dth) and a decrease in the commodity cost of $0.381 per dth. Equitrans notes that the purchased gas cost adjustment to Rate Schedule ISS is a decrease of $0.2193 per dth for the winter period and $0.3505 per dth for the base period.

Equitrans states that a copy of its filing has been served upon its affected

customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before August 12, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91–19028 Filed 8–9–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ91–3–53–000]

K N Energy, Inc.; Notice of Proposed Changes in FERC Gas Tariff

August 5, 1991

Take notice that K N Energy, Inc. ("K N") on August 1, 1991 tendered for filing proposed changes in its FERC Gas Tariff to adjust the rates charged to its jurisdictional customers pursuant to the Purchased Gas Adjustment provision (Section 19) of the General Terms and Conditions of K N's FERC Gas Tariff, First Revised Volume No. 1–B to reflect changes in the Current adjustment. K N states that the filing proposes increases (decreases) to K N's rates per Mcf as set forth in the table below:

	Zone 1	Zone 2
CD, SF and WPS Commodity	$(0.0281)	$(0.0281)
D1 Demand	(0.0053)	(0.0073)
D2 Demand	(0.0066)	(0.0070)
WPS Demand	(0.0107)	(0.0147)
IOR Commodity	(0.0400)	(0.0424)

K N states that the filing reflects revision to its base tariff rates to reflect projected weighted average gas costs for the quarter ending November 30, 1991. The proposed effective date for the rate changes is September 1, 1991.

K N states that copies of the filing were served upon K N's jurisdictional customers, and interested public bodies.

Any person desiring to be heard or to make any protest with reference to this filing should, on or before August 12, 1991, file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a petition to intervene or a protest in accordance with Rules 211 and 214 of the Commission's Rules of Practive and Procedure (18 CFR 385.211, 385.214). 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 petition to intervene in accordance with the Commission's Rules. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–19027 Filed 8–9–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TO91–5–25–000]

Mississippi River Transmission Corp.; Notice of Rate Change Filing

August 5, 1991

Take notice that on August 1, 1991 Mississippi River Transmission Corporation (MRT) tendered for filing the Sixty-Third Revised Sheet No. 4, Twenty-Second Revised Sheet No. 4.1, and Twenty-Second Revised Sheet No. 4.2 to its FERC Gas Tariff, Second Revised Volume No. 1, to be effective September 1, 1991.

MRT states that the instant filing reflects its quarterly purchased gas cost adjustment (PGA), submitted pursuant to § 154.308 of the Commission's Regulations and paragraph 17.2 of MRT's FERC Gas Tariff. MRT states that the impact of the instant filing on its Rate Schedule CD–1 rates is an increase of $.001 per MMBtu in the demand charge, and an increase of 13.91 cents per MMBtu in the commodity charge. The single part rate under Rate Schedule SGS–1 reflects an increase of 13.92 cents per MMBtu.

MRT states that a copy of the revised tariff sheets is being mailed to each of MRT's jurisdictional sales customers and to the State Commissions of Arkansas, Missouri, and Illinois.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with § 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before August 12, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–19026 Filed 8–9–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–202–000]

Paiute Pipeline Co.; Change in Rates

August 5, 1991.

Take notice that on August 1, 1991, Paiute Pipeline Company (Paiute), pursuant to section 4 of the Natural Gas Act and part 154 of the Commission's regulations thereunder, submitted for filing a notice of change in rates for natural gas service rendered to jurisdictional customers served under all rate schedules contained in First Revised Volume No. 1–A of Paiute's FERC Gas Tariff. In order to implement the notice of change in rates, Paiute tendered for filing and acceptance the following tariff sheets to be a part of First Revised Volume No. 1–A:

First Revised Sheet No. 10
First Revised Sheet No. 130

Paiute proposes to make the tendered tariff sheets and the change in rates effective on September 1, 1991.

Paiute states that based upon the test period cost of service and the projected throughput quantities employed in its filing, Paiute projects a deficiency of approximately $1,029,946 in annual revenues from jurisdictional transportation and storage services at current rates. Paiute is therefore proposing to increase rates for its jurisdictional transportation and storage services in an amount that is sufficient to eliminate the revenue deficiency and recover the full cost of service reflected in its filing.

Paiute states that it has served copies of its filing on all affected customers and all interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 384.214). All such motions or protests should be filed on or before August 12, 1991. Protests will be considered by the Commission in determining the

appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary

[FR Doc. 91–19036 Filed 8–9–91, 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–203–000]

Tennessee Gas Pipeline Co; Filing of Changes in Rates

August 5, 1991

Take notice that on August 1, 1991, Tennessee Gas Pipeline Company (Tennessee) tendered for filing changes in its FERC Gas Tariff to be effective September 1, 1991, consisting of the following revised tariff sheets:

Third Revised Volume No. 1

Sixth Revised Sheet No. 20
Original Sheet No. 20A
Sixth Revised Sheet No. 21
Original Sheet No. 21A
Sixth Revised Sheet No. 22
Fourth Revised Sheet No. 23
Third Revised Sheet No. 24
Original Sheet No. 24A
Fourth Revised Sheet No. 25
Original Sheet No. 25A
Fourth Revised Sheet No. 26
Original Sheet No. 26A
Second Revised Sheet No. 28
Original Sheet Nos. 28A, 28B
Second Revised Sheet No. 29
Original Sheet No. 29A
First Revised Sheet Nos. 57, 63, 69, 71, 74, 78, 79, 80
First Revised Sheet Nos. 82, 86, 87, 88, 89, 90, 92
Second Revised Sheet Nos. 97, 101, 102
First Revised Sheet Nos. 106, 111
Second Revised Sheet No. 116
First Revised Sheet Nos. 130, 132, 133, 138, 141, 142
First Revised Sheet Nos. 222, 231, 232, 233, 239
Original Sheet No. 239A
First Revised Sheet Nos. 246, 247, 248, 249, 250, 251, 252
Second Revised Sheet No. 253
First Revised Sheet Nos. 253A, 268, 272, 273, 274, 467

Original Volume No. 2

Twenty-fifth Revised Sheet No. 5
Original Sheet No. 5A
Twenty-fourth Revised Sheet No. 6
Original Sheet No. 6A
Eighth Revised Sheet No. 7
Original Sheet No. 7A
Ninth Revised Sheet No. 8
Original Sheet No. 8A
Eighth Revised Sheet No. 9
Original Sheet No. 9A
Thirteenth Revised Sheet No. 10

Tennessee states that the changes will increase revenues from jurisdictional sales and services by $343 million. Tennessee also states that this rate increase is necessitated by, among other things, an increase in gas plant and related expenses and an increase in costs to operate and maintain its pipeline. Tennessee also states that its filing institutes the cost allocation and rate design changes and new or expended services provided for in the "Cosmic Settlement" filed June 25, 1991 in Docket Nos. RP86–119, *et al.*, that is currently pending before the Commission, a change from the Modified Fixed Variable (MFV) to Enhanced Fixed Variable (EFV) methodology for cost classification purposes, and various other tariff changes as explained in the filing.

Tennessee states that it has served copies of the filing on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protests with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's rules and regulations. All such motions or protests should be filed on or before August 12, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 91–19034 Filed 8–9–91, 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA92–1–11–000]

United Gas Pipe Line Co.; Filing of Revised Tariff Sheets

August 5, 1991.

Take notice that on August 1, 1991 United Gas Pipe Line Company (United) tendered for filing tariff sheets:

Fourth Revised Volume 1

First Revised Sheet No. 4
First Revised Sheet No. 4A
First Revised Sheet No. 4B
First Revised Sheet No. 4C
First Revised Sheet No. 4E

The proposed effective date of the above referenced tariff sheets in this docket is October 1, 1991. United states that the above referenced tariff sheets are being filed pursuant to Section 154.305 of the Commission's regulations to reflect changes in United's purchased gas cost adjustment as provided in section 22 of United's FERC Gas Tariff, Fourth Revised Volume No. 1.

United states that it has filed tariff sheets which implement a $2.2940 per MMBtu commodity gas cost rate excluding nongas cost, ACA and GRI. This rate reflects a $2.1262 per MMBtu gas commodity cost, a surcharge of <$.0040> per MMBtu and a Settlement Surcharge of $.1718 per MMBtu.

United states that the revised tariff sheets and supporting data are being mailed to its jurisdictional sales customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or Protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in such accordance with §§ 385.214 and 385.211 of the Commission's regulations. All such petitions of protest should be filed on or before August 26, 1991.

Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a Motion to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary

[FR Doc. 91–19032 Filed 8–9–91; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TA92–1–35–000]

West Texas Gas, Inc.; Notice of Filing

August 5, 1991.

Take notice that on August 1, 1991, West Texas Gas, Inc. ("WTG") filed Twenty-Fifth Revised Sheet No 3a to its FERC Gas Tariff, Original Volume No. 1, proposed to be effective October 1, 1991. Twenty-Fifth Revised Sheet No. 3a and the accompanying explanatory schedules constitute WTG's annual PGA filing submitted in accordance with the Commission's purchased gas adjustment regulations.

WTG states that copies of the filing were served upon WTG's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington,

DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's rules and regulations. All such motions or protests should be filed on or before August 26, 1991. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 91–19033 Filed 8–9–91; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL COMMUNICATIONS COMMISSION

Travel Reimbursement Program; April 1, 1991–June 30, 1991

Summary Report

Total Number of Sponsored Events..... 12
Total Number of Sponsoring Organizations..... 11
Total Number of Different Commissioners/Employees Attending..... 24
Total Amount of Reimbursement Expected:

Transportation	$7,847.09
Subsistence	10,185.71
Other Expenses	2,193.55
Total	20,226.35

Individual Event Reports Attached.
Amount of Reimbursement Shown May Be Estimated.

Individual Event Report

Sponsoring Organization: National Association of Broadcasters, 1771 N Street NW., Washington, DC 20036.
Date of the Event: April 15–18, 1991.
Description of the Event: NAB 69th Annual Convention and International Exposition, Las Vegas, Nevada.
Commissioners Attending: Chairman Alfred C. Sikes, Commissioner James H. Quello, Commissioner Ervin S. Duggan, Commissioner Andrew C. Barrett.
Other Employees Attending: Robert Branson, Advisor to Com. Barrett, Robert Corn-Revere, Advisor to Com. Quello, Terry Haines, Chief of Staff, Office of the Chairman, Roy Stewart, Chief, Mass Media Bureau, Robert Pettit, General Counsel, Walda Roseman, Director, Office of International Communication, William Hassinger, Electronics Engineer, Mass Media Bureau, Charles Kelly, Chief, Enforcement Division, Larry Eads, Chief, Audio Services Division, Richard Smith, Chief, Field Operations Bureau, Thomas Stanley, Chief Engineer; Chief, Office of Engineering and Technology, Linda Solheim, Chief, Office of Legislative Affairs, Lorrie Secrest, Chief, Office of Public Affairs.
Amount of Reimbursement:

Transportation	$5,672.00
Subsistence	7,581.97
Other Expenses	1,385.39
Total	14,639.36

Sponsoring Organization: Federal Communications Bar Association, 1150 Connecticut Avenue NW., Suite 1050, Washington, DC 20036.
Date of the Event: May 3–5, 1991.
Description of the Event: Federal Communications Bar Association, Williamsburg, Virginia.
Commissioners Attending: None.
Other Employees Attending: Lauren Belvin, Legal Advisor to Chairman Sikes, Robert Branson, Legal Advisor to Commissioner Barrett, Diane Cornell, Legal Advisor to Commissioner Marshall, William Harris, Legal Advisor to Commissioner Quello.
Amount of Reimbursement:

Transportation	$0.00
Subsistence	621.20
Other Expenses	236.55
Total	857.75

Sponsoring Organization: Variety and Wertheim Schroder & Co., Inc., 475 Park Avenue South, New York, New York.
Date of the Event: April 11, 1991.
Description of the Event: The Business of Entertainment Conference, New York, New York.
Commissioners Attending: Commissioner James H. Quello.
Other Employees Attending: None.
Amount of Reimbursement:

Transportation	$118.00
Subsistence	159.50
Other Expenses	36.91
Total	314.41

Sponsoring Organization: Broadcast Cable Financial Management Association, 701 Lee Street, Suite 1010, Des Plaines, Illinois 60016.
Date of the Event: April 21–23, 1991.
Description of the Event: BCFM's Annual Conference.
Commissioners Attending: Commissioner Ervin S. Duggan.
Other Employees Attending: None.
Amount of Reimbursement:

Transportation	$0.00
Subsistence	360.38
Other Expenses	56.56
Total	416.94

Sponsoring Organization: Society of Cable Television Engineers, Inc., 669 Exton Commons, Exton, Pennsylvania 19341.
Date of the Event: June 14–15, 1991.
Description of the Event: SCTE's Annual Cable-Tec Expo.
Commissioners Attending: None.
Other Employees Attending: John Wong, Supervisory Engineer, Mass Media Bureau.
Amount of Reimbursement:

Transportation	$322.00
Subsistence	313.58
Other Expenses	68.54
Total	$704.12

Sponsoring Organization: University of Ottawa, Department of Electrical Engineers, Ottawa, Ontario KIN 6N5.
Date of the Event: May 22–23, 1991.
Description of the Event: Workshop.
Commissioners Attending: None.
Other Employees Attending: Michael Marcus, Assistant Bureau Chief, Office of Engineering and Technology.
Amount of Reimbursement:

Transportation	$369.09
Subsistence	127.57
Other Expenses	42.10
Total	$538.76

Sponsoring Organization: American Public Communication Council, 2000 M Street, NW., suite 550, Washington, DC 20036.
Date of the Event: April 2–4, 1991.
Description of the Event: 25 Alive 1991—Western Exposition and Conference, Las Vegas, Nevada.
Commissioners Attending: Commissioner Andrew C. Barrett.
Other Employees Attending: None.
Amount of Reimbursement:

Transportation	$439.00
Subsistence	133.86
Other Expenses	45.20
Total	$618.06

Sponsoring Organization: New York State Telephone Association, Inc., 111 Washington Avenue, Albany, New York 12210.
Date of the Event: June 9–12, 1991.

Description of the Event: Convention.
Commissioners Attending: None.
Other Employees Attending: James Schlichting, Chief, Policy and Planning Division, Mass Media Bureau.
Amount of Reimbursement:

Transportation	$353.00
Subsistence	164.00
Other Expenses	80.00
Total	597.00

Sponsoring Organization: KMB Video Journal, Box 825, Lakeside Drive, Block Island, Rhode Island 08807.
Date of the Event: June 19, 1991.
Description of the Event: Taping of 900 Information Services Program.
Commissioners Attending: None.
Other Employees Attending: Mary E. Richards, Supervisory General Attorney, Common Carrier Bureau.
Amount of Reimbursement:

Transportation	$188.00
Subsistence	25.50
Other Expenses	44.45
Total	257.95

Sponsoring Organization: 3M, 3M Center, St. Paul, Minnesota 55144.
Date of the Event: June 23–27, 1991.
Description of the Event: Professional Audio/Video Symposium, St. Paul, Minnesota.
Commissioners Attending: None.
Other Employees Attending: William Hassinger, Electronics Engineer, Mass Media Bureau.
Amount of Reimbursement:

Transportation	$328.00
Subsistence	425.00
Other Expenses	50.00
Total	803.00

Sponsoring Organization: Maryland, DC, Delaware Broadcaster's Association, Inc., One East Chase Street, suite 1128, Baltimore, Maryland 21202.
Date of the Event: June 29, 1991.
Description of the Event: Association's Annual Convention.
Commissioners Attending: None.
Other Employees Attending: Roy Stewart, Chief, Mass Media Bureau.
Amount of Reimbursement:

Transportation	$0.00
Subsistence	160.00
Other Expenses	109.00
Total	269.00

Sponsoring Organization: American Public Communications Council, 2000 M Street NW., suite 550, Washington, DC 20036.
Date of the Event: June 13–14, 1991.
Description of the Event: Eastern Regional Public Communications Council Conference, Atlantic City, New Jersey.
Commissioners Attending: None.
Other Employees Attending: Robert Spangler, Supervisory General Attorney, Common Carrier Bureau.
Amount of Reimbursement:

Transportation	$58.00
Subsistence	113.15
Other Expenses	38.85
Total	210.00

Federal Communications Commission.
Donna R. Searcy,
Secretary.
[FR Doc. 91–19116 Filed 8–9–91; 8:45 am]
BILLING CODE 6712–01–M

Lion's Share Broadcasting, et al.; Applications

1. The Commission has before it the following mutually exclusive applications for two new FM stations:

Applicant, City and State	File No.	MM Docket No.
I		
A. Robert D. Janecek d/b/a Lion's Share Broadcasting; Lompoc, CA.	BPH–900504MD	91–210
B. Great Scott Broadcasting; Lompoc, CA.	BPH–900518MM	
C. Lompoc Minority Broadcasters Partnership; Lompoc, CA.	BPH–900518MO	
D. John Walton Smith, Jr. d/b/a NOE–WAL Broadcasting; Lompoc, CA.	BPH–900522MH	
E. Radio Lompoc Limited Partnership; Lompoc, CA.	BPH–900516MS, (Previously Dismissed)	
II		
A. Atlantic Radio Communications, Inc.; Manahawkin, N.J.	BPH–900116MS	91–208
B. Great American Communications Corp.; Manahawkin, N.J.	BPH–900117MN	
C. Coastal Broadcasting Systems, Inc.; Manahawkin, N.J.	BPH–900117MO	
D. John Senior Broadcasting Company; Manahawkin, N.J.	BPH–900117MP	
E. Jersey Devil Broadcasting Company; Manahawkin, N.J.	BPH–900117MT	
F. Seaira, Inc.; Manahawkin, N.J.	BPH–900117MU	
G. Southern Ocean Broadcasting Company; Manahawkin, N.J.	BPH–900117MX	
H. LD Broadcasting Limited Partnership; Manahawkin, N.J.	BPH–900117NA	
I. Great Scott Broadcasting; Manahawkin, N.J.	BPH–900117ML (Dismissed Herein)	
J. Sage Broadcasting Corporation of New Jersey; Manahawkin, N.J.	BPH–900117MM (Dismissed Herein)	
K. Jersey Shore Broadcasting Corporation; Manahawkin, N.J.	BPH–900117MY (Dismissed Herein)	
L. Press Broadcasting Company; Manahawkin, N.J.	BPH–900117NC (Dismissed Herein)	

Issue Heading and Applicants
1. Air Hazard, B, D
2. Contingent Environmental, A, D
3. Comparative, A, B, C, D
4. Ultimate, A, B, C, D

Issue Heading and Applicants
1. Air Hazard, F
2. Comparative, All
3. Ultimate, All

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 FR 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.

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, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription

Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 91–19003 Filed 8–9–01; 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 and state	File No.	MM docket No.
A. David T. Murray and Martha R. Murray d/b/a Murray Communications; Colonial Heights, TN.	BPH–900220MM	91–189
B. Evelyn Holt Parker; Colonial Heights, TN.	BPH–900220MN	
C. Sullivan County Broadcasting; Colonial Heights, TN.	BPH–900220MO	
D. Colonial Broadcast Systems, Inc.; Colonial Heights, TN.	BPH–900220MP	
E. Radio Reading Services Corporation; Colonial Heights, TN.	BPED–900220MC (herein dismissed)	

Issued Heading and Applicants

1. Environmental, A–D
2. City Coverage, A–D
3. Air Hazard, A, C
4. Comparative, A–D
5. Ultimate, A–D

II

A. Judith O. and Larry R. Orkus; Port Matilda, PA.	BPH–900510MF	91–190
B. Sage Broadcasting Corporation of Ohio; Port Matilda, PA.	BPH–900510MG	
C. PAC Broadcasting Partnership; Port Matilda, PA.	BPH–900510MJ	
D. Port Matilda FM Limited Partnership; Port Matilda, PA.	BPH–900510MO	
E. Port Matilda Broadcasting Limited; Port Matilda, PA.	BPH–900510MR	
F. Phyllis J. Thaler; Port Matilda, PA.	BPH–900509MJ (herein dismissed)	

Issue Heading and Applicant

Applicant, city and state	File No.	MM docket No.

1. Alien Ownership, A
2. Air Hazard, B
3. Comparative, A, B, C, D, E
4. Ultimate, A, B, C, D, E

III

A. Cereus Broadcasting Company; Hubbard, Ohio.	BPH–900119ML	91–188
B. Gayle Communications; Hubbard, Ohio.	BPH–900122MV	
C. Stop 26-Riverbend Productions, Inc.; Hubbard, Ohio.	BPH–900122NA	
D. Kathleen De Capua; Hubbard, Ohio.	BPH–900122NJ	
E. Robert McCracken & Samuel Shirey, A General Partnership; Hubbard, Ohio.	BPH–900122NU	
F. Paul J. Dolan; Hubbard, Ohio.	BPH–900122NX	
G. WN Broadcasting Inc.; Hubbard, Ohio.	BPH–900122NZ	
H. Sage Broadcasting Corporation of Ohio; Hubbard, Ohio.	BPH–900122NH (dismissed herein)	

Issue Heading and Applicants

1. Site Availability, B
2. Environmental, A, B, C, D, E, G
3. Air Hazard, A, F
4. Comparative, A–G
5. Ultimate, A–G

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 FR 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.

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 NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, Downtown Copy Center, 1114 21st Street NW., Washington, DC 20036 (Telephone 202–452–1422).

W. Jan Gay,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 91–19004 Filed 8–9–91; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for four new FM stations:

Applicant, city and state	File No.	MM docket No.
A. Radio Lake Geneva Corporation; Lake Geneva, WI.	BPH–900611MG	91–205
B. Tom Kwiatkowski; Lake Geneva, WI.	BPH–900613MA	
C. David A. Nelson; Lake Geneva, WI.	BPH–900613MB	
D. Lake Geneva Broadcasting, Inc.; Lake Geneva, WI.	BPH–900614MA	
E. Northwest Broadcasting Company; Lake Geneva, WI.	BPH–900606MG (herein dismissed)	
F. State Long Distance Telephone Company, Lake Geneva, WI.	BPH–900612MB (herein dismissed)	

Issue Heading and Applicants

1. Air Hazard, B
2. Environmental, A–D
3. Comparative, A–D
4. Ultimate, A–D

II

A. Sacred Heart University, Inc., Shirley, New York.	BPED–891215MD	91–206
B. Long Island Educational TV Council, Inc., Ridge, New York.	BPED–900522MA	
C. Long Island University; Southampton New York.	BPED–900522MI	

Issue Heading and Applicants

1. Financial Qualifications, A,B
2. Environmental, A, B, C
3. 307(b), Noncommercial Educational A, B, C
4. Contingent Comparative Noncommercial Educational, FM, A, B, C
5. Ultimate, A, B, C

III

A. Carmen Diaz; Sun City, CA.	BPH–900122MT	91–209
B. Ramona Broadcasting Company; Sun City, CA.	BPH–900122MW	
C. Ann McCullom and Duane Davis d/b/a Sun City Broadcasters; Sun City, CA.	BPH–900122NB	

Applicant, city and state	File No.	MM docket No.
D. Dennis L. Martin; Sun City, CA.	BPH-900 22ND	
E. Sun City Wireless, Ltd., L.P.; Sun City, CA.	BPH-900122NG	
F. Sun City Communications, A California Limited Partnership; Sun City, CA.	BPH-900122NK	
G. Sun City Communications, Inc.; Sun City, CA.	BPH-900122NO	
H. Molezion Communications, Inc.; Sun City, CA.	BPH-900122NP	
I. Vineyard Communications, Inc.; Sun City, CA.	BPH-900122NV	
J. Sun City Broadcasting Co., Limited Partnership; Sun City, CA.	BPH-900122NE (dismissed)	

Issue Heading and Applicants
1. Site Availability, F
2. Contingent Environmental, A, B, E, F, G, H, I
3. Comparative, A, B, C, D, E, F, G, H, I
4. Ultimate, A, B, C, D, E, F, G, H, I

IV

A. Lynn Ketelsen; Rapid City, SD.	BPH-900510MM	91-207
B. Crystal Broadcast Partners; Rapid City, SD.	BPH-900510MQ	

Issue Heading and Applicants
1. Alien Ownership/Control (SEE APPENDIX), A
2. Air Hazard, A
2. Comparative, A, B
3. Ultimate, A, B

Appendix

1. To determine whether Ketelsen's application violates 47 U.S.C. 310, and, if so, whether Ketelsen is legally qualified to be a licensees.

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. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in appropriate appendixes. 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 Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).

W. Jan Gay,

Assistant Chief, Audio Services Division Mass Media Bureau.

[FR Doc. 91-19006 Filed 8-9-91; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Columbus/Alianca Agreement; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203-011334-001.
Title: Columbus/Alianca Agreement.
Parties:
Hamburg-Sudamerikanische Dampfschifffahrts-Gesellschaft Eggert & Amsinck
Empresa de Navegacao Alianca S/A.

Synopsis: The proposed amendment would modify the Agreement to provide that the parties will respect the law, rules and regulations issued by the authorities of the countries included in the geographic scope of the Agreement.

Dated: August 6, 1991.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 91-19024 Filed 8-9-91; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Bruce Canfield; 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 30, 1991.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Bruce Canfield, Waskom, Texas; to acquire an additional 12.79 percent of the voting shares of Waskom Bancshares, Inc., Waskom, Texas, for a total of 15.5 percent, and thereby indirectly acquire First State Bank, Waskom, Texas.

Board of Governors of the Federal Reserve System, August 6, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-19066 Filed 8-9-91; 8:45 am]

BILLING CODE 6210-01-F

Century Bancorp, Inc., Medford, Massachusetts; Application to Engage in Combined Securities Brokerage and Investment Advisory Activities for the Account of Institutional and Retail Customers

Century Bancorp, Inc., Medford, Massachusetts ("Century"), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("BHC Act") and section 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)), through its wholly-owned subsidiary, Century Financial Services, Inc., Medford, Massachusetts ("Company"), to engage *de novo* in the provision of securities brokerage and investment advisory services on a combined basis for institutional and retail customers. Company proposes to engage in these activities throughout the United States.

Company is currently authorized to engage in the provision of securities brokerage services according to the limitations set forth in and pursuant to § 225.25(b)(15) of the Board's Regulation Y (12 CFR 225.25(b)(15)).

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board, after due

notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." Century believes that these proposed activities are "so closely related to banking or managing or controlling banks as to be a proper incident thereto."

The Board has previously determined that, subject to certain conditions, the provision of securities brokerage and investment advisory services on a combined basis for institutional and retail customers is a permissible nonbanking activity for bank holding companies and does not violate the Glass-Steagall Act. *See, e.g., National Westminster Bank PLC*, 72 Federal Reserve Bulletin 584 (1986); *Manufacturers Hanover Corporation*, 73 Federal Reserve Bulletin 930 (1987); *Bank of New England Corporation*, 74 Federal Reserve Bulletin 700 (1988). Century proposes that Company conduct these activities in accordance with substantially all of the prudential limitations relied upon by the Board in these orders.

Century states that the proposed activities will benefit the public. It believes that they will promote competition and provide gains in efficiency and added convenience to customers. Moreover, Century believes that the proposed activities will not result in any unsound banking practices.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than August 26, 1991. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Boston.

Board of Governors of the Federal Reserve System, August 6, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-19067 Filed 8-9-91; 8:45 am]

BILLING CODE 6210-1-F

First State Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

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 on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than August 30, 1991.

A. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. First State Corporation, Albany, Georgia; to acquire Randolph County Federal Savings & Loan Association, Cuthbert, Georgia, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Monroe Agency, Inc., Monroe, Nebraska; to acquire Nebraskaland Insurance Agency, Genoa, Nebraska, and thereby engage in the sale of general insurance, excluding life insurance and annuities, permitted for bank holding companies with total consolidated assets of $50 million or less pursuant to § 225.25(b)(8)(vi) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, August 28, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-19068 Filed 8-9-91; 8:45 am]

BILLING CODE 6210-01-F

Miners National 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 30, 1991.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Miners National Bancorp, Inc., Pottsville, Pennsylvania; to acquire 19.9 percent of the voting shares of East Penn Bank, Emmaus, Pennsylvania, a *de novo* bank.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First Michigan Bank Corporation, Holland, Michigan; to acquire 100 percent of the voting shares of FMB-Trust and Financial Services, National Association, Holland, Michigan, a *de novo* bank.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. First Cecilian Bancorp, Inc., Cecilia, Kentucky; to become a bank holding company by acquiring at least 80 percent of the voting shares of The Cecilian Bank, Cecilia, Kentucky.

2. Golden Financial Corporation, Elizabethtown, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Fort Knox National Bank, Radcliff, Kentucky.

3. Teutopolis Holding Co., Teutopolis, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Teutopolis State Bank, Teutopolis, Illinois.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Beulah Bancorporation, Inc., Beulah, North Dakota; to become a bank holding company by acquiring 100 percent of the voting shares of D&B Holding Company, Inc., Beulah, North Dakota, and thereby indirectly acquire Bank of Beulah, Beulah, North Dakota.

E. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Henderson Citizens Bancshares, Inc., Henderson, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Henderson Citizens Delaware Bancshares, Inc., Dover, Delaware; Enterprise Bancshares, Inc., Mount Enterprise, Texas; Citizens National Bank of Henderson, Henderson, Texas; and Merchants State Bank, Mount Enterprise, Texas. Comments on this application must be received by August 26, 1991.

Board of Governors of the Federal Reserve System, August 6, 1991.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 91-19069 Filed 8-9-91; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

[Program Announcement Number 157]

Cooperative Agreements To Advance The Understanding of the Health of Racial and Ethnic Populations or Subpopulations

Introduction

The Centers for Disease Control (CDC), announces the availability of funds in Fiscal Year 1991 for cooperative agreements to the Asian American Health Forum (AAHF) and the National Coalition of Hispanic Health and Human Services Organizations (COSSMHO) to advance the understanding of the health of racial and ethnic populations and subpopulations. There are two areas of study: (1) Analysis of previously collected health data and (2) improvements in existing research methodologies or testing of innovative methodological techniques used to gather information on such groups.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the priority area of Surveillance and Data Systems which focuses on developing and implementing a national process to identify significant gaps in the Nation's disease prevention and health promotion data. (For ordering a copy of Healthy People 2000, see the section **WHERE TO OBTAIN ADDITIONAL INFORMATION.)**

Authority

This program is authorized under Public Health Service Act (PHS Act), section 306 (42 U.S.C. 242k).

Eligible Applicants

Cooperative agreements to address the CDC priorities outlined above will be awarded only to the Asian American Health Forum (AAHF) and the National Coalition of Hispanic Health and Human Services Organizations (COSSMHO). No other applications are solicited. CDC plans to support one-year cooperative agreements to these two national membership organizations to (1) analyze existing data on the health of racial and ethnic populations or subpopulations and (2) improve methodological approaches for the collection of information on the health of racial and ethnic populations or subpopulations. These activities are pursuant to fulfilling the provisions of the Disadvantaged Minority Health Improvement Act of 1990 (Pub. L. 101-527) and the need for improved data to monitor objectives of Healthy People 2000.

These two membership organizations are in a unique position to identify data gaps in health status among constituencies and to identify appropriate and qualified health investigators who can develop and conduct projects that address priority needs for data and improvements in methodologies. Both organizations have participated with the PHS's Office of Disease Prevention and Health Promotion to stimulate the development and implementation of long-range strategies for meeting the health promotion/disease prevention targets set for their respective populations in Healthy People 2000. The lack of adequate data to measure and track the health status of special populations is a major concern of Healthy People 2000, and improvement of data on racial and ethnic minorities is an explicit objective of the process.

AAHF was established in 1986 to foster the health needs of Asians and Pacific Islanders in the U.S. It is the primary national nonprofit membership organization focused on (1) Assisting in the development of government health policies and programs for the Asian American community; (2) promoting and performing the collection, analysis and dissemination of information on the morbidity and mortality of Asians and Pacific Islanders in the U.S.; and (3) advancing health services research. The AAHF, through its data development committee, has already initiated efforts to systematically assess data sources and gaps on Asians and Pacific Islanders. The third biennial national conference sponsored by the Forum in November 1990, in collaboration with the Asian Advisor Committee of the National Institutes of Health, focused on data collection and research with the goal of "Dispelling the Myth of a Healthy Minority." The product of these efforts will provide an invaluable "head start" in identifying priority research to be addressed through this cooperative agreement.

COSSMHO was founded in 1974 and is a not-for-profit organization with a membership of over 700 individuals and institutions, entirely Hispanic-focused, working in a wide variety of health-related fields. In the past several years, COSSMHO has implemented national demonstration programs in the fields of chronic disease prevention, adolescent

pregnancy prevention, and health promotion, administering over $2.4 million in subcontracts benefiting local communities.

In 1986 COSSMHO entered into an agreement with the Office of the Assistant Secretary for Health and NCHS to establish the Hispanic Health Research Consortium To facilitate analysis of the Hispanic Health an Nutrition Examination Survey (HHANES) conducted by NCHS from 1982–1984. Two rounds of competitive grants were awarded by COSSMHO to establish a network of eight university and community-based research teams. COSSMHO coordinated the research of this network, provided technical assistance, convened meetings of the researchers and disseminated information nationally to researchers interested in conducting HHANES analyses. A special supplement to the American Journal of Public Health, published in December 1990, contained 11 articles from this research.

AAHF and COSSMHO should document in their proposals that they meet all of the following requirements:

1. Are national, private, nonprofit organizations;
2. Have a national membership, state/local chapters, and/or otherwise well-defined affiliate structures;
3. Possess an understanding of the current and potential role of the membership in data analysis and methodological research;
4. Have in place a variety of communication channels that are appropriate for informing member and other representative investigators about how to become involved in meeting the objectives of the cooperative agreement;
5. Can obtain top level support within the organization for the project and, where appropriate, demonstrate similar support from the membership; and
6. Have experience in working with researchers within their respective communities.

Availability of Funds

Approximately $900,000 will be available in Fiscal Year 1991 to fund these cooperative agreements. It is anticipated that each award will be for approximately $450,000. This estimate may vary and is subject to change. The award will begin on or about September 30, 1991, and will be for a project period of one year.

Purpose

The purpose of this program is to increase the quality and quantity of available information on the health of racial and ethnic populations or subpopulations. Funds will be awarded for the purpose of conducting and coordinating 1) analysis of previously collected health data and 2) improvements in existing research methodologies or development of innovative methodological techniques used to gather information on such groups. Primary data collection is not authorized under this cooperative agreement.

Examples of interest areas include:

Data Analysis: Analysis of existing data where known gaps exist regarding health status, health care needs, access to care issues, barriers to care, relationships between socioeconomic status and health among subgroups, network and support systems influence on health, and acculturation and generational differences between/within subgroups.

Methodological Research: Improve or develop innovative methodological approaches to: (1) Estimate small group denominator data; (2) develop sampling techniques for small, difficult-to-study populations; (3) develop culturally sensitive techniques to elicit comparable information from different groups or subgroups; (4) determine how responses to questionnaires differ by race; and (5) determine how best to phrase race/ethnicity questions on questionnaires.

Program Requirements

In conducting activities to achieve the purpose of the program, the recipient shall be responsible for conducting activities under A., below, and CDC will be responsible for conducting activities under B., below:

A. Recipient Activities

1. Establish a process to identify individual topic areas for data analysis and methodological research, involving the membership community and other research communities (e.g., universities, state health departments, non-profit survey research organizations, and community organizations).

2. Develop analytic and research plans for the conduct of individual analytic and research projects, including the identification of qualified investigators. For the conduct of these analysis and research activities, it is understood that the recipients may rely on analysts and researchers in academic and other institutions, and the applicants may enter into contracts (including consortia agreements) with such individuals and institutions as necessary to meet the requirements of the program.

3. Execute the analytic and research plans identified above, relying on the use of contracts with individual investigators to the extent necessary. In the event that contracts are used, the recipient will assure that proposals undergo an objective review based on an assessment of scientific merit and avoidance of conflict of interest.

4. Evaluate the products of individual analytic and research activities, including the work of contractors, on how well they accomplish the objectives of the program.

B. CDC Activities

1. Provides technical assistance in the identification of analytic and research priorities.

2. Assist in the refinement of analytic and research plans, and in the technical review of proposals from prospective contractors. For the conduct of these analysis and research activities, it is understood that the recipients may rely on analysts and researchers in academic and other institutions, and the applicants may enter into contracts (including consortia agreements) with such individuals and institutions as necessary to meet the requirements of the program.

3. Make available other information and technical assistance from government sources as appropriate.

4. Provide liaison with other government agencies as appropriate.

5. Provide technical assistance on individual analytic and research projects, including those conducted by contractors, as appropriate.

Review and Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. Understanding the technical and substantive issues and the research priorities the project proposes to address; clarity, feasibility, and practicality of the goals and objectives of the project as well as the plan to meet them; (20 points)

2. Soundness, practicality, and feasibility of the technical approach to the work, including how the tasks are to be carried out, anticipated problems and proposed solutions; potential for the awardee to make an innovative, significant impact and contribution to improving the quantity and quality of health data on racial and ethnic populations or subpopulations; feasibility and appropriateness of the proposed evaluation plan and mechanism; (30 points)

3. Commitment of management and members to the project, as demonstrated by relevant experience of the organization in conducting similar

projects; adequacy of project management to keep project on track and on schedule; demonstrated capacity for reaching a wide and varied number of key audiences to the project; (25 points)

4. Management plan, advisory and supervisory structure, and qualifications and relevant experience of the proposed staff both in the content and execution of the proposed project; relevant experience could include, but would not be limited to, communications and marketing of the availability of research grants to diverse constituent members and groups. (25 points)

Executive Order 12372 Review

Applications are not subject to review under Executive Order 12372, Intergovernmental Review for Federal Programs.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number is 93.283.

Application Submission and Deadline

AAHF and COSSMHO must submit a signed original and two copies of the application, Form PHS–5161–1, to Candice Nowicki, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., room 300, Atlanta, Georgia 30305, on or about August 31, 1991. Applications shall be considered as meeting the deadline if they are received at the above address on or before the stated deadline date or if they bear a postmark of August 31, 1991, and are received in time for submission to the independent review group. Applicants should request a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks will not be accepted as proof of timely mailing.

Applications which do not meet the above criteria will be considered late applications, will not considered in the current cycle, and will be returned to the applicant.

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding these projects, please refer to Announcement 157 and contact the following: Business Management Technical Assistance may be obtained from Gordon R. Clapp, Grants Management Specialist, Centers for Disease Control, Procurement and Grants Office, 255 East Paces Ferry Road NE., Mailstop E14, Atlanta, Georgia 30305, telephone (404) 842–6801 of FTS 236–6801.

Programmatic technical assistance may be obtained from Edward L. Hunter or Marjorie S. Greenberg, National Center for Health Statistics, at (301) 436–7142.

A copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) referenced in the INTRODUCTION may be obtained through the Superintendent of Documents. Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

Dated: August 6, 1991.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 91–19057 Filed 8–9–91; 8:45 am]

BILLING CODE 4160–18–M

[Announcement No. 165]

Infant Health Initiative Cooperative Agreements

Introduction

The Centers for Disease Control (CDC) announces the availability of new competing cooperative agreement funds in Fiscal Year (FY) 1991 for the following programs to build capacity in states to: reduce adverse pregnancy outcomes, identify maternal behavioral risk factors during pregnancy and early infancy, and develop and implement prenatal smoking cessation interventions.

Cooperative agreements will be awarded for three programs:

A. Prenatal Smoking Cessation Programs (PSC)
B. Pregnancy Risk Assessment Monitoring Systems (PRAMS)
  1. Maintenance of existing programs
  2. Development of new programs
C. Centers for Healthy Infants and Pregnancies Surveillance (CHIPS)

Applications may be submitted for PSC only, for PRAMS only, or for both PSC and PRAMS. However, applications for CHIPS must also include proposals for PSC and PRAMS. Applicants who submit proposals for CHIPS must indicate whether they wish to be considered for PSC and/or PRAMS if their CHIPS proposal is not funded.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Health People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the prior areas of Maternal and Infant Health and Surveillance and Data Systems. (For ordering a copy of Healthy People 2000, see the Section **WHERE TO OBTAIN ADDITIONAL INFORMATION.**)

Authority

This program is authorized under section 301(a) (42 U.S.C. 241(a)) and section 317(k)(3) (42 U.S.C. 247b(k)(3)) of the Public Health Service Act, as amended.

Eligible Applicants

For this announcement, the term "state" also includes the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, the Northern Mariana Islands, Guam, the Republic of the Marshall Islands, and the Republic of Palau.

A. PSC Programs

Eligible applicants are the city of New York (the only city public health agency designated as a registration area for vital statistics) and the official state public health agencies excluding Colorado, Maryland, and Missouri, which previously received CDC funds and have implemented this program under a prior announcement for Smoking Cessation In Pregnancy (SCIP) Research and Demonstration projects.

B. PRAMS Programs (2 Categories)

1. Maintenance of Existing Programs

Eligible applicants are the six official public health agencies designated as vital statistics registration areas with an approved project period for PRAMS that expired in FY 1990: Indiana, Maine, Michigan, Oklahoma, West Virginia, and the District of Columbia.

2. Development of New PRAMS Programs

Eligible applicants are the city of New York (the only city public health agency designated as a registration area for vital statistics) and the official state public health agencies designated as registration areas for vital statistics, excluding those eligible under Category 1 above.

C. CHIPS Programs

Eligible applicants are the city of New York, and the official state public health agencies designated as registration areas for vital statistics. Applications for CHIPS must include PRAMS and PSC proposals. Although not eligible for PSC funding, Colorado, Maryland, and Missouri must include a description of their PSC program when applying for CHIPS.

Availability of Funds

Awards are expected to begin on or before September 27, 1991, and are intended for major support of the operational cost of implementing these programs.

A. PSC Programs

Approximately $400,000 will be available in FY 1991 to fund approximately eight PSC awards for a 12-month budget period within a project period of up to 2 years. The average award is expected to be $50,000, ranging from $40,000 to $60,000.

B. PRAMS Programs

Approximately $1,160,000 will be available in FY 1991 to fund approximately six maintenance and six new PRAMS awards for a 12-month budget period within a project period of up to 5 years. The average award for recipients developing only mail/telephone surveillance systems is expected to be $65,000, ranging from $40,000 to $75,000. The average award for recipients who must supplement the basic approach with hospital-based data collection is expected to be $120,000, ranging from $100,000 to $125,000.

C. CHIPS Programs

Approximately $900,000 will be available in FY 1991 to fund approximately two CHIPS Programs for a 12-month budget period within a project period of up to 5 years. The average award is expected to be $400,000 including both the PSC and the PRAMS components. Awards are expected to range from $300,000 to $450,000 including both PSC and PRAMS components. Requests for direct assistance for a lead epidemiologist for CHIPS are encouraged.

Continuation awards for PSC, PRAMS, and CHIPS within the project period will be made on the basis of satisfactory performance and the availability of funds. Funding estimates may vary and are subject to change.

Purpose

The purposes of these cooperative agreements are:

A. PSC Programs

Assist public health agencies in the design, development, implementation, and evaluation of prenatal smoking cessation programs that are integrated into currently existing material and infant health programs in an effort to reduce state and national low birthweight (LBW) rates.

B. PRAMS Programs

Assist public health agencies in: (1) Establishing and maintaining state-specific, population-based surveillance of selected material behaviors that occur during pregnancy and the child's early infancy and (2) generating state-specific data for planning and evaluating perinatal health programs.

C. CHIPS Programs

Provide the means to develop a multidisciplinary team of individuals dedicated to building the recipient's analytic capacity to use epidemiologic and surveillance data to address the health problems that affect its women, infants, and children.

Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for conducting specified activities under section A. below, and CDC shall be responsible for conducting activities under section B. The applications should be presented in a manner that demonstrates the applicant's ability to address the proposed activities in a collaborative manner with CDC.

A. Recipient Activities

1. Infrastructure Development—Develop a plan that defines how the proposed programs will be integrated into the appropriate organizational structure, and how cooperation with the appropriate units within the organization will be attained including the coordination of data development and analysis activities with other Federal Maternal and Child Health (MCH) data requirements, specifically MCH Block Grant and Year 2000 Objectives and Healthy Start activities. If the applicant or a community within the applicant's jurisdiction has applied for Healthy Start Initiative funds, the plan for CHIPS or PRAMS should describe how CHIPS and, in particular, PRAMS will be used to assist with the evaluation of Healthy Start activities. If the applicant or a community within the applicant's jurisdiction has applied for Healthy Start Initiative funds applies for PSC, the plan should describe, at a minimum, how PSC will enhance Healthy Start activities to decrease infant mortality.

2. Program Plan Development—Develop and maintain a program plan for the major components of each program for which assistance is requested.

3. Program Implementation—Develop and maintain an implementation plan for the major components of each program for which assistance is requested.

4. Program Evaluation and Quality Assurance—Develop and maintain an evaluation and quality assurance plan for the major components of each program for which assistance is requested. Plans for data development and analysis will be designed to assure coordination with the responsiveness to other reporting requirements including Title V.

B. CDC Activities

For each of the programs under this announcement, CDC will collaborate in the development of operational procedures and written protocols, the evaluation of progress toward stated objectives, and the exchange of information among recipient agencies.

1. PSC Program

a. Assist in the selection of appropriate state-specific interventions and in the development of protocols for intervention delivery.

b. Assist states in the identification of appropriate training methods and resources necessary for providing training to staff responsible for implementation of the intervention.

c. Assist states in identifying data needs for program evaluation, designing data collection instruments, and in selecting appropriate methods and software for program evaluation.

d. Facilitate the exchange of information among SCIP and PSC states, and assist states in program monitoring and problem resolution activities.

2. PRAMS

a. Assist in the preparation and revision of state-specific questions and the common questions at agreed upon intervals and the development of computer programs for sampling.

b. Provide specific variable descriptions and format layouts of all data files, written guidelines and technical assistance for data cleaning and editing; develop statistical weights for the analysis of PRAMS data; install program software and provide documentation for operations management, questionnaire data entry, and the development of an analysis database.

c. Assist in monitoring and provide technical assistance to resolve problems regarding data collection procedures, response rates, unbiased and estimate omissions sampling procedures, and the completeness of database files.

d. Provide training for recipient agency staff in epidemiologic analytic

techniques and the use of program and sample survey analysis software.

3. CHIPS

a. Collaborate in the post-award development of a 5-year plan of activities.

b. Assist in the implementation of PSC and the design and implementation of other intervention programs to reduce behavioral risk factors for poor pregnancy outcome.

c. Assist in the design and implementation of PRAMS and other surveillance systems and the development of protocols for special studies and other epidemiological research.

d. Assist in the analysis and interpretation of existing data and provide technical support in the areas of vital record linkage.

e. Develop and provide a sample protocol for evaluating state-based CHIPS programs.

Evaluation Criteria

Applications will be reviewed, evaluated, and scored individually by program-specific (PSC, PRAMS, and CHIPS) objective review committees on the basis of the following criteria:

A. Background and Need

The extent to which the application describes and presents appropriate data indicating an understanding of the problem, the program for which assistance is requested, and the purpose of these cooperative agreements. (Maximum scores: PSC 15 Points, PRAMS Maintenance 35 Points, PRAMS New 30 Points, and CHIPS 10 Points)

B. Plan of Operation

Part I

The degree to which the plan addresses the stated needs, is likely to achieve the purposes of these cooperative agreements, and describes the specific roles and responsibilities of participating organizational units and program personnel. (Maximum scores: PSC 60 Points, PRAMS Maintenance 30 Points, PRAMS New 35 Points, and CHIPS 40 Points)

Part II (PRAMS only)

The degree to which the application describes the process for registering births in the state. (Maximum scores: PRAMS Maintenance 20 Points and PRAMS New 25 Points)

C. Timetable

The degree to which the application provides a complete and achievable timetable of appropriate events. (Maximum scores: PSC 10 Points, PRAMS Maintenance 10 Points, PRAMS New 5 Points, and CHIPS 10 Points)

D. Evaluation

The adequacy of the plan to monitor progress toward the stated objectives. (Maximum scores: PSC 15 Points, PRAMS Maintenance 5 Points, PRAMS New 5 Points, and CHIPS 10 Points)

E. Budget

The degree to which the proposed budget is reasonable, consistent with the problems identified and the scope of the program proposed to address those problems, and the intended use of cooperative agreement funds; and clearly reflects the applicant's intent to commit non-federal resources to support the operational costs of these programs. (Not Scored)

F. CHIPS Applications Will Receive Weighted Scores for Their PSC and PRAMS Components Determined by the Program-Specific Objective Review Committee

1. PSC Weighted Evaluation Score (Maximum 10 points) The applicant's total PSC score (as determined by the PSC Objective Review Committee) times a factor of 0.10.

2. PRAMS Weighted Evaluation Score (Maximum 20 points) The applicant's total PRAMS score (as determined by the PRAMS Objective Review Committee) times a factor of 0.20.

Funding Priorities

Priority will be given to eligible applicants that have communities with the highest infant mortality and low birthweight rates.

Priority for PSC funding will be given to applicant states with higher rates of smoking prevalence. Higher statewide, community, or subgroup rates could be the basis of determining this priority.

Executive Order 12372 Review

Applications are subject to Intergovernmental Review of Federal Programs as governed by Executive Order 12372. This Order establishes a system for state and local government review of proposed Federal assistance applications. Applicants should contact their state Single Point of Contact (SPOC) as early as possible to alert them to the prospective applications and receive any necessary instructions on the state process. For proposed projects serving more than one state, the applicant is advised to contact the SPOC of each affected state. A current list of SPOCs is included in the application kit. The due date for state process recommendations will be 30 days after the application deadline date for new and competing continuation awards (the appropriations for these financial assistance awards were received late in the fiscal year and would not allow for an application receipt date which would accommodate the 60 day state recommendation process within fiscal year 1991). If SPOCs have any state process recommendations on applications submitted to CDC, they should forward them to the Centers for Disease Control, Procurement and Grants Office, Grants Management Branch, 255 East Paces Ferry Road, NE., Atlanta, Georgia 30305. The granting agency does not guarantee to "accommodate or explain" for state process recommendations it receives after that date.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance Number is 93.283.

Other Requirements

Paperwork Reduction Act

Projects involving the collection of information from 10 or more individuals and funded by cooperative agreement will be subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Human Subjects (PRAMS)

Applicants must identify and obtain review and approval from an Institutional Review Board (IRB). No data collection involving human subjects may begin until these regulations (45 CFR 46, Protection of Human Subjects) have been met.

Application Submission and Deadline

The original and two copies of the application (Form PHS 5161–1) must be submitted to Candice Nowicki, Grants Management Officer, Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 300, Mailstop E14, Atlanta, Georgia 30305, on or before August 16, 1991.

A. Deadline: Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date; or

2. Sent on or before the deadline date and received in time for submission to the independent review group. Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

B. Late Applications: Applications that do not meet the criteria in A(1) or A(2) are considered late applications. Late applications will not be considered in the competition and will be returned to the applicant.

Where To Obtain Additional Information

A complete program description, a copy of the Guidelines for Establishment and Maintenance of Programs, an application package, and business management technical assistance may be obtained from Leah D. Simpson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., room 300, Mailstop E14, Atlanta GA 30305; (404) 842–6594 or FTS 236–6594.

Please refer to Announcement Number 165 when requesting information and submitting any application in response to this announcement.

Programmatic technical assistance may be obtained from:

PSC: R. Louise Floyd, R.N., D.S.N., Project Officer, Program Services and Development Branch, Division of Reproductive Health, Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, 1600 Clifton Road NE., Mailstop K22, Atlanta, GA 30333; (404) 488–5227 or FTS 236–5227.

PRAMS: Eileen P. Gunter, R.N., M.P.H., Project Officer, Program Services and Development Branch, Division of Reproductive Health, Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, 1600 Clifton Road NE., Mailstop K22, Atlanta, GA 30333; (404) 488–5227 or FTS 236–5227.

CHIPS: Dan Sadler, M.P.A., Project Officer, Pregnancy and Infant Health Branch, Division of Reproductive Health, Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, 1600 Clifton Road NE., Mailstop K23, Atlanta, GA 30333; (404) 488–5187 or FTS 236–5187.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through: Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, Telephone (202) 783–3238.

Dated: August 6, 1991

Robert L. Foster,

Acting Director, Office of Program Support Centers for Disease Control.

[FR Doc. 91–19056 Filed 8–9–91; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 91E–0225]

Determination of Regulatory Review Period for Purposes of Patent Extension; Monopril®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Monopril® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nancy E. Pirt, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–607) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Monopril®. Monopril® (fosinopril sodium) is indicated for the treatment of hypertension. It may be used alone or in combination with thiazide diuretics. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Monopril® (U.S. Patent No. 4,337,201) from E.R. Squibb and Sons, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated July 2, 1991, advised the Patent and Trademark office that this human drug product had undergone a regulatory review period and that the approval of Monopril® represented the first commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the regulatory review period for Monopril® is 2,710 days. Of this time, 1,797 days occurred during the testing phase of the regulatory review period, while 913 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective: December 16, 1983. The applicant claims December 14, 1983, as the date the investigational new drug application (IND) for Monopril® became effective. However, FDA records indicate that the IND effective date was December 16, 1983.

2. The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act: November 15, 1988. FDA has verified the applicant's claim that the new drug application (NDA) for Monopril® (NDA 19–915) was filed on November 15, 1988.

3. The date the application was approved: May 16, 1991. FDA has

verified the applicant's claim that NDA 19-915 was approved on May 16, 1991.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 2 years of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before October 11, 1991, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before February 8, 1991, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, Part 1, 98th Cong., 2d Sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 6, 1991.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 91-19118 Filed 8-9-91; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 91E-0224]

Determination of Regulatory Review Period for Purposes of Patent Extension; Orcolon®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Orcolon® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that medical device.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nancy E. Pirt, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98-417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100-670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For medical devices, the testing phase begins with a clinical investigation of the device and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the device and continues until permission to market the device is granted. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a medical device will include all of the testing phase and approval phase as specified in 35 U.S.C. 158(g)(3)(B).

FDA recently approved for marketing the medical device Orcolon®. Orcolon® is indicated for use as a surgical aid in anterior segment surgery, including cataract extraction and intraocular lens implantation. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Orcolon® (U.S. Patent No. Re. 32,969) from Seymour F. Trager and Victoria S. Chylinski. The Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated July 2, 1991, FDA advised the Patent and Trademark Office that this medical device had undergone a regulatory review period and that the approval of Orcolon® represented the first commercial marketing of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Orcolon® is 1,551 days. Of this time, 1,141 days occurred during the testing phase of the regulatory review period, while 410 days occurred during the approval phase. These periods of time were derived from the following dates:

1. The date a clinical investigation involving this device was begun: December 31, 1986. The applicant claims October 13, 1986, as the date the investigational device exemption (IDE) became effective. However, FDA records indicate that the IDE was conditionally approved on December 31, 1986.

2. The date an application was initially submitted with respect to the device under section 515 of the Federal Food, Drug, and Cosmetic Act: February 13, 1990. The applicant claims July 29, 1987, as the date the premarket approval application (PMA) for Orcolon® (PMA No. P870044) was submitted. However, FDA records indicate that PMA No. P870044 was declared not fileable three times by FDA before being withdrawn by the applicant on June 27, 1988. A second application (PMA No. P900010) was submitted on February 13, 1990 and was accepted by FDA.

3. The date the application was approved: March 29, 1991. FDA has verified the applicant's claim that PMA No. P900010 was approved by FDA on March 29, 1991.

The determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension In its application for patent extension, this applicant seeks 888 days of patent term extension.

Anyone with knowledge that any of the dates are published is incorrect may, on or before October 11, 1991, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before February 8, 1992, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d Sess., pp. 41-42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 2, 1991.

Allen B. Duncan,

Acting Associate Commissioner for Health Affairs.

[FR Doc. 91-19119 Filed 8-9-91; 8:45 am]

BILLING CODE 4160-01-M]

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Meeting, National Diabetes Advisory Board

Pursuant to Public Law 92-463, notice is hereby given of the National Diabetes Advisory Board's meeting date which will be September 22-24, 1991. The Advisory Board meeting will be in conjunction with the Technical Advisory Committee. The meeting will begin at 7 p.m. on September 22, 1991, and recess at 9:30 p.m. The meeting will reconvene at 8 a.m. on September 23, 1991, and recess at 4:30 p.m. The meeting will reconvene at 8 a.m. on September 24, 1991, and adjourn approximately 4:30 p.m. The Board will meet at the Center for Disease Control, Atlanta, Georgia. The purpose of the meeting is to sponsor a workshop on Diabetes Translation from 1 p.m. to 5 p.m. on September 23, 1991 and from 8 a.m. to noon on September 24, 1991. The Board's current and future activities will be discussed from 1:15 p.m. until approximately 4:30 p.m. on September 24, 1991. Although the entire meeting will be open to the public, attendance will be limited to space available.

For any further information, please contact Mr. Raymond M. Kuehne, Executive Director, National Diabetes Advisory Board, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852, (301) 496-6045. His office will provide, for example, a membership roster of the Board and an agenda and summaries of the actual meetings.

Dated: July 29, 1991.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 91-19012 Filed 8-9-91; 8:45 am]

BILLING CODE 4140-01-M

Consensus Development Conference on The Treatment of Panic Disorder

Notice is hereby given of the NIH Consensus Development Conference on "The Treatment of Panic Disorder," which will be held September 25-27, 1991 in the Masur Auditorium of the National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. This conference is sponsored by the National Institute of Mental Health and the NIH Office of Medical Applications of Research.

Panic disorder with and without agoraphobia is a debilitating disorder that may afflict as many as 12 million people in the course of a lifetime. It is characterized by panic attacks, which are bursts of terror that seem to come out of the blue. People suffering from a panic attack often feel like they are having a heart attack, or, alternatively, like they are losing their minds. Panic sufferers often develop agoraphobia secondary to the occurrence of these unexpected panic attacks, and they begin to avoid places where they fear a panic attack may reoccur. If the agoraphobia becomes severe enough, a person may become housebound.

In recent years, a gathering body of research information indicates that selected psychopharmacological and psychosocial treatments are effective with panic disorder with or without a history of agoraphobia. Much controversy has surfaced with respect to the nature of, as well as the most efficacious treatment for, panic disorder.

The conference will bring together experts from both the psychological and psychopharmacological camps and other health care professionals as well as representatives of the public to explore the data and evaluate the treatment technology for panic disorder.

Following a day and half of presentations by experts and discussion by the audience, an independent non-Federal consensus panel will weigh the scientific evidence and write a draft statement in response to the following questions:

- What is the diagnosis, epidemiology, natural history and current practices in panic disorder with and without agoraphobia?
- What are the short-term and long-term effects of acute and extended treatment of this disorder?
- What are the short-term and long-term effects of these treatments? How should these be managed?
- What are the considerations for treatment planning?
- What are the significant questions for future research?

On the third day of the conference, following deliberation of new findings or evidence that might have been presented during the meeting, the panel will present its final consensus statement.

Information on the program may be obtained from: Carol Sadler, Prospect Associates, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852, 301-468-6338.

Dated: August 5, 1991.

Bernadine P. Healy,

Director.

[FR Doc. 91-19084 Filed 8-9-91; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Receipt of Conveyance of Mineral Interest Application

ACTION: Notice of Receipt of Conveyance of Mineral Interest Application AZA-25276.

Notice is hereby given that pursuant to section 209 of the Act of October 21, 1976, 90 Stat. 2757, Douglas Land Corporation has applied for conveyance of the federal mineral estate described as follows:

Gila and Salt River Meridian

Parcel 1

T.4N., R.4W.,
Sec. 7, lots 1 thru 4, inclusive, E½W½, E½;
Sec. 18, lots 1 thru 4, inclusive, E½W½, E½E½/
T.3N., R.5W.,
Sec. 3, lots 1 thru 4, inclusive, S½N½, S½;
Sec. 4, lots 1 thru 4, inclusive, S½N½, S½;
Sec. 5, lots 1 thru 4, inclusive, S½N½, S½;
Sec. 6, lots 1 thru 7, inclusive, SE¼NW¼, S½NE¼, E½SW¼, SE¼;
Sec. 7, lots 1 thru 4, inclusive, E½W½, E½;
Sec. 8, all, except CAP portion;
Sec. 9, all, except CAP portion;
Sec. 10, all;
Sec. 11, W½;
Sec. 14, W½;
Sec. 15, all;
Sec. 23, E½NE¼, W½NW¼.
T.4N., R.5W.,
Sec. 1, lots 1 thru 4, inclusive, S½N½, S½;
Sec. 3, lots 1 thru 4, inclusive, S½N½, S½;
Sec. 4, lots 1 thru 4, inclusive, S½N½, S½;
Sec. 5, lots 1 thru 4, inclusive, S½N½, S½;
Sec. 6, lots 1 thru 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
Sec. 7, lots 1 thru 4, inclusive, E½W½, E½;
Sec. 8, all;
Sec. 9, all;
Sec. 10, all;
Sec. 11, all;
Sec. 12, all;
Sec. 13, all;
Sec. 14, all;

Sec. 15, all;
Sec. 17, all;
Sec. 18, lots 1 thru 4, inclusive, E½W½, E½;
Sec. 19, lots 1 thru 4, inclusive, E½W½, E½;
Sec. 20, all;
Sec. 21, all;
Sec. 22, all;
Sec. 23, all;
Sec. 24, all;
Sec. 25. W½. W½NE¼. SE¼SE¼;
Sec. 26, all;
Sec. 27, all;
Sec. 28, all;
Sec. 29, all;
Sec. 30, lots 1 thru 4, inclusive, E½W½, E½;
Sec. 31, lots 1 thru 4, inclusive, E½W½, E½;
Sec. 34, all;
Sec. 35, all;
T.3., R.6W.,
Sec. 1, lots 1 thru 4, inclusive, S½N½, S½;
Sec. 3, lots 1 thru 2, inclusive, S½NE¼, SE¼;
Sec. 11, E½
Sec. 12, all;
T.4N., R.6W.,
Sec. 25, NE¼, NE¼NW¼, S½NW¼, S½;
Sec. 26, all;
Sec. 27, E½;
Sec. 34, E½;
Sec. 35, all;
Sec. 36, N½, SE¼.

Parcel 2

T.5N., R.4W.,
Sec. 33, S½SW¼NW¼SE¼.

Parcel 3

T.3N., R.5W.,
Sec. 14, W½SE¼.

Parcel 4

T.3N., R.5W.,
Sec. 23, W½NE¼, E½NW¼.

Parcel 5

T.4N., R.4W.,
Sec. 8, E½.

Parcel 6

T.5N., R.4W.,
Sec. 4, SE¼.

Parcel 7

T.5N., R.4W.,
Sec. 9, E½.

Parcel 8

T.5N., R.4W.,
Sec. 10, SW¼NE¼, NW¼SE¼.

Parcel 9

T.5N., R.4W.,
Sec. 33, N½NW¼SW¼SE¼.

Parcel 10

T.5N, R.4W.,
Sec. 4, lot 1
T.6N, R.4W.,
Sec. 33, E½ except west 1100 ft. thereof.
Consisting of 23,540 acres, more or less.

The federal mineral interests may be conveyed in whole or in part. The purpose is to allow consolidation of surface and subsurface ownership for the lands described above, where there are no known mineral values or in those instances where the reservation of ownership of the mineral interest in the United States interferes with or precludes appropriate non-mineral development of the lands and such development would be a more beneficial use of the lands than its mineral development.

Additional information concerning this application may be obtained from the Area Manager, Lower Gila Resource Area, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Upon publication of this notice in the **Federal Register**, the mineral interests described above will be segregated to the extent that they will not be open to appropriation under the public land laws, including the mining laws. The segregative effect of the application shall terminate either upon issuance of a patent or other document of conveyance of such mineral interests, upon final rejection of the application or two years from the date of this publication, whichever occurs first.

Dated: August 6, 1991.

Charles R. Frost,

Associate District Manager.

[FR Doc. 91–19055 Filed 8–9–91; 8:45 am]

BILLING CODE 4310–03–M

[NM–030–01–4212–11; NMNM77534]

Recreation and Public Purpose Act Classification, Dona Ana County, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; Recreation and Public Purposes (R&PP) Act classification.

SUMMARY: The following public land in Dona Ana County, New Mexico has been examined and found suitable for classification for lease or conveyance to the Las Cruces Public School District under the provisions of the R&PP Act, as amended (43 U.S.C. 869 et seq.):

T. 22 S., R. 2 E., NMPM
Section 23, N½N½NW¼SW¼, SW¼NW¼

Containing 50.00 acres, more or less.

The school district proposes to use the subject land for the Onate High School site. The subject land has been identified for disposal in the BLM's Record of Decision for the Southern Rio Grande Plan Amendment (December 1986).

EFFECTIVE DATES: Comments on the proposed lease/conveyance or classification of public land must be submitted on or before September 26, 1991.

ADDRESSES: Comments should be sent to the Bureau of Land Management, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005.

FOR FURTHER INFORMATION CONTACT: Marvin M. James at the address above or at (505) 525–8228.

SUPPLEMENTARY INFORMATION: The lease/patent, when issued, will be subject to the following terms, conditions, and reservations:

1. All valid existing rights of record.
2. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.
3. A right-of-way for ditches and canals constructed by the authority of the United States.
4. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

Upon publication of this notice in the **Federal Register** the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act and leasing under the mineral leasing laws. For a period of 45 days from the date of publication of this notice, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the District Manager, Las Cruces District Office, 1800 Marquess, Las Cruces, New Mexico 88005. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice.

Dated: Augsut 1, 1991.

C.D. Sykes,

Acting District Manager.

[FR Doc. 91–19096 Filed 8–9–91; 8:45 am]

BILLING CODE 4310–FB–M

Fish and Wildlife Service

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Review of Draft Recovery Plan for the Black-capped Vireo

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Document availability; reopening of comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice that the comment period is reopened for review of the draft recovery plan for the Black-capped Vireo (*Vireo atricapillus*). The reopening of the comment period will allow all interested parties to submit comments on the draft recovery plan.

DATES: The comment period for this draft recovery plan will be reopened August 12, 1991, and will close August 27, 1991. Comments must be received by the closing date. Any comments that are received after the closing date may not be considered in the final decision on this draft recovery plan.

ADDRESSES: Comments and materials should be sent to Robert M. Short, U.S. Fish and Wildlife Service, 711 Stadium Drive East, suite 252, Arlington, Texas 76011. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Robert Short, Field Supervisor (see address above).

SUPPLEMENTARY INFORMATION:

Background

The black-capped vireo was listed by the Service as an endangered species in 1987. The species is threatened by the brown-headed cowbird (*Molothrus ater*) which parasitizes vireo nests, and habitat loss due to urbanization, range management, overbrowsing, and succession. The current breeding range extends from a few areas in west-central Oklahoma, through central Texas to northern Mexico (Coahuila). A notice of the availability of the draft recovery plan for this species was published in the **Federal Register** (56 FR 26693) on June 10, 1991.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) provides for the development of recovery plans for listed species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided prior to final approval of a new or revised plan. Recovery plans describe actions considered necessary for conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Service will consider all information presented during the public comment period prior to approval of each new or revised Recovery Plan. The Service and other Federal agencies will also take these comments into account in the course of implementing approved recovery plans.

The comment period on the draft recovery plan originally closed on July 15, 1991. The Service is reopening the comment period from August 12, 1991, to August 27, 1991. Written comments should be submitted to the Service office listed in the **ADDRESSES** section above.

Author

The primary authority of this notice is Lorena Wada, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103, (505) 766–2914 or FTS 474–2914.

Authority: The authority for this action is the Endangered Species Act (16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted).

Dated: August 2, 1991.

James A. Young,

Acting Regional Director.

[FR Doc. 91–18821 Filed 8–9–91; 8:45 am]

BILLING CODE 4310–55–M

Minerals Management Service

Outer Continental Shelf; Locations and Dates of Public Hearings Regarding the Draft Environmental Impact Statement for the Proposed Comprehensive Outer Continental Shelf Natural Gas and Oil Resource Management Program for 1992–1997

On August 1, 1991, a **Federal Register** Notice 56 FR 36843 announced the availability of the draft Environmental Impact Statement (EIS) for the Comprehensive Outer Continental Shelf Natural Gas and Oil Resource Management Program for 1992–1997 indicating that the exact dates, times, and locations of public hearings on the draft EIS would be announced at a later date. This notice provides that information.

The purpose of these hearings is to receive specific comments on the adequacy of the draft EIS and to provide the Secretary of the Interior with additional information from both public and private sectors to help evaluate fully the potential environmental effects of the proposed program.

The public hearings are scheduled for the following dates and times at the following locations:

September 10, 1991, Minerals Management Service, Sixth Floor Conference Room, 949 East 36th Avenue, Anchorage, Alaska, 9 a.m. to 1 p.m., Contact: Michael Baffrey, (907) 271–6677.

September 10, 1991, Wilmington Hilton Hotel, 301 North Water Street, Wilmington, North Carolina, 1 p.m. to 4 p.m. and 6 p.m. to 9 p.m., Contact: Keith Good, (703) 787–1052.

September 11, 1991, Minerals Management Service, 1201 Elmwood Park Boulevard, New Orleans, Louisiana, 2 p.m. to 4 p.m., Contact: Janet Diaz, (504) 736–2540.

September 12, 1991, Marriott International Airport Hotel, 18700 John F. Kennedy Boulevard, Houston, Texas, 7 p.m. to 10 p.m., Contact: Janet Diaz, (504) 736–2540.

September 17, 1991, Gulf Coast Research Laboratory, Ocean Springs Campus, Caylor Building Auditorium, 703 East Beach Drive, Ocean Springs, Mississippi, 7 p.m. to 10 p.m., Contact: Janet Diaz, (504) 736–2540.

September 18, 1991, Ramada Resort, 600 South Beltline Highway, Mobile, Alabama, 7 p.m. to 10 p.m., Contact: Janet Diaz, (504) 736–2540.

September 18, 1991, Santa Maria Hilton Hotel, 3455 Skyway Drive, Santa Maria, California, 1 p.m. to 4 p.m. and 6 p.m. to 9 p.m., Contact: Mike McCrary, (805) 389–7865.

September 19, 1991, Holiday Inn Bay Beach, 51 Gulf Breeze Parkway, Gulf Breeze, Florida, 7 p.m. to 10 p.m., Contact: Janet Diaz, (504) 736–2540.

Interested individuals, representatives of organizations, and public officials who wish to testify at the hearings are requested to contact the person listed above for the particular location at least 5 days prior to the hearings. Time limitations may make it necessary to limit the length of each oral presentation to 5 minutes or less. An oral statement may be supplemented, however, by a more complete statement which should be submitted to the hearing officer at the time of the oral presentation. After the presentation of oral statements by those who have preregistered, if time is still available during the period of time listed for the hearings, other individuals will be given an opportunity to be heard.

Written comments on the draft EIS, including comments from individuals unable to present oral statements or to attend the hearings, will be accepted until October 29, 1991. All written comments should be mailed to the Director, Minerals Management Service, 381 Elden Street, Mail Stop 4320, Herndon, Virginia 22070–4817, Attention: Debra Purvis. Hand deliveries to the Department of the Interior may be made to room 4230, 1849 C Street, NW., Washington, DC 20240. Specify on the envelope or package "Comprehensive Program draft EIS." Both the oral and written statements will be given equal consideration. After all the public hearing testimony and written

comments on the draft EIS have been reviewed and analyzed, a final EIS will be prepared.

Dated: August 7, 1991.

Thomas Gernhofer,

Associate Director for Offshore Minerals Management.

[FR Doc. 91–19080 Filed 8–9–91; 8:45 am]

BILLING CODE 4320–MR–M

National Park Service

Meetings; National Park System Advisory Board's History Areas Committee, and National Park System Advisory Board

AGENCY: National Park Service, Interior.

ACTION: Notice of meetings of the National Park System Advisory Board and of the Board's History Areas Committee.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. appendix (1988), that meetings of the National Park System Advisory Board and of its History Areas Committee will be held in early October, 1991 in Estes Park, Colorado.

The Board's History Areas Committee will convene at 9 a.m., Saturday, October 5, 1991 in McLaren Hall, which is in the headquarters complex of Rocky Mountain National Park, along route 36 on the west side of Estes Park. Adjournment will be at about 5:30 p.m. A primary purpose of the Committee's meeting will be to evaluate studies of historic properties in order to advise the full National Park System Advisory Board at their meeting on the qualifications of properties being proposed for National Historic Landmark designation, and to recommend to the full Board those properties that the Committee finds meet the criteria of the National Historic Landmarks program. Also to be discussed will be five properties proposed for study as potential additions to the National Park System; for these properties the Committee will determine from existing information on hand whether to urge that the full Board recommend that the properties be studied. The Committee is chaired by Dr. Holly Anglin Robinson of Alpharetta, Georgia.

Presentations and discussions will include the following properties being nominated for National Historic Landmark designation: 10 maritime properties located in Connecticut, Florida, Maine and New York; 18 women's history properties located in Alabama, California, the District of Columbia, Florida, Kentucky, Maryland, Massachusetts, Michigan, New Jersey, New Mexico, New York, Pennsylvania and West Virginia; a German theater in Wisconsin; a presidential site in Texas; and an addition to a site in Kansas relating to the Constitution theme study. The five properties being reviewed for possible study as potential additions to the National Park System are located in Florida, Montana, South Dakota and Alaska (2).

The meeting of the full National Park System Advisory Board will convene at 1 p.m., Sunday, October 6, 1991 in the Trail Ridge Room of the Holiday Inn of Estes Park, 101 South Saint Vrain Street, Estes Park, Colorado (junction of routes 36 and 7), continuing until about 5:30 p.m. The Board will reconvene at 8 a.m. the next morning, Monday, October 7, and conclude its meeting at about noon. In addition to receiving reports and/or recommendations from its History Areas Committee as indicated above, the Board will also receive reports and/or recommendations from its other committees:

—Natural Areas Committee (three natural areas that may be studied for potential inclusion in the National Park System (located in North Carolina, New Jersey and New Mexico), and the status of the National Natural Landmark program);
—Special Projects Committee (Columbus Quincentennial, park-related tourism and perhaps other topics); and
—Secretarial Initiatives Committee (Park education, volunteerism, urban park issues, partnership parks and perhaps other topics).

The Board will also be addressed by senior personnel of the Department of the Interior and the National Park Service. Board members will tour Rocky Mountain National Park on October 5 and 6. The Board is chaired by Mr. Bryan Wagner of New Orleans, Louisiana.

The business meetings of both the Board and its History Areas Committee will be open to the public. Space and facilities to accommodate members of the public are limited and persons will be accommodated on a first-come, first-served basis. Anyone may file with the Board or its History Areas Committee a written statement concerning matters to be discussed. The Chairmen may also permit attendees to address the Committee or Board, but may restrict the length of presentations as necessary to allow the Committee and the Board to complete their agendas within the allotted times.

This is also to notify all concerned and interested parties that because the Federal Government's Fiscal Year 1992 begins on October 1, 1991, there is a possibility that budget authority may not be available in time to allow these meetings to occur. If no appropriation or continuing resolution has been passed, or if budget authority is for any other reason not available, the meetings may be canceled on very short notice. Those planning to attend may telephone Mr. David L. Jervis, Office of Policy, National Park Service, (P.O. Box 37127, Washington, DC 20013–7127) at 202–208–4030 on October 1 or 2 to ascertain whether the meetings will occur.

Persons wishing further information on the October 6–7 Board meeting may also contact Mr. Jervis. Anyone wishing further detail on the potential National Historic Landmarks to be discussed at the October 4 History Areas Committee meeting may contact Mr. Ben Levy or Ms. Patty Henry, History Division, National Park Service, P.O. Box 37127, Washington, DC 20013–7127 (telephone 202–343–8164). Persons wishing further detail on either the natural or historic properties being reviewed for possible study as potential additions to the National Park System may contact Mr. Warren Brown, Park Planning and Protection Division, National Park Service, Washington, DC 20013–7127 (telephone 202–208–4285).

Draft summary minutes of the meetings will be available for inspection about 12 weeks after the meetings, in room 1220, Main Interior Building, 18th and C Streets NW., Washington, DC.

Herbert S. Cables, Jr.,

Deputy Director.

[FR Doc. 91–19008 Filed 8–9–91; 8:45 am]

BILLING CODE 4310–70–M

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Meeting

Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet in the office of the Martin E. Segal Company, Conference Room 7A, One Park Avenue, New York, New York, on September 20, 1991, beginning at 8:30 a.m.

The purpose of the meeting is to discuss topics and questions which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics and methodology referred to in title 29 U.S. Code, section 1242(a)(1)(B).

A determination as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) has been

made that the subject of the meeting falls within the exception to the open meeting requirement set forth in title 5 U.S. Code, section 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: August 7, 1991.

Leslie S. Shapiro,

Advisory Committee Management Officer, Joint Board for the Enrollment of Actuaries.

[FR Doc. 91-19115 Filed 8-9-91; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 49-91]

Privacy Act of 1974; New System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is hereby given that the Department of Justice proposes to establish a new system of records to be maintained by the Immigration and Naturalization Service (INS).

The Secondary Verification Automated Log (SVAL), JUSTICE/INS-016, is a new off-line personal computer system of records for which no public notice consistent with the provisions of 5 U.S.C. 552a(e) (4) and (11) has been published.

5 U.S.C. 552a(e) (4) and (11) provide that the public be given a 30-day period in which to comment on the new routine uses of a proposed system of records. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 60-day period in which to conclude its review of the system. Therefore, please submit any comment by September 11, 1991. This public, OMB and the Congress are invited to submit any comments to Patricia E. Neely, Staff Assistant, Systems Policy Staff, Justice Management Division, Department of Justice, Washington, DC 20536, (Room 1103 CAB Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report on this system to OMB and the Congress.

The system description is printed below.

Dated: July 29, 1991.

Harry H. Flickinger,

Assistant Attorney General for Administration.

JUSTICE/INS-016

SYSTEM NAME:

Secondary Verification Automated Log (SVAL).

SYSTEM LOCATION:

Central, Regional, District, and other offices of the Immigration and Naturalization Service (INS) in the United States as detailed in JUSTICE/INS-999.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Immigrant aliens apply for Federal entitlements for whom INS receives a Form G-845, Document Verification request, which is submitted by Federal and State entitlements agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Temporary paper records include Form GF-854 as submitted by the entitlement agencies and contain the following data: Alien name and identifying number, name of the entitlement agency, and immigration status as reported by the alien applicant. INS will update Form G-845 with immigration status information and return it to the entitlement agency. However, identical data, together with Form G-845 disposition data, will be recorded and maintained by INS on hard and floppy disks as a record of secondary verifications made by the entitlement agencies.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

8 U.S.C. 1255a, 8 U.S.C. 1324a, 8 U.S.C. 1360 and 42 U.S.C. 1320b-7.

PURPOSE(S):

The SVAL, JUSTICE/INS-016 system is used to maintain records of a second attempt by entitlement agencies to verify immigration status by comparing paper documents (known as the "secondary verification"). Secondary verification is conducted where eligibility for certain benefits was not or could not be confirmed through direct access to an INS automated database entitled "Alien Status Verification Index" (ASVI), JUSTICE/INS-009 (known as the "primary verification"). Specifically, INS is asked to compare the entitlement agency's paper record, Form G-845 (which contains information provided by the immigrant aliens applying for Federal entitlements), with INS paper records; complete the Form relative to immigration status; and return it to the entitlement agency. The SVAL, JUSTICE/INS-016 system is maintained to track the interim and final disposition of the second request to verify eligibility which may require referral to an INS district office.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant information contained in this system of records may be disclosed to the following:

A. To a Federal, State, or local government agency in response to a request for information on the status and/or disposition of a document verification request submitted by that agency.

B. To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

C. To the General Services Administration and the National Archives and Records Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Until they have been processed and returned to the entitlement agency, Forms G-845 are kept in a card index file. Data extracted from the form is stored in personal computers on hard and floppy disks.

RETRIEVABILITY:

These records are retrieved by serial number, A-file number and/or name of immigrant applicant.

SAFEGUARDS:

INS offices are located in buildings under guard and access to the premises is by official identification. Access to personal computers is limited to INS employees and access to records in this system is further restricted through user identification and discrete password functions to assure that accessibility is limited.

RETENTION AND DISPOSAL:

Form G-845 is retained long enough to complete the verification, at which time the form is returned to the entitlement agency. Completed verifications are archived on to a storage disk monthly and destroyed five (5) years after the last month contained on the disk. Disposition authority is INS Disposition Schedule NI-85-90-3.

SYSTEM MANAGER AND ADDRESS:

Director, Records Management Branch, Records Systems Division, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536.

NOTIFICATION PROCEDURES:

Address your inquiries about the system in writing to the system manager identified above.

RECORDS ACCESS PROCEDURES:

Make all requests for access in writing to the Freedom of Information Act/ Privacy Act (FOIA/PA) Officer at the nearest INS Office, or in the INS office maintaining the desired records (if known) by using the List of Principal Offices of the Immigration and Naturalization Service Appendix, JUSTICE/INS–999, published in the Federal Register. Clearly mark the envelope and letter "Privacy Act Request." Provide the A-file number and/or the full name and date of birth, with a notarized signature of the individual who is the subject of the records, and a return address.

CONTESTING RECORD PROCEDURES:

Direct all requests to contest or amend information in the record to the FOIA/PA Officer at one of the addresses identified above. State clearly and concisely the information being contested, the reason for contesting it, and the proposed amendment thereof. Clearly mark the envelope and letter "Privacy Act Request." Provide the A-file number and/or the full name and date of birth, with a notarized signature of the individual who is subject of the record, and a return address.

RECORD SOURCE CATEGORIES:

Form G–845, Request for Document Verification (furnished by entitlement agencies) and INS immigration status records.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 91–18840 Filed 8–9–91; 8:45 am]

BILLING CODE 4410–10

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 91–71]

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agent Report Forms Under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by September 11, 1991. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Mr. D. A. Gerstner, NASA Agency Clearance Officer, Code NTD, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700–0048), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (703) 271–5542.

Reports

Title: Patents.
OMB Number: 2700–0048.
Type of Request: Revision.
Frequency of Report: Annually.
Type of Respondent: Non-Profit.
Number of Respondents: 3019.
Responses per Respondent: 1.0.
Annual Responses: 3019.
Hours per Response: 1.0.
Annual Burden Hours: 3019.
Abstract-Need/Uses: Reports and records regarding patents are required to comply with statutes and the OMB and NASA implementing regulations.

August 6, 1991.

D. A. Gerstner,

Director, IRM Policy Division.

[FR Doc. 91–19073 Filed 8–9–91; 8:45 am]

BILLING CODE 7510–01–M

Notice (91–72)

Agency Report Forms Under OMB Review

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made the submission.

Copies of the proposed forms, the requests for clearance (S.F. 83's), supporting statements, instructions, transmittal letters and other documents submitted to OMB for review, may be obtained from the Agency Clearance Officer. Comments on the items listed should be submitted to the Agency Clearance Officer and the OMB Paperwork Reduction Project.

DATES: Comments are requested by September 11, 1991. If you anticipate commenting on a form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Paperwork Reduction Project and the Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Mr. D. A. Gerstner, NASA Agency Clearance Officer, Code NTD, NASA Headquarters, Washington, DC 20546; Office of Management and Budget, Paperwork Reduction Project (2700–0052), Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Shirley C. Peigare, NASA Reports Officer, (703) 271-5542.

Reports

Title: NASA FAR Supplement , part 18-27, Patents, Data and Copyrights.
OMB Number: 2700-0052.
Type of Request: Extension.
Frequency of Report: As reportable action occurs.
Type of Respondent: State or local governments, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.
Number of Respondents: 1822
Responses per Respondent: 1.2.
Annual Responses: 2186.
Hours per Response: 8.
Annual Burden Hours: 17491.
Abstract-Need/Uses: Records and reports regarding patents and data are required to comply with statutes and the OMB and NASA implementing regulations.

Dated: August 6, 1991.

D. A. Gerstner,

Director, IRM Policy Division.

[FR Doc. 91–19074 Filed 8–9–91; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL COMMISSION ON SEVERELY DISTRESSED PUBLIC HOUSING

Meeting

AGENCY: National Commission on Severely Distressed Public Housing.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463. as amended, the National Commission on Severely Distressed Public Housing announces a forthcoming meeting of the Commission.

DATES: Thursday, August 15, 1991 9:30–3 (Public Hearing).

ADDRESSES: Hearing Location: 9201 Rainier Avenue South, Seattle Washington.

FOR FURTHER INFORMATION CONTACT: Carmelita Pratt, Administrative Officer, The National Commission on Severely Distressed Public Housing, 1100 L Street NW., room 7121, Washington, DC 20005 (202) 275–6933.

TYPE OF MEETING: Open.

Due to scheduling difficulties, this notice could not be published 15 days prior to this meeting as required by Federal Advisory Committee Act.

Carmelita R. Pratt,

Administrative Officer.

[FR Doc. 91–19054 Filed 8–9–91; 8:45 am]

BILLING CODE 6820–07–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–333–OM, ASLBP No. 91–645–02–OM, Facility Operating License No. DPR–59, EA 91–053; Docket No. 55–8615–SC, ASLBP No. 91–646–02–SC, Senior Reactor Operator License No. SOP–10561–1, EA 91–054]

New York Power Authority (James A. FitzPatrick Nuclear Power Plant) and David M. Manning, Senior Reactor Operator; Memorandum and Order (Setting Prehearing Conference)

August 5, 1991.

The Board will conduct a prehearing conference in these proceedings beginning at 9 a.m. on September 5, 1991 at room 1221, Federal Building, 100 South Clinton Street, Syracuse, New York. All parties or their legal counsel are directed to attend.

The purpose of the conference is to identify issues for hearing; to discuss any need for discovery; to explore settlement possibilities; [1] and to set a schedule for any other prehearing business.

Bethesda, Maryland, August 5, 1991.

For the Atomic Safety and Licensing Board.

Ivan W. Smith,

Chairman, Administrative Law Judge.

[FR Doc. 91–19088 Filed 8–9–91; 8:45 am]

BILLING CODE 7590–01–M

[1] By letter of this date, counsel for the NRC Staff informed members of the Licensing Board that a possible settlement between the Staff and New York Power Authority is under discussion. We infer from Staff's letter that Mr. Manning is not participating in settlement discussions.

[Docket No. 50–312]

Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station); Exemption

I

By letter of December 28, 1989, and supplements of March 30, 1990 and June 24, 1991, the Sacramento Municipal Utility District (SMUD, the licensee), owner and operator of the Rancho Seco Nuclear Generating Station, requested an exemption concerning requirements of several sections of part 55 of title 10 of the Code of Federal Regulations (10 CFR part 55) concerning operator written examinations, operating tests, conditions of licenses, and requalification program requirements. The facility is a pressurized water reactor located in Sacramento County, California, and is currently defueled.

Sections 55.41, 55.43, 55.45, and 55.59 of 10 CFR part 55 pertain to the content required in written examinations and operating tests and the requirements for requalifying operators and senior operators. Sections 55.53(e) and 55.53(f)(2) delineate the requirements for operators to maintain active proficiency.

The 10 CFR part 50 licensee (SMUD) is requesting this exemption from 10 CFR part 55 (Operators' Licenses) because part 55 delineates the operator training and requalification requirements that the part 50 licensee must follow in the course of granting and maintaining operators' licenses.

II

The licensee's proposed action includes exemptions to §§ 55.41, 55.43, 55.45, and 55.59 of 10 CFR part 55 only to the extent that these regulations pertaining to power operations of a nuclear facility in the course of granting and maintaining of operators' licenses for operating power reactors. In addition, the proposed action includes an exemption to § 55.53(e) to the extent that the regulation applies to an operating facility and that it requires that "the licensee shall actively perform the functions of an operator or senior operator on a minimum of seven 8-hour or five 12-hour shifts per calendar quarter." The licensee's proposed action would reduce the requirement for actively performing operator and senior operator functions to 4-hours per calendar quarter. As well, the proposed action includes an exemption to § 55.53(f)(2) to allow the completion of one shift (instead of 40 hours) under the direction of an operator or senior operator to regain an active status.

The licensee's request for exemption from these regulations is based on (1) the cessation of power operation at Rancho Seco on June 7, 1989, (2) the completion of defueling the reactor on December 8, 1989, and (3) the Commission's issuance of a Confirmatory Order on May 2, 1990, prohibiting refueling at Rancho Seco without first receiving approval from the NRC. Defueling the reactor was the last major action associated with a normal operational nuclear facility. The requirements of 10 CFR part 55 for granting and maintaining operators' licenses are designed for operating power reactors. With Rancho Seco in a defueled condition and unable to refuel without NRC approval, the facility is in a static condition with little or no change in daily operating activities. Additionally, the knowledge required of operators and senior operators in a defueled status is far less than that required for an operating facility; therefore, far less time actively performing operator functions would be required each calendar quarter in order to maintain a proficient status for the more limited, non-operating duties to be performed. Likewise, far less time would be required for an operator to regain his proficiency for such limited duties if he failed to meet the minimum proficiency time.

The proposed exemption does not affect the risk of facility accidents because of the defueled condition of the plant. With the reactor vessel defueled and the licensee not intending to resume power operation at Rancho Seco, there are no longer any credible design basis accidents associated with an operating plant from start-up through full-power operation. The design basis accidents for a nuclear facility in a defueled condition are all associated with the loss of the pool water inventory or with fuel handling. Because of the geometric storage arrangement of the fuel assemblies under water, a criticality accident is not considered credible. In addition, the Confirmatory Order of May 2, 1990, prohibiting movement of the fuel to the reactor further diminishes the possibility for a fuel handling accident.

With the reactor defueled, the operators will primarily monitor and maintain the spent fuel pool storage facility to ensure that the special nuclear

material continues to be safely stored to ensure that the public health and safety is not compromised. This exemption would enable the licensee to continue to train operators for their principal activities in the defueled condition without expending excessive resources and time training on unrelated power activities. The training which remains relevant to the defueled status, and a requirement to perform operator and senior operator functions for 4 hours each calendar quarter to maintain active proficiency, ensure the protection of the public health and safety and are consistent with the defueled condition of the facility.

The NRC promulgated the requirements of 10 CFR part 55 on the assumption that the operators licensed would be controlling an operating facility which would experience transients and malfunctions from routine start-up through full-power operation. Requiring operator training in areas that would benefit them only during power operations and requiring an inordinate amount of active performance of functions in a defueled status to maintain proficiency as well as to regain proficiency will not significantly enhance or increase the capability needed by licensed operators at Rancho Seco to maintain safety under permanently defueled plant conditions. A special circumstances, as defined in 10 CFR 50.12(a)(2)(ii), exists in that application of the regulations that pertain to power operations would not serve the underlying purpose of the rules.

For these reasons, the staff finds the licensee has provided an acceptable basis to authorize the granting of an exemption in accordance with the provisions of 10 CFR 55.11.

III

Accordingly, the Commission has determined that in accordance with 10 CFR 55.11, this exemption is authorized by law and will not endanger life or property and is in the public interest. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(ii), are present to justify the exemption. The referenced special circumstances pertain to exemptions to regulations which do not alter the underlying purpose of the regulations.

Based on the foregoing, the Commission hereby grants an exemption as described in Section II above from §§ 55.41, 55.43, 55.45, 55.53(e), 55.53(f)(2), and 55.59 of 10 CFR part 55, only to the extent that these regulations pertain to power operations of a nuclear facility; in the case of §55.53(e) that the regulation requires seven 8-hour shifts or five 12-hour shifts per calendar quarter to maintain active operator and senior operator proficiency; and in the case of § 55.53(f)(2) that the regulation requires 40 hours of shift functions under the direction of an operator or senior operator to regain an active status.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (56 FR 37242, August 5, 1991).

This exemption is effective upon issuance and shall continue in effect so long as the Confirmatory Order to License No. DPR–54 dated May 2, 1990, remains in effect. Removing the Order by the NRC shall nullify the exemption and require full compliance with 10 CFR part 55 in its entirety, unless a further exemption is requested and subsequently granted.

Dated at Rockville, Maryland this 5th day of August 1991.

For the Nuclear Regulatory Commission.

Dennis M. Crutchfield,

Director, Division of Advanced Reactors and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 91–19089 Filed 8–9–91; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–29524; File No. SR–CSE–91–03]

Self-Regulatory Organizations; Order Granting Partial Accelerated Approval of Proposed Rule Change and Filing of Amendment by the Cincinnati Stock Exchange Relating to the Extension of a Pilot for Preferencing of Public Agency Market and Marketable Limit Orders by Approved Dealers and Other Proprietary Members

August 5, 1991.

I. Introduction

On July 15, 1991, the Cincinnati Stock Exchange, Inc. ("CSE") submitted a proposed rule change to the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), and rule 19b-4 thereunder, and an amendment thereto on July 29, 1991.[1] The CSE requests accelerated approval of a six-month extension of paragraphs (u), (l) and (m) of Exchange Rule 11.9, which modify the Exchange's time priority rules, establishing a six-month pilot preferencing rule.[2] In addition, the CSE requested approval for an amendment to rule 11.9 to remove the limit on the number of issues a Designated Dealer can preference during the pilot period.

The preferencing rule modifies the Exchange's time priority rules to permit a market maker to act as Dealer of the Day and have priority over same-priced market maker or professional agency interest entered prior in time to his bid or offer when the market maker is interacting with public agency market and marketable limit orders that he or she represents as agent. The CSE intended the original proposal to provide market makers with the ability to retain and execute their internal order flow at the best bid or offer, provided the public limit orders on the book have been executed at that price. The time priority rule was designed to create incentives for a market maker/dealer to direct his or her own retail order flow to the Exchange, permitting the market maker/dealer to preference itself over other professionals with respect to order flow that the market maker/dealer is directing to the Exchange.

Originally, as a condition of Commission approval of the preferencing rule, the CSE agreed to propose the rule on a six-month pilot basis and amend the proposal to address Commission concerns regarding: (1) Short-sale arbitrage programs; (2) payment for order flow; (3) the number of issues that a Designated Dealer could preference during the period of the pilot; and (4) length of service as a Designated Dealer. To prevent the use of preferencing to facilitate program trading, the CSE agreed to limit to 60 the number of issues that a Designated Dealer could Preference. The CSE, however, has requested approval of an amendment to the preferencing rule that would remove the limit on the number of issues a Designated Dealer may preference for the remainder of the pilot period. Although the CSE originally requested accelerated approval of this aspect of the proposal, the exchange amended its filing to request accelerated approval only for the extension of the pilot period.[3]

[1] *See* letter from Kevin S. Fogarty, Vice President, Market Regulation, CSE, to Christine Sakach, Branch Chief, National Market System Branch, Division of Market Regulation, Securities and Exchange Commission, dated July 29, 1991 ("July Letter").

[2] *See* Securities Exchange Act Release No. 28866 (February 7, 1991), 56 FR 5854.

[3] *See* July Letter.

II. Description of the Proposal and Exchange Rationale

The purpose of the proposed rule change is to extend for six months the original six-month pilot for CSE's preferencing rule. The CSE states that it has sought to increase the amount of retail business transacted on the Exchange. The CSE's preferencing proposal is an attempt to attract more business, with attendant improvements in efficiency and liquidity, to the Exchange. In addition, the CSE states that, although preferenced trading has been growing since its introduction in April, preferenced trading for the month of June still accounted for less than 5% of the Exchange's average daily trading volume. Therefore the Exchange believes that it may be useful for the Commission to extend the pilot period and defer final judgment on the rule until more experience has been obtained with its operation.

Finally, as stated above, the CSE agreed to limit to sixty the number of issues that a Designated Dealer could preference during the original pilot period. The pilot is ending, and the CSE states that no dealer has preferenced anything approaching 60 issues. Nonetheless, the CSE states that interest has been expressed in preferencing issues in numbers greater than this. Therefore, the CSE has requested that, if it is not possible to provide accelerated approval for SR–CSE–91–03 as filed, the Commission give partial accelerated approval, reserving decision on the sixty-issues cap until the comment period has ended, so that as soon as possible during the extension of the pilot, it be allowed to determine, in light of the circumstances as they arise, the number of issues a Designated Dealer can preference. As a condition of removing the sixty-issues limitation, the CSE has agreed to provide the Commission with the following information during the extension of the pilot to aid the Commission in evaluating the effect of lifting the six-issue cap: (1) a list indicating how many Designated Dealers are preferencing in more than sixty issues; (2) a list identifying, in each such case, the issues being preferenced; and (3) reports indicating the volume preferenced in each issue. Further, the CSE has stated that, if the Commission requests it, it would provide available information relating to specific intervals of time.[4]

[4] The CSE stated in its July Letter that it will request confidential treatment on all information furnished with regard to the sixty-issue cap.

III. Discussion

The Commission finds that the extension of the pilot is consistent with the Act and the rules and regulations thereunder applicable to the Exchange. Specifically, the proposal is consistent with section 6(b)(5) because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Commission believes that the proposal addresses the CSE's legitimate desire to attract additional business to the exchange.

The Commission finds good cause for approving the extension of the pilot for an additional six months effective upon termination of the original pilot of August 7, 1991, which is prior to the thirtieth day after the date of publication of the notice of filing. The Commission believes that accelerated approval will help the CSE continue its preferencing program without interruption to participating dealers.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change. 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 original and amended 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 principle office of the above-referenced self-regulatory organization. All submissions should refer to the file number in the caption above and be submitted by September 3, 1991.

VI. Conclusion

Based on the foregoing, the Commission has concluded that the extension of the pilot, as it is the same as the original pilot approved on February 7, 1991, is consistent with the requirements of the Act and that it is appropriate to approve the proposal.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the extension of the pilot for an additional six-month period, commencing upon termination of the original pilot on August 7, 1991, be, and hereby is, approved until February 7, 1992.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–19039 Filed 8–9–91; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Application for Unlisted Trading Privileges in an Over-the-Counter Issue and to Withdraw Unlisted Trading Privileges in an Over-the-Counter Issue

August 6, 1991.

On July 15, 1991, the Midwest Stock Exchange, Inc. submitted an application for unlisted trading privileges ("UTP") pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") security, *i.e.*, a security not registered under section 12(b) of the Act.

File No.	Symbol	Issuer
7–7110	SMLS	Scimed Life Systems, Inc., Common Stock, $.05 par value.

The MSE stated that, upon approval of this application, the security will be assigned to a Specialist/Odd Lot Dealer, pursuant to the rules of the Exchange.

The MSE also applied to withdraw UTP pursuant to section 12(f)(4) of the Act on the following issue:

File No.	Symbol	Issuer
7–7111	RTRSY	Reuters Holdings PLC, American Depositary Receipts, No par value.

The Exchange requests that Reuters Holdings PLC be removed from the program due to trading inactivity.

Comments

Interested persons are invited to submit, on or before August 21, 1991, written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Commentators are asked to address whether they believe the requested grant of UTP would be consistent with section 12(f)(2), which requires that, in considering an application for extension of UTP in an OTC security, the Commission consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such security, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91-19043 Filed 8-9-91; 8:45 am]

BILLING CODE 8010-01-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Incorporated

August 6, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

IMCO Recycling, Inc.
Common Stock, $.10 Par Value (File No. 7-7138)
NutMeg Industries
Common Stock, $.01 Par Value (File No. 7-7139)
READICARE, Inc.
Common Stock, $.01 Par Value (File No. 7-7140)
Singer Co., N.V.
Common Stock, $.01 Par Value (File No. 7-7141)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 27, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91-19044 Filed 8-9-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29523; File No. SR-MSRB-91-05]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Approving Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Statutory Disqualifications

On June 17, 1991, the Municipal Securities Rulemaking Board ("MSRB" or "Board") submitted a proposed rule change (File No. SR-MSRB-91-05) with the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1) which amends the cross-reference to section 3(a)(39) of the Act contained within MSRB Rule G-4 to correspond with the recently enacted amendments to the Act. The proposed rule change also contains technical word changes.

Notice of the proposed rule change was given in Securities Exchange Act Release No. 29370 (June 26, 1991), 56 FR 30603. The Commission received no comments on the proposal. This order approves the proposal.

In its filing with the Commission, the MSRB stated that rule G-4(a), on statutory disqualifications, disqualifies firms and individuals from participating in the municipal securities business if they are barred or suspended from membership in an exchange or in the National Association of Securities Dealers, Inc. ("NASD") by reason of certain "statutory disqualifications" as defined in the Act or for a violation of NASD or exchange rules concerning just and equitable principles of trade.

In November 1990, President Bush signed into law the Securities Acts Amendments of 1990 ("the 1990 Amendments"). Among other things, the 1990 Amendments amend section 3(a)(39) of the Act, concerning statutory disqualification from self-regulatory organizations, and expand, by incorporation, the list of findings that result in the statutory disqualification. The 1990 Amendments re-letter subparagraphs (D) and (E) of section 3(a)(390 of the Act as subparagraphs (E) and (F), respectively, and add new subparagraph (D), which includes among the conditions that result in statutory disqualification findings by certain foreign entities. In addition, subparagraph (F), which by cross-reference to section 15(b)(4)(G) of the Act makes persons convicted of specified felonies and misdemeanors related to financial matters subject to statutory disqualification, adds "any other felony" to the list of crimes that warrant special review.

The proposed rule change amends the cross-reference to section 3(a)(39) of the Act contained within MSRB rule G-4 to correspond with the recently enacted amendments to the Act and makes some technical word changes.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the MSRB. In particular, the Commission finds that the proposal is consistent with section 15B(b)(2)(C) of the Act, which requires in pertinent part that the Board's rules be designed "to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles to trade, to foster cooperation and coordination with persons engaged in regulating * * * transactions in municipal securities * * * and, in general, to protect investors and the public interest."

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that File No. SR-MSRB-91-05 be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 91-19042 Filed 8-9-91; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-29522; File No. SR-NASD-91-35]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Pre-Opening Application in the Intermarket Trading System

August 5, 1991.

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 July 31, 1991, the National Association of Securities Dealers, Inc.

("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this release to solicit comments on the proposed rule change from interested persons and simultaneously granting accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing amendments to the Rules of Practice and Procedure for the Intermarket Trading System/Computer Assisted Execution System Automated Interface ("ITS/CAES Rules"), and Schedules D and G to the NASD By-Laws with respect to the ITS pre-opening application and trading halts. The purpose of the rule change is to conform the NASD Rules with the ITS Plan.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Association is proposing to amend the Rules of Practice and Procedure for the Intermarket Trading System/Computer Assisted Execution System Automated Interface ("ITS/CAES Rules") and Schedules D and G to the NASD By-Laws to comport the language of the NASD rules with the amendments to the ITS Plan recently approved by the Commission.[1] The amendments pertain to the ITS pre-opening application and trading halts and the purpose of the proposed rule change is to codify the approved changes to the ITS Plan in the ITS/CAES Rules.

In addition, the NASD is amending Schedules D and G to clarify that when the NASD acknowledges an exchange trading halt, the NASD trading halt will apply only to those market makers designated as ITS/CAES market makers. NASD trading halts called in response to an exchange operational halt will not be applicable to third market makers in listed stocks that are not participants in the ITS/CAES linkage. Current rules allow the NASD to withdraw quotations and halt trading in listed securities traded through ITS/CAES in recognition of a primary market operational halt, thereby enabling ITS/CAES market makers to receive and respond to pre-opening indications. If all ITS/CAES market makers remain closed during the primary market's operational halt, all will be permitted to participate in the pre-opening application; if, however, one or more ITS/CAES market makers reopen prior to the primary market's reopening, this action will preclude all ITS/CAES market makers from participating in the pre-opening application, unless the primary market specialist elects to accept pre-opening responses. The NASD notes that trading effected by market makers that are not ITS/CAES market makers will not jeopardize the ITS/CAES market makers' ability to respond to pre-opening applications.

The NASD believes the proposed rule change is consistent with sections 15A(b)(6) and 11A(a)(D) of the Act. Section 15A(b)(6) requires that the rules of a national securities association be designed to "foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market," and section 11A calls for the linking of all markets for qualified securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD requests that the Commission find good cause, pursuant to section 19(b)(2) of the Act, for approving the proposed rule change prior to the 30th day after publication in the **Federal Register** and, in any event, on or before August 5, 1991, the date on which the ITS Pre-Opening Plan Amendments are scheduled to take effect. The NASD makes this request because conforming the NASD rules to the provisions of the ITS Plan amendments already approved by the Commission is necessary for consistent implementation of the new procedures among ITS participants.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing thereof. The Commission believes that accelerated approval is appropriate to ensure the consistent implementation of the ITS Plan amendments regarding new procedures for pre-opening applications and indications of interest following all trading halts. The Commission also finds that approval of the proposed amendments is consistent with and furthers the objectives of sections 15A(b)(6) and 11A(a)(1)(D) of the Act in that the amendments are designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and the ITS system is designed to link all markets for qualified securities through communications and data processing facilities.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by September 3, 1991.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed amendments to the ITS/CAES

[1] Release No. 34-29193 (May 15, 1991).

Rules and Schedules D and G to the NASD By-Laws be, and hereby are, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–19041 Filed 8–9–91; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–29521; File No. SR–NASD–91–32]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Filing and Immediate Effectiveness of Proposed Rule Change Relating to Assessments and Fees

August 5, 1991.

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 July 16, 1991, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one establishing or changing a fee under section 19(b)(3)(A)(ii) of the Act, which renders the fee effective upon the Commission's receipt of this filing. 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 proposed rule amendment to sections 2(c) and 2(e) of Schedule A of the NASD's By-Laws is being made so that these sections reference new section 2(j) of Schedule A.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose and bases for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The proposed rule amendment to section 2 of Schedule A is in response to the comments of Commission staff which requested that conforming changes be made to sections 2(c) and 2(e) of Schedule A to reference new section 2(j). Section 2(j) allows the NASD to keep examination fees collected from persons who are granted examination waivers. The NASD made section 2(j) effective on February 8, 1991 and the Commission published this change in the **Federal Register** on March 8, 1991 in Release No. 34–28931; File No. SR–NASD–91–7.

(b) The NASD believes that the proposed rule change is consistent with section 15A(b)(5) of the Act, which requires that the rules of the Association provide for the equitable allocation of reasonable fees and other charges among members and other persons using any facility or system which the Association operates or controls, in that it allows the NASD to partially recover the substantial costs involved in the waiver review process.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The rule change is effective upon filing, pursuant to section 19(b)(3)(A) of the Act in that it affects assessments and fees imposed by the Association exclusively upon its members. At any time within 60 days of the filing of a rule change pursuant to section 19(b)(3)(A) of the Act, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by September 3, 1991.

For the Commission by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 91–19040 Filed 8–9–91; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

August 6, 1991.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Diasonics, Inc.
Common Stock, $0.01 Par Value (File No. 7–7134)
READICARE, Inc.
Common Stock, $0.01 Par Value (File No. 7–7135)
NutMeg Industries
Common Stock, $0.01 Par Value (File No. 7–7136)
IMCO Recycling, Inc.
Common Stock, $0.10 Par Value (File No. 7–7137)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before August 27, 1991, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the

Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 91–19045 Filed 8–9–91; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Areas #2518 and #2529]

Minnesota (With Contiguous Counties in Wisconsin) Declaration of Disaster Loan Area

Winona County and the contiguous counties of Fillmore, Houston, Olmsted, and Wabasha in the State of Minnesota, and Buffalo, La Crosse, and Trempleleau Counties in the State of Wisconsin constitute a disaster area as a result of damages caused by flash flooding which occurred on the evening of July 21, 1991 in the Town of Stockton. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on October 3, 1991 and for economic injury until the close of business on May 4, 1992 at the address listed below: Disaster Area 2 Office, Small Business Administration, One Baltimore Place, suite 300, Atlanta, GA 30308, or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage	
Homeowners with Credit Available Elsewhere	8.000
Homeowners without Credit Available Elsewhere	4.000
Businesses with Credit Available Elsewhere	8.000
Businesses and non-profit Organizations without Credit Available Elsewhere	4.000
Others (Including Non-Profit Organizations) with Credit Available Elsewhere	9.125
For Economic Injury:	
Businesses and Small Agricultural Cooperatives without Credit Available Elsewhere	4.000

The numbers assigned to this disaster for physical damage are 251806 for Minnesota and 251906 for Wisconsin. For economic injury the numbers are 736300 for Minnesota and 736400 for Wisconsin.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: August 2, 1991.

Patricia Saiki,

Administrator.

[FR Doc. 91–19078 Filed 8–9–91; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 1447]

Determination Under Section 4(a) of the International Narcotics Control Act of 1990

Pursuant to the authority vested in me by section 4(a) of the International Narcotics Control Act of 1990 and Presidential Determination No. 91–20, dated January 25, 1991, I hereby determine the following:

(1) Peru is implementing programs to reduce the flow of cocaine to the United States in accordance with a bilateral or multilateral agreement, to which the United States is a party, that contains specific, quantitative and qualitative performance criteria with respect to those programs;

(2) The armed forces and law enforcement agencies of Peru are not engaged in a consistent pattern of gross violations of internationally recognized human rights, and the Government of Peru has made significant progress in protecting internationally recognized human rights, particularly in:

(A) Ensuring that torture, cruel, inhuman, or degrading treatment or punishment, incommunicado detention or detention without charges and trial, disappearances, and other flagrant denials of the right to life, liberty or security of the person are not practiced; and

(B) Permitting an unimpeded investigation of alleged violations of internationally recognized human rights, including providing access to places of detention, by appropriate international organizations (including nongovernmental organizations such as the International Committee of the Red Cross) or groups acting under the authority of the United Nations or the Organization of American States; and

(3) The Government of Peru has effective control over police and military operations related to counter-narcotics and counterinsurgency activities.

Lawrence S. Eagleburger,

Acting Secretary.

[FR Doc. 91–19098 Filed 8–9–91; 8:45 am]

BILLING CODE 4710–10–M

[Public Notice 1449]

Shipping Coordinating Committee; Meeting Sub-Committee on Safety of Life at Sea Working Group on Lifesaving, Search and Rescue

The Working Group on Lifesaving, Search and Rescue of the Sub-Committee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 9:30 a.m. on August 29, 1991 in room 4315 at Coast Guard Headquarters, 2100 Second Street SW., Washington, DC.

The purpose of the meeting is to review the agenda items and to prepare U.S. positions for the 23rd Session of the International Maritime Organization (IMO) Sub-Committee on Lifesaving, Search and Rescue, scheduled for January 13–17, 1992, at the IMO Headquarters in London. Among other things, the items of particular interest are:

—Review and amendment of SOLAS Chapter III, to clarify the intent of the chapter and to cover more specifically various lifesaving arrangements (such as freefall lifeboats and marine evacuation systems) which are recently gaining wider application.
—406 MHz satellite Emergency Position Indicating Radio Beacon (EPIRB) coding and registration.
—Method and content of safety instruction of passengers on ships.
—Role of the human element in maritime casualties (including on board communication problems).
—Differences in safety standards between "new" and "existing" ships.
—Location of symbols relating to the lifesaving appliances and arrangements.

Members of the public may attend the meeting up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Kurt J. Heinz, U.S. Coast Guard Headquarters (G–MVI–3/1404), 2100 Second Street SW., Washington, DC 20593–0001 or by calling: (202) 267–1444.

Dated: July 31, 1991.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 91–19099 Filed 8–9–91; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice 1450]

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea Working Group on Radiocommunications; Meetings

The Working Group on Radiocommunications of the Subcommittee on Safety of Life at Sea will conduct open meetings at 9:30 a.m. on September 19, 1991 and November 21, 1991. These meetings will be held in the Department of Transportation Headquarters Building, 400 Seventh Street, SW., Washington, DC 20950.

The purpose of these meetings is to prepare for the 38th Session of the International Maritime Organization (IMO) Subcommittee on Radiocommunications which is scheduled for July 1992 at the IMO headquarters in London, England.

Agenda items included preparation for the 38th Session, primarily related to the implementation of the Global Maritime Distress and Safety System (GMDSS).

Members of the public may attend these meetings up to the seating capacity of the room.

For further information and meeting room number, contact Mr. Ronald J. Grandmaison, U.S. Coast Guard Headquarters (G–TTM), 2100 Second Street SW., Washington, DC 20593–0001. Telephone: (202) 267–1389.

Dated: July 29, 1991.

Geoffrey Ogden,

Chairman, Shipping Coordinating Committee.

[FR Doc. 91–19100 Filed 8–9–91; 8:45 am]

BILLING CODE 4710–7–M

Bureau of Intelligence and Research

[Public Notice 1451]

Announcement of Supplemental FY 1991 Soviet-East European Studies Grant Recipients

On April 27, 1991, the U.S. Department of State approved the April 8, 1991, recommendations of the Soviet-Eastern European Studies Advisory Committee for awards in the competition which ended February 15, 1991.

1. American Council of Learned Societies

Grant: $200,948.

Purpose: Fellowships for German-American collaborative research in East European and Soviet studies.

Contact: Jason H. Parker, or Steven C. Wheatley, ACLS, 228 East 45th Street, New York, New York 10017–3398 (212) 697–1505, Fax (212) 949–8058.

2. American Council of Teachers of Russian/American Council for Collaboration in Education and Language Study

Grant: $25,000.

Purpose: To award research/language training fellowships in non-Russian areas of the USSR.

Contact: Dan E. Davidson, Director, USSR Program Group, ACTR/ACCELS, Fifth Floor, 1619 Massachusetts Avenue NW., Washington, DC 20036 (202) 328–2287, Fax (202) 328–8068.

3. Council on International Educational Exchange

Grant: $100,000.

Purpose: To award fellowships for "Social Sciences Program for Advanced Students of Russian" at Leningrad State University.

Contact: Damon B. Smith, Deputy Executive Director, Cooperative Russian Language Program/ CIEE, 205 East 42nd Street, New York, NY 10017 (212) 661–1414, Fax (212) 972–3231.

4. Center on East-West Trade, Investment, and Communications at Duke University

Grant: $225,000.

Purpose: To support Mid-Career Training Program to increase U.S. understanding of the Soviet Republics: the first year on Soviet Central Asia.

Contact: Jerry F. Hough, Center on East-West Trade, Investment, and Communications, Duke University, 2114 Campus Drive, Durham, NC 27706 (919) 684-5551, Fax (919) 684-8749.

5. Institute on International Education

Grant: $200,000.

Purpose: To award grants to advanced graduate students for policy-related research on East Central Europe.

Contact: Mary E. Kirk, Program Manager, East Central Europe and Soviet Union, Institute on International Education, 809 United Nations Plaza, New York, NY 10017–3580 (212) 883–8200, Fax (212) 984–5452.

6. International Research and Exchange Board

Grant: $927,771.

Purpose: To facilitate access for Americans to the USSR and Eastern Europe through: Short-term research grants; special projects; developmental fellowships; predeparture orientation; individual research exchanges; dissemination of research findings; and Union Republics research residents.

Contact: Barbara Sassone, IREX, 126 Alexander Street, Princeton, NJ 08540–7102 (609) 683–9500, Fax (609) 683–1511.

7. Joint Committee on Soviet Studies

Grant: $531,245.

Purpose: To support a national program for grants to Slavic libraries, and maintenance of the American Bibliography of Slavic and East European Studies.

Contact: Robert Huber, Staff Associate, JCSS/Social Science Research Council, 605 Third Avenue, New York, NY 10158 (212) 661–0280, Fax (212) 370–7896.

8. National Academy of Sciences

Grant: $225,000.

Purpose: To support training for young researchers in Energy and Environmental Sciences to Poland, Romania, and USSR.

Contact: Gary R. Waxmonsky, Associate Director, Office of Soviet and East European Affairs, NAS, 2101 Constitution Avenue, NW.—HA–166, Washington, DC 20418 (202) 334–2644, Fax (202) 334–2614.

9. National Council for Soviet and East European Research

Grant: $759,123.

Purpose: To support a national competition among American institutions of higher education and non-profit corporations for postdoctoral research projects on the USSR and Eastern Europe.

Contact: Robert Randolph, Executive Director, NCSEER, 1755 Massachusetts, Avenue, NW., suite 304, Washington, DC 20036 (202) 387–0168, Fax (202) 234–5068.

Dated: August 1, 1991.

Kenneth E. Roberts,

Executive Director, Soviet-Eastern European Studies Advisory Committee.

[FR Doc. 91–19097 Filed 8–9–91; 8:45 am]

BILLING CODE 4710–32–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended August 2, 1991

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: 47663

Date filed: July 30, 1991

Parties: Members of the International Air Transport Association

Subject: SNATC/2040 dated July 24, 1991, R–1 to R–4, US-Europe Reso No. 19 (UK–US and Washington-Madrid fares)

Proposed Effective Date: September 1, 1991

Docket Number: 47664
Date filed: July 30, 1991
Parties: Members of the International Air Transport Association
Subject: SNATC/2041 dated August 1, 1991, R–1, Resolution No. 19
Proposed Effective Date: December 31, 1991

Docket Number: 47672
Date filed: August 2, 1991
Parties: Members of the International Air Transport Association
Subject: TC2 MV/P 0455 dated July 5, 1991, Mail Vote 504 (Fares from Algeria), R–1 to R–11
Proposed Effective Date: August 15, 1991

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 91–19046 Filed 8–9–91; 8:45 am]
BILLING CODE 4910–62–M

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended August 2, 1991

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 application, or motion 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: 47674
Date filed: August 2, 1991
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 3, 1991
Description: Application of Caribbean Airways Jamaica Limited, pursuant to section 402 of the Act and subpart Q of the Regulations, applies for a foreign air carrier permit to enable it to engage in non-scheduled and charter foreign air transportation of persons, property and mail between a point or points in Jamaica to Miami or Fort Lauderdale, Florida.

Docket Number: 47675
Date filed: August 2, 1991
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 30, 1991
Description: Joint Application of Delta Air Lines, Inc. and Pan American World Airways, Inc., pursuant to section 401(h) of the Act and subpart Q of the Regulations, apply to the Department of Transportation for approval of the transfer to Delta of certain Pan American Certificate and Exemption Authorities.

Docket Number: 46532
Date filed: August 2, 1991
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: August 30, 1991
Description: Second Amendment to Application of LTU Lufttransport-Unternehmen GmbH. & Co. KG, for Amendment of its Foreign Air Carrier Permit, requests addition of Atlanta, Georgia as a coterminal point for service to the United States.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 91–19047 Filed 8–9–91; 8:45 am]
BILLING CODE 4910–62–M

Office of the Secretary

[Notice 91–12]

Senior Executive Service Performance Review Boards (PRB) Membership

AGENCY: Department of Transportation (DOT).

ACTION: Notice.

SUMMARY: DOT publishes the names of the persons selected to serve on the various Departmental Performance Review Boards (PRB) established by DOT under the Civil Service Reform Act.

FOR FURTHER INFORMATION CONTACT: Glenda M. Tate, Director of Personnel, and Executive Secretary, DOT Executive Resources Board, (202) 366–4088.

SUPPLEMENTARY INFORMATION: Title 5 U.S.C. 4312 requires that each agency implement a performance appraisal system making senior executives accountable for organizational and individual goal accomplishment. As part of this system, 5 U.S.C. 4314(c) requires each agency to establish one or more PRBs, the function of which is to review and evaluate the initial appraisal of a senior executive's performance by the supervisor and to make recommendations to the final rating authority relative to the performance of the senior executive.

The persons named below have been selected to serve on one or more Departmental PRBs.

Issued in Washington, DC, on August 5, 1991.

Jon H. Seymour,
Assistant Secretary for Administration.

Department of Transportation Senior Executive Service Performance Review Boards

Office of the Secretary

Samuel Podberesky, Assistant General Counsel for Aviation Enforcement and Proceedings
Thomas Herlihy, Assistant General Counsel for Legislation
Neil R. Eisner, Assistant General Counsel for Regulation and Enforcement
Arnold Levine, Director, Office of International Transportation and Trade
Richard F. Walsh, Director, Office of Economics
Patricia Parrish, Director, Office of Management Planning
Linda Higgins, Director, Office of Acquisition and Grant Management
James M. Craun, Deputy Director, Office of Aviation Analysis
Richard B. Chapman, Deputy Director, Office of Information Resource Management
Marilyn S. Richmond, Deputy Assistant Secretary for Governmental Affairs
Elizabeth Monro, Special Assistant for Aviation Policy
Stephanie Lee-Miller, Director, Office of Commercial Space Transportation
Leon C. Watkins, Assistant Administrator for Civil Rights, Federal Aviation Administration
John E. Turner, Associate Administrator for National Airspace System Development Federal Aviation Administration
Nan K. Harllee, Deputy Associate Administrator for Policy and International Affairs, Maritime Administration

United States Coast Guard

Glenda M. Tate, Director, Office of Personnel Office of the Secretary
Katherine E. Collins, Director, Office of Budget, Office of the Secretary
John P. Eicher, Director, Office of Program Management Support, Federal Highway Administration
Leon C. Watkins, Assistant Administrator for Civil Rights, Federal Aviation Administration
RADM G.D. Passmore, Chief, Office of Personnel and Training
RADM A.E. Henn, Chief, Office of Marine Safety, Security and Environmental Protection
RADM W.P. Leahy, Jr., Chief, Office of Law Enforcement and Defense Operations
RADM R.M. Polant, Chief, Office of Command, Control and Communications
RADM K.H. Williams, Resource Director/ Comptroller
Elizabeth R. Monro, Special Assistant for Aviation Policy, Office of the Secretary

Federal Aviation Administration

Arnold Aquilano, Associate Administrator for Airway Facilities
Joan W. Bauerlein, Director, Office of International Aviation

Theodore R. Beckloff, Regional Administrator, Alaskan Region
Monte R. Belger, Associate Administrator for Aviation Standards
Dorothy H. Berry, Deputy Associate Administrator for Human Resource Management
Carolyn C. Blum, Director, Logistics Service
Anthony J. Broderick, Associate Administrator for Regulation and Certification
Garland P. Castleberry, Regional Administrator, Southern Region
Clyde M. DeHart, Jr., Regional Administrator, Southwest Region
Arlene B. Feldman, Regional Administrator, New England Region
Darlene Freeman, Deputy Associate Administrator for Aviation Standards
Margaret Gilligan, Chief of Staff
Brooks C. Goldman, Associate Administrator for Administration
Theron A. Gray, Deputy Associate Administrator for Appraisal
Leonard L. Griggs, Assistant Administrator for Airports
Charles H. Huettner, Deputy Assistant Administrator for Aviation Safety
Frederick M. Isaac, Regional Administrator, Northwest Mountain Region
Homer C. McClure, Director, Aeronautical Center
Herbert R. McLure, Associate Administrator for Human Resource Management
Michael C. Moffet, Assistant Administrator for Policy, Planning, and International Aviation
Hugh L. O'Neill, Assistant Administrator for Public Affairs
Daniel J. Peterson, Regional Administrator, Eastern Region
Edward J. Phillips, Regional Administrator, Great Lakes Region
William H. Pollard, Associate Administrator for Air Traffic
Martin Pozesky, Associate Administrator for System Engineering and Development
Kenneth P. Quinn, Chief Counsel
Stanley Rivers, Regional Administrator, Central Region
Raymond A. Salazar, Manager, Center for Management Development
Carl B. Shellenburg, Regional Administrator, Western-Pacific Region
Jacqueline L. Smith, Deputy Regional Administrator, Great Lakes Region
Orlo K. Steele, Assistant Administrator for Civil Aviation Security
Quentin S. Taylor, Deputy Associate Administrator for Airports
John E. Turner, Associate Administrator for National Airspace System Development
Leon C. Watkins, Assistant Administrator for Civil Rights
Brenda Yager, Assistant Administrator for Government and Industry Affairs
Nan K. Harllee, Deputy Associate Administrator for Policy and International Affairs, Maritime Administration
Earnest Hawkins, Associate Administrator for Administration, Maritime Administration
William T Hudson, Director, Office of Civil Rights, Office of the Secretary
Elizabeth R. Monro, Special Assistant for Aviation Policy, Office of the Secretary
George S. Moore, Jr., Associate Administrator for Administration, Federal Highway Administration

Federal Highway Administration

George S. Moore, Jr., Associate Administrator for Administration
Anthony R. Kane, Associate Administrator for Program Development
Leon N. Larson, Regional Administrator, Georgia
Richard P. Landis, Associate Administrator for Motor Carriers
Dennis C. Judycki, Associate Administrator for Safety and System Applications
Madeleine S. Bloom, Director, Office of Policy Development
Earnest Hawkins, Associate Administrator for Administration, Maritime Administration
William J. Watt, Associate Administrator for Policy, Federal Railroad Administration

Federal Railroad Administration

S. Mark Lindsey, Chief Counsel
Raymond J. Rogers, Associate Administrator for Administration
Philip Olekszyk, Deputy Associate Administrator for Safety
James T. McQueen, Associate Administrator for Railroad Development
William J. Watt, Associate Administrator for Policy
Rosalind A. Knapp, Deputy General Counsel, Office of the Secretary
William T. Hudson, Director, Office of Civil Rights, Office of the Secretary

National Highway Traffic Safety Administration

Barry I. Felrice, Associate Administrator for Rulemaking
Adele L. Derby, Associate Administrator for Regional Operations
George L. Parker, Associate Administrator for Research and Development
P. Jackson Rice, Chief Counsel
Alicia Casanova, Director, Office of Small and Disadvantaged Business Utilization, Office of the Secretary

Urban Mass Transportation Administration

Nancy M. Butler, Director of Communications and External Affairs
Earnest Hawkins, Associate Administrator for Administration, Maritime Administration
Kevin E. Heanue, Director, Office of Environment and Planning, Federal Highway Administration
Rosalind A. Knapp, Deputy General Counsel, Office of the Secretary
Rose A. McMurray, Associate Administrator for Management and Administration, Research and Special Programs Administration
Philip Olekszyk, Deputy Associate Administrator for Safety, Federal Railroad Administration

Maritime Administration

Reginald A. Bourdon, Associate Administrator for Policy and International Affairs
Richard E. Bowman, Associate Administrator for Maritime Aids
Harlan T. Haller, Associate Administrator for Shipbuilding and Ship Operations
Earnest Hawkins, Associate Administrator for Administration
Nan K. Harllee, Deputy Associate Administrator for Policy and International Affairs
W. Patrick Morris, Chief Counsel
William T. Hudson, Director, Office of Civil Rights, Office of the Secretary

Research and Special Programs Administration

Wallace D. Burnett, Deputy Assistant Secretary for Budget and Programs, Office of the Secretary
Katherine E. Collins, Director, Office of Budget, Office of the Secretary
Franz K. Gimmler, Deputy Associate Administrator for Safety, Urban Mass Transportation Administration
Frank L. Hassler, Assistant Director, Office of Information Resources
Robert A. Knisely, Special Assistant and Director for Drug Enforcement and Program Compliance, Office of the Secretary
Arnold Levine, Director, Office of International Transportation and Trade, Office of the Secretary
Rose A. McMurray, Associate Administrator for Management and Administration
Elizabeth R. Monro, Special Assistant for Aviation Policy, Office of the Secretary
Alan I. Roberts, Associate Administrator for Hazardous Materials Safety
George W. Tenley, Jr., Associate Administrator for Pipeline Safety
Frank F.C. Tung, Deputy Director, Volpe National Transportation Systems Center

Office of the Inspector General

Melissa J. Allen, Deputy Assistant Secretary for Administration, Office of the Secretary
William D. Colvin, Inspector General, National Aeronautics and Space Administration
Theron Gray, Deputy Associate Administrator for Appraisal, Federal Aviation Administration
Chris Greer, Assistant Inspector General for Audits, Department of Housing and Urban Development
Edward Hefferon, Deputy Inspector General, General Services Administration
Jacquelyn K. Howard, Assistant Inspector General for Management and Policy, Department of Housing and Urban Development
Steve McNamara, Acting Assistant Inspector General for Auditing, Department of Education
Everett Mosely, Deputy Assistant Inspector General for Auditing, Department of Agriculture
Thomas Roslewicz, Deputy Inspector General for Audit Services, Department of Health and Human Services
Walter R. Somerville, Director, Office of Civil Rights, United States Coast Guard
Steven Switzer, Deputy Inspector General, Resolution Trust Fund
Leon C. Watkins, Assistant Administrator for Civil Rights, Federal Aviation Administration

Michael Zimmerman, Deputy Inspector General, Department of Commerce

[FR Doc. 91-19048 Filed 8-9-91; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

Receipt of Noise Compatibility Program and Request for Review for Lanai Airport, Lanai City, Lanai, Hawaii

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for Lanai Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96-193) (hereinafter referred to as "the Act") and 14 CFR part 150 by the State of Hawaii, Department of Transportation. This program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR part 150 for Lanai Airport were in compliance with applicable requirements effective February 1, 1990. The proposed noise compatibility program will be approved or disapproved on or before January 28, 1992.

EFFECTIVE DATE: The effective date of the start of FAA's review of the noise compatibility program is August 1, 1991. The public comment period ends September 30, 1991.

FOR FURTHER INFORMATION CONTACT: David J. Welhouse, Airport Engineer/Planner. Honolulu Airports District Office, Federal Aviation Administration, P.O. Box 50244, Honolulu, Hawaii 96850. Telephone 808/541-1243. Street Address: 300 Ala Moana Boulevard, room 7116, Honolulu, Hawaii 96813. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program for Lanai Airport which will be approved or disapproved on or before January 28, 1992. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the noise compatibility program for Lanai Airport, effective on August 1, 1991. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before January 28, 1992.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., room 617, Washington, DC 20591

Federal Aviation Administration, Western-Pacific Region Office, 15000 Aviation Boulevard, room 3E24, Hawthorne, California 90261

Federal Aviation Administration, Honolulu Airports District Office, 300 Ala Moana Boulevard, room 7116, Honolulu, Hawaii 96813

State of Hawaii, Department of Transportation, Airports Division, Honolulu International Airport, Gate 31, Honolulu, Hawaii 96819

State of Hawaii, Department of Transportation, Airport District Office, Lanai Airport, Lanai City, Lanai, Hawaii

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California on August 1, 1991.

Herman C. Bliss,

Manager, Airport Division, Western-Pacific Region.

[FR Doc. 91-19062 Filed 8-9-91; 8:45 am]

BILLING CODE 4910-13-M

Federal Aviation Administration

Receipt of Noise Compatibility Program and Request for Review for Lihue Airport, Lihue, Kauai, Hawaii

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for Lihue Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96-193) (hereinafter referred to as "the Act") and 14 CFR part 150 by State of Hawaii, Department of Transportation. This program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR part 150 for Lihue Airport were in compliance with applicable requirements effective May 17, 1990. The proposed noise compatibility program will be approved or disapproved on or before January 28, 1992.

EFFECTIVE DATE: The effective date of the start of FAA's review of the noise compatibility program is August 1, 1991. The public comment period ends September 30, 1991.

FOR FURTHER INFORMATION CONTACT: David J. Welhouse, Airport Engineer/Planner, Honolulu Airports District Office, Federal Aviation Administration, P.O. Box 50244, Honolulu, Hawaii 96850. Telephone 808/541-1243. Street Address: 300 Ala Moana Boulevard, room 7116, Honolulu, Hawaii 96813. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program for Lihue Airport which will be approved or disapproved on or before January 28, 1992. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the noise compatibility program for Lihue Airport, effective on August 1, 1991. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal period, limited by law to a maximum of 180 days, will be completed on or before January 28, 1992.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration,
800 Independence Avenue, SW., room 617,
Washington, DC 20591

Federal Aviation Administration,
Western-Pacific Region Office,
15000 Aviation Boulevard, room 3E24,
Hawthorne, California 90261

Federal Aviation Administration,
Honolulu Airports District Office,
300 Ala Moana Boulevard, room 7116,
Honolulu, Hawaii 96813

State of Hawaii,
Department of Transportation,
Airport Division,
Honolulu International Airport, Gate 31,
Honolulu, Hawaii 96819

State of Hawaii,
Department of Transportation,
Airport Division,
District Office Manager,
Lihue Airport, Lihue, Kauai, Hawaii 96766

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California on August 1, 1991.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 91–19060 Filed 8–9–91; 8:45 am]

BILLING CODE 4910–13–M

Acceptance Noise Exposure Maps for Kahului Airport, Kahului, Maui, HI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the State of Hawaii, Department of Transportation for Kahului Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps is July 31, 1991.

FOR FURTHER INFORMATION CONTACT: David J. Welhouse, Airport Engineer/Planner, HNL–621, Federal Aviation Administration, Honolulu Airports District Office, P.O. Box 50244, Honolulu, Hawaii 96850–0001, Telephone (808) 541–1243.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Kahului Airport are in compliance with applicable requirements of part 150 effective July 31, 1991.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the State of Hawaii, Department of Transportation. The specific maps under consideration are Figures 4–1 and 6–1 in the submission. The FAA has determined that these maps for Kahului Airport are in compliance with applicable requirements. This determination is effective on July 31, 1991. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the maps depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section

103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., room 617, Washington, DC 20591

Federal Aviation Administration, Western-Pacific Region, Airports Division, room 3E24, 15000 Aviation Boulevard, Hawthorne, California 90261

Federal Aviation Administration, Honolulu Airports District Office, 300 Ala Moana Boulevard, room 7116, Honolulu, Hawaii 96813

State of Hawaii, Department of Transportation, Airports Division, Honolulu International Airport, Gate 31, Honolulu, Hawaii 96819

State of Hawaii, Department of Transportation, Airports Division, District Office Manager, Kahului Airport, Kahului, Maui, Hawaii 96732

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California on July 31, 1991.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 91–19061 Filed 8–9–91; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement; Frederick County, VA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project to be located in Frederick County, Virginia.

FOR FURTHER INFORMATION CONTACT: Robert B. Welton, District Engineer, Federal Highway Administration, P.O. Box 10045, Richmond, VA 23240–0045, Telephone 804/771–2682.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Virginia Department of Transportation (VDOT), and the County of Frederick, will prepare a draft environmental impact statement (DEIS) on a proposal to extend Route 37 in Frederick County The proposed improvement would involve construction of a multi-lane, limited access, bypass, east of the City of Winchester, VA. The proposed southern terminus is Interstate 81 and existing Route 37; the northern terminus is also Interstate 81 and existing Route 37. The length for the proposed roadway is approximately 14.0 miles.

Improvements to the existing corridor are considered necessary to provide for the efficient movement of existing and projected traffic and provide relief from heavy congestion on the existing Route 37, U.S. Routes 11, 522 and 17/50, Virginia Route 7, and Interstate 81. This proposal will include new interchanges and connector routes for U.S. Routes 522, 17/50, Interstate 81 and other arterials in Frederick County. The proposed improvements will extend existing Route 37 on the west side of the City of Winchester to the east side, thereby completing a circumferential roadway around the City of Winchester.

Alternatives under consideration include: (1) Taking no action (no build); (2) transportation system management improvements (improve existing roadway network); (3) mass transit; (4) constructing a mult-lane, limited access bypass on new location. The various build alternatives will incorporate variations of vertical and horizontal grade alignment.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A series of public informational meetings and a public hearing will be held in the future.

Public notice will be given indicating the time and place of the meetings and hearing. The DEIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting is planned at this time.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the DEIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research Planning and Construction. The provisions of Executive Order 12372 regarding State and local review of Federal and Federally assisted programs and projects apply to this project.)

Issued on: August 5, 1991.

Robert B. Welton,

District Engineer, Richmond, Virginia.

[FR Doc. 91–19101 Filed 8–9–91; 8:45 am]

BILLING CODE 4910–22–M

Federal Railroad Administration

[Docket No. H–91–3]

Petition for Test of New Technologies; CSX Transportation, Inc.

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that CSX Transportation, Inc. (CSXT) has petitioned the Federal Railroad Administration (FRA) for authorization to establish a test program on CSXT's Atlanta and Mobile Divisions that evaluates if a computerized system of recording Hours of Duty information will meet the requirements of §§ 228.9 and 228.11 of FRA's regulations as set forth in "Subpart B–Records and Reporting."

Section 228.9, entitled "Railroad records; general," requires (1) that the record be signed by the employee whose time on duty is being recorded or, in the case of train and engine crews, signed by the ranking crewmember. CSXT states that it seeks a demonstration project of the records signature requirement of the "Hours of Service of Railroad Employees" in order to modernize recordkeeping. CSXT proposed that each employee will have his or her own personal identification number ("pin"), which will remain confidential to the employee. When accessing the computer for input of the hours of service record, required by § 228.11, the pin number will not appear on the computer screen when the employee enters his or her number.

Instead of the employee physically signing the duty record pursuant to § 228.9(a)(1), the employee's pin will serve as "signature."

FRA anticipates a test period of six months from September 1, 1991 through March 1, 1992, at which time results of the test will be reviewed for further consideration. During the test period, the CSXT will not be relieved from maintaining a written signed record by the employee or the ranking employee as required by § 228.9.

During the test period FRA will be able to access the computer screen locations to ensure compliance in reporting the necessary information required by FRA for the Hours of Service recordkeeping regulation. The petitioner requests that this test application, pursuant to 49 CFR 228.9, be approved. Upon completion of the test program period, CSXT will present full

documentation in support of the results. CSXT believes that this proposal will comply with the spirit and purpose of the regulation.

Interested persons are invited to participate in this proceeding by submitting written views and comments. FRA has not scheduled a public hearing since the facts do no appear to so warrant. If any interested party desires an opportunity for oral comment, he or she should notify FRA in writing before the end of the comment period and specify the basis for his or her request.

Communications concerning this proceeding should identify the appropriate Waiver Petition Docket No. H–91–3 and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Communications received before September 6, 1991, will be considered by FRA before final action is taken. Comments received after that will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments, during regular business hours (9 a.m. to 5 p.m.) in room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Issued in Washington, DC on August 5, 1991.

Grady C. Cothen, Jr.,

Associate Administrator for Safety.

[FR Doc. 91–19022 Filed 8–9–91; 8:45 am]

BILLING CODE 4910–06–M

[Waiver Petition Docket Number H–91–4]

Petition for a Waiver of Compliance; Metro-North Commuter Railroad Co.

In accordance with 49 CFR § 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received from Metro-North Commuter Railroad Company a request for exemptions from or waivers of compliance with a requirement of Federal rail safety standards. The petition is described below, including the regulatory provisions involved, and the nature of the relief being requested.

Metro-North Commuter Railroad Company

Metro-North Commuter Railroad Company (MNCW) is seeking a 3-year test waiver of compliance from § 229.29(a) of the Railroad Locomotive Safety Standards, 49 CFR part 229. MNCW is requesting that it be permitted to extend the clean, oil, test and stencil (COT&S) period from 24 months to 36 months on 110 test cars equipped with RT5A and GRB–1 Type Brake Equipments. The test cars are part of the 616 "M" Series electric railcar fleet built between 1971 and 1987. Cars will be placed into the test as they receive their present biennial inspection and test. Each valve portion will be painted for identification as a test valve. The performance of the test cars will be monitored during the test and at the conclusion of the 36 month period, an operational inspection will be made on each car. Rack tests will be performed on each set of equipment and all valves including brake units will be disassembled and inspected. All data pertinent to the brake equipment on each car will be recorded during the 3-year period. If conditions so justify, MNCW will petition for a permanent extension for all "M" series cars at that time.

In addition, 10 of the test cars will be equipped with state of the art air filtration systems. At the conclusion of the 3-year test period, the brake equipment on these cars will be compared to that on the other 100 cars to determine if the special filters can justify a longer cleaning period. At that time, FRA will determine if a 4-year test is warranted for the 10 cars.

The railroad reports that due to improved maintenance procedures, they have reduced the number of train delays by 1/3 during each of the last 3 years. The installation of dryers/filters in the air system along with long life rubber products have contributed to a highly reliable brake system. By extending the car overhaul and brake maintenance from 2 to 3 years, the projected availability will be increased by almost 400 car days per year.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number H–91–4) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Communications received before September 23, 1991, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m. to 5 p.m.) in room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Issued in Washington, DC on August 5, 1991.

Grady C. Cothen, Jr.,

Associate Administrator for Safety.

[FR Doc. 91–19023 Filed 8–9–91; 8:45 am]

BILLING CODE 4910–06–M

Sunshine Act Meetings

Federal Register
Vol. 56, No. 155
Monday, August 12, 1991

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION
August 6, 1991.

TIME AND DATE: 10:00 a.m., Thursday, August 1, 1991.

PLACE: Room 600, 1730 K Street, NW., Washington, D.C.

STATUS: Closed (Pursuant to 5 U.S.C. § 552b(c)(10)).

MATTERS TO BE CONSIDERED: In addition to the previously announced items, the Commission also considered the following item:

2. *Lancashire Coal Company*, Docket No. PENN 89-147-R, etc. Issues included Lancashire Coal Company's petition for reconsideration of the Commission's June 11, 1991, decision.

It was determined by a unanimous vote of Commissioners that this item be included and no earlier announcement of the addition was possible.

CONTACT PERSON FOR MORE INFORMATION: Sandra G. Farrow (202) 653-5629.

Sandra G. Farrow.

[FR Doc. 91-19256 Filed 8-9-91; 3:54 pm]

BILLING CODE 6735-01-M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 10:00 a.m., August 19, 1991.

PLACE: 5th Floor, Conference Room, 805 Fifteenth Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the last meeting.
2. Thrift Savings Plan activities report by the Executive Director.
3. Quarterly review of investment policy.
4. Review of KPMG Peat Marwick audit report entitled "Comments and Recommendations to the TIB Staff Arising from Full and Limited Scope Fiduciary Compliance Audits of Selected Federal Agencies' Implementation and Maintenance of Systems and Records Supporting the FERSA Thrift Savings Plan."
5. Review of Arthur Andersen & Co. review of June 30, 1991, interim financial statements of the Thrift Savings Fund.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 523-5660.

Dated: August 7, 1991.

Francis X. Cavanaugh,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 91-19137 Filed 8-7-91; 4:42 pm]

BILLING CODE 6760-01-M

RESOLUTION TRUST CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 4:18 p.m. on Tuesday, August 6, 1991, the Board of Directors of the Resolution Trust Corporation met in closed session to consider: (1) the resolution of failed thrift institutions; (2) contracting matters relating to local area network procurement; (3) the sale of assets; (4) recommendations regarding the early termination of a FSLIC Assistance Agreement; and (5) certain litigation matters.

In calling the meeting, the Board determined, on motion of Vice Chairman Andrew C. Hove, Jr., seconded by Director Robert L. Clarke (Comptroller of the Currency), and concurred in by Director C.C. Hope (Appointive) and Director T. Timothy Ryan Jr. (Director of Office of Thrift Supervision), that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(8), (c)(9)(A)(ii), (c)(9)(B) and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b).

The meeting was held in the Board Room of the Federal Deposit Insurance Corporation Building located at 550—17th Street, N.W., Washington, DC.

Dated: August 7, 1991.

Resolution Trust Corporation.

John M. Buckley, Jr.,

Executive Secretary.

[FR Doc. 91-19177 Filed 8-8-91; 10:32 am]

BILLING CODE 6714-01-M

Corrections

Federal Register
Vol. 56, No. 155
Monday, August 12, 1991

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1191

[Docket No. 90-2]

RIN 3014-AA09

Americans With Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities

Correction

In rule document 91-17481 beginning on page 35408 in the issue of Friday, July 26, 1991, make the following correction:

§ 1191.1 [Corrected]

On page 35453, in the third column, in the tenth line from the bottom of the page, the section heading now reading "§ 1191.11 Accessibility guidelines." should read "§ 1191.1 Accessibility guidelines.".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 910527-1127]

RIN 0693-AA85

Proposed Federal Information Processing Standard (FIPS) for Government Network Management Profile (GNMP)

Correction

In notice document 91-18020 beginning on page 36136 in the issue of Wednesday, July 31, 1991, make the following correction:

On page 36137, in the third column, in paragraph 11., in the second line, "January 31, 1992" should read "(six months after date of publication of final document in the Federal Register).

BILLING CODE 1505-01-D

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1 and 3

Adverse Registration Actions and Other Registration Matters

Correction

In proposed rule document 91-18022 beginning on page 37026 in the issue of Friday, August 2, 1991, make the following corrections:

1. On page 37026, in the third column, under the "**DATES**" caption, the date should read "October 1, 1991".

§ 3.12 [Corrected]

2. On page 37041, in the third column, in § 3.12(i)(2), in the eighth line, "(i)(1)(ii)(iv)" should read "(i)(1)(ii)-(iv)".

§ 3.32 [Corrected]

3. On page 37044, in the first column, in § 3.32(e)(1), in the first line, "reqistrant" should read "registrant".

4. On the same page, in the second column, in § 3.32(h), in the tenth line from the end of the paragraph, "§ 3.21(c)" should read "§ 3.211(c)".

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

48 CFR Parts 232 and 252

Department of Defense Federal Acquisition Regulation Supplement; Contract Financing

Correction

In rule document 91-16405 beginning on page 31341 in the issue of Wednesday, July 10, 1991, make the following corrections:

1. On the same page, in the second column, in the first full paragraph, in the eighth line from the bottom "related" should read "relate".

2. In the same column, in the table at the bottom, in the heading, in the first column of the table "interstrate" should read "interest".

3. On the same page, in the third column, in the first paragraph, in the fourth line from the bottom "of" should read "for".

4. In the same column, in the second paragraph, in the fourth line, "232.501-1(S-71)." should read "232.502-1(S-71)."

5. On page 31342, in the first column, in the second full paragraph, in the first line insert "does" following "rule".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

48 CFR Parts 915, 917, 950 and 970

Acquisition Regulation

Correction

In rule document 91-14086 beginning on page 28099 in the issue of Wednesday, June 19, 1991, make the following corrections:

1. On page 28103, in the second column, in the table, above entry "85" insert "Satisfactory".

2. On the same page, in the same column, in the same table, after entry "81" remove the rule.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

[Social Security Ruling SSR 91-6]

Child's Insurance Benefits—Effect of a Second Adoption on an Adopted Child's Continued Entitlement to Benefits—West Virginia

Correction

In notice document 91-15580 beginning on page 29970 in the issue of Monday, July 1, 1991, make the following correction:

On page 29970, in the first column, in the **SUMMARY:**, in the ninth line, "of " should read "on".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-060-4212-14;WYW81452]

Realty Action; Direct Sale of Public Lands; Wyoming

Correction

In notice document 91-15373 beginning on page 29709 in the issue of Friday, June 28, 1991, make the following corrections:

1. On page 29709, in the second column, in the **SUMMARY:**, in the last line, "1917" should read "1719"

2. On the same page, in the third column, in paragraph 1., in the last line, "1990" should read "1890"

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 740, 761, and 772

RIN 1029-AB42

Federal Lands Program; Areas Unsuitable for Mining; Areas Designated by Act of Congress; Requirements for Coal Exploration

Correction

In rule document 91-17097 beginning on page 33152 in the issue of Thursday, July 18, 1991, make the following corrections:

1. On page 33162, in the second column, in the second line "permitted" should read "pertinent"

2. In the same column, in the 2d paragraph, in the 12th line "family" should read "facility"

§ 761.12 [Corrected]

3. On page 33164, in the third column, in § 761.12(a)(1)(ii) in the seventh line from the bottom "Federal" was misspelled.

4. On the same page, in the same paragraph, in the fifth line from the bottom "little" should read "title".

BILLING CODE 1505-01-D

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1152

Abandonment and Discontinuance of Rail Lines and Rail TransportationUnder 49 U.S.C. 10903

Correction

In rule document 91-17929 beginning on page 35834 in the issue of Monday, July 29, 1991, make the following correction:

§ 1152.20 [Corrected]

On page 35835, in the first column, in § 1152.20(a), in the second line "(b) * * *" should read "(2) * * *".

BILLING CODE 1505-01-D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-25338]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

Correction

In notice document 91-16100 appearing on page 30958 in the issue of Monday, July 8, 1991, the Release Number should appear as shown above.

BILLING CODE 1505-01-D

federal register

Monday
August 12, 1991

Part II

Department of Housing and Urban Development

Office of Administration

Submission of Proposed Information Collection to OMB; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N-91-3298]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Wendy Swire, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708-0050.

This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). It is also requested that OMB complete its review within ten days.

The Notice lists the following information:

(1) The title of the information collection proposal;

(2) The office of the agency to collect the information;

(3) The description of the need for the information and its proposed use;

(4) The agency form number, if applicable;

(5) What members of the public will be affected by the proposal;

(6) How frequently information submissions will be required;

(7) An estimate of the total numbers of hours need to prepare the information submission including number of respondents, frequency of response, and hours of response;

(8) Whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and

(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 2, 1991.

Marcia K. Dodge,

Deputy Director, Office of Urban Rehabilitation.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Comprehensive Housing Affordability Strategy.

Office: Community Planning and Development.

Description of the Need for the Information and Its Proposed Use: The heart of a Comprehensive Housing Affordability Strategy (CHAS) is the jurisdiction's narrative of its needs, priorities and goals. The tabular formats are an integral part of a jurisdiction's CHAS. They display a jurisdiction's housing needs and inventory and are summarized by housing activity, income group, family size and tenure type. They also display a jurisdiction's investment plan and goals. The data will be used both by a jurisdiction in formulating its CHAS and by HUD in reviewing and approving that CHAS.

Form Number: HUD-40090 and HUD-40091.

Respondents: State and Local Governments.

Frequency of Submission: Annual.

Reporting Burden:

	No. of respondents	×	Frequency of response	×	Hour per response	=	Burden hours
Initial CHAS	1,078		1		288		310,464
Annual Updates (following 4 years)	1,078		1		128		137,984
Annual Records Keeping	1,078		1		80		86,240
Total Burden	1,078		1		496		534,688

Total Estimated Burden Hours: 534,688.

Status: Revision.

Contact: Larry Gould, HUD, (202) 401-2001, Wendy Swire, OMB, (202) 395-6880.

Dated: August 2, 1991.

Justification

1. The Following Circumstances Make the Collection of Information Necessary

Title I of the National Affordable Housing Act of 1990 requires that jurisdictions develop and implement a Comprehensive Housing Affordability Strategy (CHAS), consisting of 15 elements, as a condition for receiving funds made available under title II of this Act, specific programs under the United States Housing Act of 1937, the Housing and Community Development Act of 1974, and the Stewart B. McKinney Homeless Assistance Act. For the purposes of title I, a jurisdiction may be a State, including the District of Columbia and the Commonwealth of Puerto Rico, a unit of general local government or an authorized consortium of geographically contiguous units of general local governments.

In meeting this title I requirement, the jurisdiction must provide in its CHAS the following information, if appropriate, for review by HUD:

1. Its 5-year housing needs;
2. The nature and extent of its homelessness and the strategy for meeting the need;
3. The characteristics of its housing market;
4. How public policies affect its ability to provide affordable housing;
5. The institutional structure through which it will carry out its housing strategy;
6. Its available private and non-Federal resources to carry the purposes of the Act;
7. Its plan for investment or other use of housing funds made available under the HOME Investment Partnership Act, the United States Housing Act of 1937, the Housing and Community Development Act of 1974, and the Stewart B. McKinney Homeless Assistance Act;
8. Its means of cooperation among the State and any units of general local government;
9. The number, condition and needs of Public Housing units. (Only applies to units of general local government);
10. Its strategy to coordinate Low-Income Tax Credit with the development of affordable housing. (Only applies to States);
11. Its activities to encourage Public Housing residents to become involved in management and participate in homeownership;

12. Its standards for monitoring activities;
13. A certification that it is in compliance with an antidisplacement and relocation plan;
14. A certification that it will affirmatively further fair housing; and
15. The number of families to whom the jurisdiction will provide affordable housing.

All jurisdictions would be expected to address the above elements except for elements 9, which applies only to units of general local government, and 10, which applies only to States. In some cases, HUD will permit an abbreviated CHAS when a jurisdiction's project would involve such a limited amount of funds and housing units that the information required in certain elements would be inappropriate to that project. In addition, jurisdictions must submit to HUD for approval an annual update of their CHAS for a period of four consecutive years. There is also a statutory provision that would permit jurisdictions to amend, within a specific time frame, a CHAS that HUD disapproved.

Title I also requires participating jurisdictions to submit, annually, for HUD review, a performance report on the progress they have made in carrying out their housing strategy and in meeting the goal identified in element 15 of their CHAS. This report will require additional records that must now be maintained on the new information needed to accommodate the statutory requirements of the annual report. Such information is not available under the current record systems of the established HUD programs that now require a CHAS as a condition of funding.

For example, information involving an increase in record keeping would include an identification of persons benefiting from the jurisdiction's housing activities by the different statutory categories, such as income levels, size of families, the elderly, families participating in programs to achieve economic dependence and persons with AIDS.

Title I also mandates that jurisdictions meet certain presubmission requirements involving citizen participation. Before the submission of their CHAS, jurisdictions are statutorily directed to publish their proposed CHAS in order to give their citizens, public agencies and other interested parties the opportunity for comment and to hold at least one public hearing in order to obtain the forenamed groups' views on the jurisdiction's housing needs.

2. Purpose and Use of Information

The Act's Conference language states that the CHAS will serve as a "working guide for each jurisdiction's use of federal and other housing resources." The conferees express the concern that in the past, housing assistance plans and other planning documents required of recipients as a condition of receiving HUD funds, were often burdensome exercises that did not further efficient management or the effective achievement of key housing goals. They emphasize that in replacing these plans, the CHAS as a single, action-oriented, housing strategy, will serve not only as an effective monitoring tool for HUD, but also as an efficient and productive management tool for States and units of general local government.

The CHAS performance report provides a methodical and analytical approach for measuring, on an annual basis, the jurisdiction's accomplishments and progress in carrying out its housing strategy and, like the CHAS, it will serve as a HUD monitoring tool. This annual review of progress will also enable the jurisdiction to quickly correct deficiencies that retard or thwart a jurisdiction's performance in meeting its housing goals. Such self-imposed corrections protect the jurisdiction against possible HUD funding sanctions when deficiencies are unresolved.

The information involving the comments and views received from citizens and other interested groups during the citizen participation process will be considered by jurisdictions and to the extent possible incorporated into their housing strategy. Title I requires that jurisdictions attach a summary of such comments and views as part of their CHAS submission to HUD.

3. Use of Improved Information Technology to Reduce Burden

Development of computer software for jurisdictions' use would not be cost effective. The information needed in the data elements of the CHAS would be based on Census data and on local surveys and data collection relating exclusively to the jursidiction. The information needed to complete the remaining CHAS elements would be provided through narratives and, like the data elements, would be unique to the housing needs and conditions of each participating jurisdiction.

4. Describe the Efforts To Identify Duplication

Much of the duplication that may have resulted from the requirements of the CHAS has been statutorily eliminated under this Act by replacing the Housing Assistance Plan and the Comprehensive Housing Assistance Plan with the CHAS. Both plans were required submissions as a condition for funding under the Community Development Block Grant (CDBG) program and the McKinney Homeless Assistance programs. The jurisdictions required to submit a CHAS are, with few exceptions, the same recipients now receiving funds under current HUD programs, such as the CDBG and McKinney programs.

Furthermore, in developing the pending form for the annual performance report of the CHAS, HUD will closely compare this report with other performance reports required under HUD programs to avoid any duplication of efforts by the jurisdictions in the collection of data and related housing information.

5. Why Similar Information Already Available Cannot Be Used or Modified

The information collected for the CHAS is unique to each individual jurisdiction. It is the type of information, particularly the statistical data, that cannot be fixed, but rather continually changed from one time period to another. To accommodate these changes in information, title I requires jurisdictions to update their CHAS annually.

6. Small Business Involvement

Not applicable.

7. Consequence of Less Frequent Information Collection

Title I precludes a less frequent collection. Importantly, the information being collected is the minimum required by this title.

8. Inconsistency with 5 CFR 1320.6

Not applicable. This information collection is being conducted in a manner consistent with the guidelines of 5 CFR 1320.6.

9. Consultation With Jurisdictions

The information collected is limited only to that which is statutorily required in order for a jurisdiction to address each of the 15 elements of its CHAS. Nevertheless, public comment is being solicited on all aspects of this proposed rule, including the paperwork requirements. All comments received will be thoroughly considered before the final rule is published.

10. Not Applicable

11 Not Applicable

12a. Annual Cost Estimates for Initial Submission Year Only

Jurisdictions

[States and Units of General Local Government]

	No. of resp.	X	Estim. hours	X	Aver hrly rt.	Cost
Initial CHAS	1078		240		$15.00	$3,880,800
Citizen Participation 4 hrs.[1]	1078		8		$15.00	129,360
Publication Costs—$100	1078					107,800
Annual Performance Report	1078		40		$15.00	646,800
Total Annual Cost to Jurisdictions						$4,764,760

[1] It is anticipated that jurisdictions that are CDBG recipients will hold their CHAS public hearings in conjunction with their CDBG public hearings.

12b.

Annual and Burden Hours for Annual Update Submissions

[Years 2 through 5]

[Annual]

Description	No. of Resp.	X	Estimate hours per year or annually	X	Aver hourly rt	Cost for 1 year or annually
Annual update	1078		80		$15	1,293,600
Citizen participation	1078		8		15	129,360
Publication Costs—$100 per year	1078					107,800
Annual Performance Report	1078		40		15	646,800
Total Annual Cost to Jurisdiction						$2,177,560

13a

Estimate of Burden of Information Collection for Initial Submission Year Jurisdictions

[States and Units of General Local Government]

Description of information collection	Section rule affected	No. of respondents	No. of response per respondence	Total annual responses	Hours per response	Total hour
Initial CHAS.[1]	91.15, 20, 55	1,078	1	1,078	240	258,720
Citizen participation process	91 40, 45, 50	1,078	1	1,078	8	8,624
Annual performance report.[2]	91 75, 80	1,078	1	1,078	40	43,120
Total annual burden hours						310,464

Note: [1] The above hours per respondent are based in part on past experience concerning the collection of information by CDBG and McKinney recipients in their development and submission of the Housing Assistance Plan and Comprehensive Housing Assistance Plan which have now been replaced by the CHAS. Much of the information required in these two documents has been consolidated into the requirements of the CHAS. Also factored into these hours is the reduction for those exceptions where jurisdictions submit an abbreviated CHAS.

[2] Included in the burden hours is the time that jurisdictions will need to provide substantive responses to HUD recommendations on the annual performance report.

13b

Annual and Combined Estimate of Burden of Information Collection for Years 2 Through 5 Jurisdictions

[States and Units of General Local Government; Annual]

Description of Information	Section of rules	Annual No. of	No. of response per response	Total annual responses	Annual hrs. per response	Total hrs. annually
Annual update	91 55(b)	1,078	1	1,078	80	86,240
Citizer participation	91 40, 45, 50	1,078	1	1,078	8	8,624

ANNUAL AND COMBINED ESTIMATE OF BURDEN OF INFORMATION COLLECTION FOR YEARS 2 THROUGH 5 JURISDICTIONS—Continued

[States and Units of General Local Government; Annual]

Description of Information	Section of rules	Annual No. of	No. of response per response	Total annual responses	Annual hrs. per response	Total hrs. annually
Annual performance report	91.75, 80	1,078	1	1,078	40	43,120
Total annual burden hours						137,984

14. Changes in Burden

As previously stated in the justification section, the CHAS is a new requirement authorized under title I of the National Affordable Housing Act of 1990. The burden hours are compiled on the basis of a jurisdiction meeting this requirement. Since the CHAS replaces the CHAP and HAP, the burden hours relating to these latter documents have been eliminated. Thus, the burden hours needed in meeting the initial first year CHAS requirements are, balanced out by the elimination of the CHAP and HAP. The figures reflected on Line 19—2 also represent a reduced number of grantees.

15. The Results of This Collection of Information Are Not Planned for Statistical Use

August 2, 1991.

Addendum to Information Collection Submission of February 1, 1991

Regulatory Basis for the Comprehensive Housing Affordability Strategy Tables

The Department's intent to include tabular formats as part of the CHAS formulation was stated in the February 4, interim rule. Reference background, page 4481, first full paragraph which states "The CHAS document will consist of five components, each with tabular summaries and supporting narrative, that integrate the fifteen statutory items described in more detail in this rule * * *. Beginning in FY 1993, HUD will provide special tabulations of decennial census data from the U.S. Census Bureau as the basis for the tabular summaries of need and market and inventory condition integral to the first two components."

However, in consideration of the anticipated difficulties that States may encounter in accumulating the data needed to fill out the tabular formats consisting of tables 1 and 2, the Department has made these tables optional for FY 1992. In addition, States are not required to fill out Table 3. In the case of local jurisdictions, much of the data required for tables 1 and 2 is already available from a jurisdiction's latest Housing Assistance Plan (HAP). Importantly, if a jurisdiction has never developed a HAP, it is required to submit only that data available from the 1980 or 1990 Census.

The following are the regulatory citations that support each of the required Tables. The citation for jurisdictions involving units of general local government is 91.15 and 91.20 for jurisdictions involving States.

Table	Citation
1A "Housing Assistance Needs of Low and Moderate Income Households" (Optional for States).	91.15(a) and 91.20(a) "Needs data".
1B "Other Special Needs Population" (Optional for States).	91.15(a) and 91.20(a) "Needs data".
2A "Population and Minority Data" (Optional for States).	91.15(c) and 91.20(c) "Market characteristics".
2B "Market and Inventory Conditions Housing Stock Inventory" (Optional for States).	91.15(c) and 91.20(c) "Market characteristics".
2C "Assisted Housing Inventory" (Optional for States).	91.15(c) and 91.20(c) "Market characteristics".
3 "Priorities for Assistance 5-Year Plan" (Optional for States).	91.15(g) and 91.20(g) "Plan".
4/5A "Anticipated Resources & Plan for Investment".	91.15(f) and 91.20(f) "Resources".
5B "Goals for Families to be Assisted with Housing".	91.15(n) and 91.20(n) "Goals".

Summary of HUD Notice to Field Offices Transmitting CHAS Instructions

I. Background

Title I of the National Affordable Housing Act established the requirement that States and local governments that apply for direct assistance under certain HUD programs have a housing strategy that has been approved by HUD. For certain other applicants, the Act requires that an application for funding include a certification of consistency with an approved housing strategy for the jurisdiction in which the proposed project will be located. The Department published an interim rule implementing the CHAS requirements in the **Federal Register** on February 4, 1991.

These requirements may change when the Department publishes a final rule on the CHAS in early 1992. Consequently, HUD invites jurisdictions to comment on the CHAS requirements and to suggest ways in which the CHAS can be made a more useful State and local planning instrument. HUD especially encourages jurisdictions to comment on the required tables and to identify areas of the instructions for the tables and narratives that need clarification. The Department hopes to draw upon the initial experiences of jurisdictions in developing the CHAS to ensure that it becomes a valuable planning tool for jurisdictions.

The Department recognizes that the CHAS imposes new requirements and that many jurisdictions lack experience in developing and implementing comprehensive housing plans. For this reason, HUD considers the first year or two to be a time for capacity building within jurisdictions. This first CHAS submission is an opportunity for the Department to gather feedback and make adjustments that will enhance the usefulness of the CHAS as both a planning instrument for jurisdictions and a monitoring tool for HUD.

II. Purpose

The CHAS is a comprehensive planning document that identifies a jurisdiction's overall needs for affordable and supportive housing and outlines a strategy to address those needs. The Act requires each jurisdiction's CHAS to contain fourteen elements that describe the jurisdiction's housing needs and market conditions, set out a 5-year strategy that establishes priorities for meeting those needs, identify resources anticipated to be available for the provision of affordable and supportive housing, and establish a short-term investment plan that outlines the intended uses of resources. The CHAS replaces the Housing Assistance Plan (HAP) required for Community Development Block Grant (CDBG) Program funding and the Comprehensive Homeless Assistance Plan (CHAP)

required by the McKinney Homeless Assistance Programs.

The CHAS is much more than a prerequisite for funding or a monitoring tool for HUD's own use. The major purpose of the CHAS is to encourage jurisdictions to develop a comprehensive, long-term strategy for addressing their needs for affordable and supportive housing. Thus, the CHAS is a comprehensive planning document. The CHAS development process represents an opportunity to involve citizens and community groups in the process of assessing a jurisdiction's overall housing needs, establishing strategic priorities and developing a plan to meet the jurisdiction's identified housing goals. Once in place, the CHAS will serve as a useful management tool to guide the jurisdiction's housing investment decisions.

While data on housing needs and conditions are an integral part of the CHAS, it should be stressed that the CHAS is not an exercise in data collection and presentation. The 5-year narrative strategy is the centerpiece of the CHAS. Use of current and reliable data in assessing its needs will enable a jurisdiction to develop the most responsive and effective strategy possible. Jurisdictions should consider the required data as a means to assess the housing needs and resources that will shape their strategies, not as the driving force behind the CHAS.

Although HUD intends to provide the data on housing needs and conditions in future years, this data is not currently available in the tabular formats shown. Therefore, the instructions identify where inclusion of this data is optional for the FY 1992 submission.

(End of Summary)

BILLING CODE 4210-01-M

PREPARING A

COMPREHENSIVE HOUSING AFFORDABILITY STRATEGY

FOR FISCAL YEAR 1992

INSTRUCTIONS FOR STATES

NOTICE: THESE FORMS AND INSTRUCTIONS ARE BASED ON THE INTERIM RULE PUBLISHED FOR EFFECT ON FEBRUARY 4, 1991, AND ARE FOR USE IN SUBMITTING THE CHAS FOR FY 1992 ONLY. THE RULE IS SUBJECT TO CHANGE WHEN PUBLISHED AS A FINAL RULE. PLEASE SEND YOUR COMMENTS ON THE INSTRUCTIONS AND FORMS TO BOTH THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND TO THE OFFICE OF MANAGEMENT AND BUDGET AT THE ADDRESSES LISTED BELOW SO THEY MAY BE CONSIDERED IN FORMULATING THE CHAS REQUIREMENTS FOR FUTURE YEARS.

Public reporting burden for this collection of information is estimated to average 248 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2506-XXXX), Washington, D.C. 20503.

BILLING CODE 4210-01-C

Comprehensive Housing Affordability Strategy (CHAS)

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General Information

As specified in the Interim Rule, 24 CFR part 91, published February 4, 1991, States must formulate a Comprehensive Housing Affordability Strategy (CHAS) which includes information covering all areas within the State, both metropolitan and nonmetropolitan. However, the Interim Rule further provides a State the option of incorporating into its CHAS the CHASs prepared by local jurisdictions. Whether or not a State exercises this option, HUD will still receive an individual CHAS from each CDBG Entitlement Community in the State which will provide detailed descriptions of the affordable and supportive housing needs of those metropolitan communities.

The Department has therefore determined that the State CHAS should, with only a few exceptions (discussed in other sections of these instructions), cover only those portions of the State for which the State has not incorporated local CHASs. Moreover, even those CDBG Entitlement Communities whose local CHASs have not been incorporated will be covered only (again with limited exceptions) in the narrative portions of the State CHAS.

Accordingly, the State CHAS should focus primarily on the nonentitled (for CDBG) portions of the State. Nonentitled local jurisdictions will not normally be submitting full CHASs (unless part of multijurisdiction HOME consortia), or even abbreviated strategies, and will typically receive HUD financial assistance in major HUD formula programs such as CDBG and HOME only through the State. The State CHAS is thus the only comprehensive planning document for those nonentitled communities.

As specified in the Interim Rule, the State CHAS will consist of five parts. These parts integrate the 14 elements of information required by the statute and described in detail in the regulations.

The prescribed format described in these instructions further groups the five parts of the CHAS into three major sections. These three sections and their component parts are:

- State Profile
  1. Needs Assessment.
  2. Market and Inventory Conditions.
- 5-year Strategy
  3. Strategies.
- 1-Year Plan/Annual Update
  4. Resources.
  5. Implementation.

Since a State may choose to incorporate local CHASs into its CHAS and is required by the Interim Rule to break down information for parts 1 and 2 by geographic area within the State, the State CHAS must also include an Introduction, which describes the options the State has chosen, and how it has presented the required information.

Each of the five main parts of the State CHAS contains narrative discussions of affordable housing and supportive housing for homeless persons and others with special needs, supported by tables and other documentation. For parts 1 and 2, the State has the option of providing data using the tables furnished by HUD or providing the same data in an alternative tabular format at least as detailed.

The State CHAS shall cover both Entitlement and nonentitlement communities (minus any jurisdictions whose CHASs have been incorporated in the State CHAS) in its narrative sections. Tabular data for parts 1 and 2 shall cover only the nonentitled portions of the State, broken down by nonentitled metropolitan areas and nonmetropolitan areas. Tabular data for the remaining three parts of the State CHAS shall be consolidated for the entire State, to the extent the State plans to invest funds under its control in those areas, including those whose local CHASs have been incorporated into the State CHAS.

Tables and instructions for filling out the tables are located in appendix A. Definitions for terms used in these instructions may also be found in appendix A under the section entitled "General Definitions Used With The CHAS."

The related tables and documentation for each part are to be attached at the back of the narrative for that part. The cover sheet included as appendix B shall be completed and placed at the front of the CHAS package. The State must also provide a table of contents at the beginning of the CHAS indicating the location of the narrative and tables and other supporting documentation for each part of its submission. The format for the table of contents may be found in appendices C and D of these instructions.

The tables contained in appendix A have been designed for use beyond Fiscal Year 1992. However, the instructions for each of the tables are for the Fiscal Year 1992 submission only. The instructions will be revised for future submissions.

For the Fiscal Year 1992 CHAS, HUD cannot provide to States a break-down of Census data by entitled/nonentitled areas, and, within the nonentitled portion, by metropolitan and nonmetropolitan area. HUD also does not expect States to conduct special surveys to collect such data. Accordingly, needs assessment and market and inventory conditions data are not required to be submitted.

Where estimates for nonentitled areas can be provided from data derived from the U.S. Census or from readily available State sources, States are encouraged to provide such estimates. The estimates may be provided for either all nonentitled areas, or, if possible, between nonentitled metropolitan areas and nonmetropolitan areas. The instructions for each of the applicable tables include specific guidance on which U.S. Census publications contain the data requested. However, these publications do not break out the data for entitled metropolitan areas, nonentitled metropolitan areas and nonmetropolitan areas.

The CHAS represents a State's assessment of its needs for affordable housing and supportive housing for homeless and other persons, and its strategy and action plan for addressing those needs. Therefore, States are free to expand the contents of their CHAS beyond what is minimally required to be submitted for HUD review and approval.

Introduction

In this section the State identifies the local jurisdictions, if any, whose individual CHASs have been incorporated into the State CHAS, and indicates the geographic sub-State areas by which information in the State CHAS is provided.

Incorporation of Local Jurisdictions' CHASs

The State shall provide in this section a list of all local jurisdictions—including metropolitan cities, other cities, urban counties, counties, and HOME

consortia—whose CHASs are incorporated in the State CHAS. Signature of the cover sheet of the State CHAS shall constitute acceptance by the State of any local CHAS on this list as part of the State's overall affordable and supportive housing strategy and as the basis for investment of State or State-administered HUD resources in that jurisdiction.

The State need not append a copy of any incorporated local CHAS to the State CHAS since HUD will have received, or will ultimately receive, a copy from the jurisdiction.

States which are considering incorporating local CHASs should review copies of those jurisdictions' draft CHASs published for public review and comment, and then copies of those jurisdictions' final CHASs as ultimately revised and submitted, following the citizen participation process, to HUD. If at the time the State is ready to submit its State CHAS to HUD it has not yet received or reviewed a jurisdiction's final CHAS, it must make a preliminary decision on incorporation of that CHAS on the basis of the draft version.

If a draft local CHAS is the version incorporated, the State shall note in parentheses following that jurisdiction's name on the list: "Draft CHAS published for public comment on [provide date]." Once the final versions of all such draft local CHASs have been received and reviewed, the State shall submit a (revised) list of all jurisdictions whose final local CHASs have been incorporated in the State CHAS.

The letter transmitting the final list should note whether, as a result of changes in the final versions, any of the draft CHASs originally incorporated are no longer incorporated, or whether any CHASs not previously incorporated are now incorporated. Based on such changes, the State should submit any necessary amendments to its CHAS. Such amendments will not be considered to be substantial amendments and, therefore, will not subject the State to any further citizen participation requirements.

Where the State has chosen not to incorporate one or more local CHASs, the State shall indicate, in general terms, the reasons why. The State need not identify such jurisdictions by name, particularly if most local CHASs have not been incorporated, nor provide more than a brief description of its basic approach to the issue.

Sub-State Geographic Areas

The State shall identify in this section the geographic areas by which information in the State's CHAS is presented. As noted in the interim rule, the State has a wide variety of options, although at the very least, it must break out information between entitled and nonentitled areas, and within the latter, between metropolitan and nonmetropolitan areas.

Jurisdictions whose CHASs are incorporated

Where a local jurisdiction's CHAS has been incorporated in the State CHAS, that jurisdiction should not be included in either the narrative or tabular presentations of parts 1 or 2 of the State CHAS. The State need only include the jurisdiction in the presentations in Parts 3 (Strategies), 4 (Resources) and 5 (Implementation), to the extent the State plans to invest resources in that jurisdiction.

Entitled Areas (whose CHASs are not incorporated)

For the narratives of parts 1 and 2 of the CHAS, the State has a choice of consolidating all such areas in a single presentation, or may break out information for such areas by city, county, metropolitan area, planning district, or other sub-State region. For the narratives of parts 3, 4 and 5 of the CHAS, the State shall consolidate all such areas in a single presentation. No tabular data will be provided for entitled areas in parts 1 or 2 of the CHAS. Entitled areas will be included in the tables for parts 3 (table 3 is optional for States), 4, and 5 to the extent the State plans to invest resources in such areas.

Nonentitled Areas (whose CHASs are not incorporated)

For the narratives of parts 1 and 2 of the CHAS, the State must, at a minimum, break down the presentations for nonentitled areas by metropolitan and nonmetropolitan areas. Within the metropolitan and nonmetropolitan categories, the State has a choice of further breaking the information down by city, county, metropolitan area (if applicable), planning district, or other sub-State region. For the narratives of parts 3, 4 and 5 of the CHAS, the State is only required to break out the presentations by metropolitan and nonmetropolitan areas.

For parts 1 and 2 of the CHAS, if the State wishes to provide tabular data, then it must, at a minimum, provide the tabular data for all (CDBG) nonentitled areas of the State in the tables provided by HUD or provide that data in an alternative State format at least as detailed. The State is encouraged to break down the tabular data for all nonentitled areas of the State, if possible, into separate tables for metropolitan and nonmetropolitan areas. As in the narratives, the State has a choice of further breaking the data down by other sub-State categories, i.e., a separate table for each such category. For parts 3 (If the State chooses to complete Optional table 3), 4, and 5 of the CHAS, the State shall submit consolidated tables for all entitled and nonentitled (both metropolitan and nonmetropolitan) areas of the State.

Section I. State Profile

Part 1. Needs Assessment

This part summarizes available data on the most significant current housing needs of very low-income, low-income, and moderate-income families, and projects those needs over the five-year CHAS period. This part also summarizes the most significant current supportive housing needs of homeless persons and others with special needs.

General Instructions

The narrative should describe the State's assessment of the most significant current and projected needs for entitled areas (minus those whose CHASs have been incorporated) and, as presented in the tables, for nonentitled areas. The State shall also discuss those needs or issues which are not or cannot be qualified or presented in tabular form even for nonentitled areas.

In future years, States shall be required to quantify their current needs utilizing tables 1A, and (on an optional basis) 1B, or they may quantify specified needs data using other tabular formats at least as detailed. For the FY 1992 submission, States are not required to complete needs data for tables 1A. Although States are encouraged to complete all or a portion of this (or an alternative) table to the extent they can from available Census or State data sources, they should not undertake special surveys solely for this purpose.

Table 1B is an optional table which will not be required even in future years, but may be used to organize data. The table can serve as a resource in developing the narrative on the estimated needs for supportive housing and/or services for people with special needs other than homeless persons.

Projected 5-year affordable housing needs may be described in narrative form, or, if the 5-year projected needs are significantly different in several categories of need, on a second table 1A.

A 5-year projection of supportive housing needs of homeless persons or others with special needs is not

required. However, where the State anticipates there will be a significant change in supportive housing needs in the foreseeable future, it should discuss those future needs in the narrative sections which address current needs.

Narratives

The outline provided below must be followed separately for each geographic area which the State has identified in the Introduction, including at least (1) entitled areas, (2) nonentitled metropolitan areas, and (3) nonmetropolitan areas, but excluding any jurisdictions whose CHASs have been incorporated in the State CHAS.

Housing Needs—Current Estimates.

The narrative is to discuss the State's estimate of current needs for housing assistance for very low-income, low-income, and moderate-income families and households for the various categories called for in table 1A. Where supporting data are not available, the narrative is to describe to the best possible extent the significant needs which exist.

The narrative must identify the source(s) of the family and household needs data presented in table 1A (if used) or the narrative. Where modified or expanded data other than Census data are provided in table 1A or the narrative as the basis of current estimates, the State must indicate in the narrative the source of additional data or the projection techniques and assumptions applied in developing the modified data.

The narrative shall include a discussion of the estimated extent to which cost burden and severe cost burden are being experienced by low- and moderate-income persons in the State, as well as a discussion of the estimated extent to which families already receive housing assistance. In particular, the narrative shall describe the number and family type of households who meet the Federal preferences for priority in admission to rental assistance programs ("worst case" needs).

Those with "worst case" needs for assistance are unassisted very low-income renter households who pay more than half of their income for rent, live in seriously substandard housing (which includes homeless people) or have been involuntarily displaced. If the State has established its own preferences for admission to public housing or rental assistance programs, these also should be described.

The narrative shall also discuss the housing needs of the elderly and persons with disabilities who do not require supportive housing services.

Five-Year Projections. A State must consider whether and how its current housing needs will change over the five-year CHAS period. If the State does not believe there will be significant changes in its current estimate of needs, it should so indicate in the narrative. If it believes there will be significant changes in its current estimate of needs, and it has presented its current estimates in either table 1A or an alternative tabular format, it should present those five-year projected needs in another table 1A or alternative tabular format. The State should describe in its narrative the projected changes of the years covered by the CHAS, as appropriate.

In developing its five-year projection, the State must consider and discuss any foreseeable changes in housing needs that may result from those employed or expected to be employed in the State but not currently residing there.

Supportive Housing Needs of Homeless Persons

Note: The FY 1992 Submission for the Supportive Needs of Homeless has been Revised from Previous Draft Instructions.

For the fiscal year 1992 CHAS submission, States are required to provide ONLY a narrative description of their homeless population. For the fiscal year 1993 CHAS submission, HUD intends to provide States with guidance on acceptable methodologies and definitions to estimate the size of their homeless populations. HUD is currently developing this guidance.

States are required to provide the following on Supportive Housing Needs of Homeless Persons:

Current needs estimates. To the extent reliable information is available, the State shall describe in its narrative the nature and extent of homelessness within the State. The description may contain an estimated total number of homeless persons living in shelters in the State, although this information is not required. The State shall briefly describe the source of these estimates and the methods. However, States are not required to submit the complete data source or study to HUD. The source of the number must be made available to citizens upon request.

Note: State are not required for this year to break down total number of homeless persons by component (i.e. family versus single) or provide an estimate of the number of unsheltered. States need only describe the nature and extent of their unsheltered population and homeless families.

Special and Supportive Needs Population: States shall provide a description of the special needs population. If available, this description may include an estimated proportion of the total number of homeless persons who have special needs (i.e. persons who are mentally ill, alcohol or drug abusers, runaway or abandoned youth, victims of domestic violence and other categories that the State may specify).

If available, the racial and ethnic status of homeless population and of the special needs populations may be provided.

The narrative shall include a description of special needs of homeless persons (e.g. need for supportive housing, drug treatment, mental health counseling), if the information is available.

Supportive Housing Needs for Others with Special Needs—Current Estimates—The State shall describe in the narrative the characteristics and special housing needs of persons other than the homeless, including the elderly, frail elderly, persons with disabilities (mental, physical, developmental), persons with AIDS, and any other categories which the State specifies. This description must include those persons returning to the community from mental and physical health care institutions, as well as low-income families who could benefit from participating in an organized program to achieve economic independence and self-sufficiency, as identified in a Public Housing Agency's (PHA) Family Self-Sufficiency Program Plan.

Supportive housing is defined as housing with a supportive environment, such as group homes, single room occupancy, (SRO), or other housing that includes a planned services component. In addition, the narrative should consider the supportive service needs of persons in other home settings, whether in assisted housing or the general community, such as PHA Self-Sufficiency Program services.

This discussion should indicate the extent of existing supportive services and the documented need, summarized as appropriate from the plan of the State agency on aging, or equivalent plans from agencies serving the non-elderly handicapped populations, with appropriate references to any approved State plans.

Part 2. Market and Inventory Conditions

This part summarizes housing market and inventory characteristics, including trends in population, household formation, and housing, as well as information on the assisted housing and public housing stock. It also summarizes the facilities and services available for

homeless persons and other persons with special needs.

General Instructions

The Market and Inventory Conditions narrative must describe the State's assessment of the significant characteristics of housing markets within the State as they relate to housing and supportive housing for homeless persons and others with special needs. The narrative should discuss any significant trends in total population, household population, and total housing inventory, or in the provision of supportive housing facilities and services, which may influence the development of the State's overall strategy.

States are responsible for providing sufficient information in the narrative and, as required, in the tables for this part to serve as a basis for the "Strategies" and "Implementation" sections of their submissions.

In future years, States shall be required to quantify their housing market and inventory conditions utilizing tables 2A, 2B, and 2C, or may present the required data utilizing other tabular formats at least as detailed. For the FY 1992 submission, States are not required to complete these tables. Although States are encouraged to complete all or a portion of these (or alternative) tables to the extent they can from available Census or State data sources, they should not undertake special surveys solely for this purpose.

In future years, HUD will provide 1990 Census data to States for use with tables 2A and 2B. The instructions for each table identify the appropriate Census publications containing some of the data elements on these tables.

For Fiscal Year 1992, States need only submit table 2C data relative to its inventory of assisted housing which is readily available from State sources. HUD cannot provide data on assisted housing in a readily usable format for each State in time for the October 1991 submission. While HUD maintains data on assisted housing, much of the coding is done at the county level, so that separating out such data by entitled and nonentitled areas may be difficult. However, HUD does expect to provide States with data on their assisted housing inventory for use with table 2C in future years.

Tabular data are not required for supportive housing for the homeless or for other persons with special needs.

Narratives

The outline provided below must be followed separately for each geographic area which the State has identified in the Introduction, including at least (1) entitled areas, (2) nonentitled metropolitan areas, and (3) nonmetroplitan areas, but excluding any jurisdictions whose CHASs have been incorporated in the State CHAS.

Housing Conditions. Based on the analysis of data and information available to the State, the narrative must include a description of the most significant market and inventory conditions. The narrative must also describe the nature and extent of the cost burden and severe cost burden experienced by renters.

The narrative shall include a discussion of housing markets in terms of supply, demand and cost of housing. The narrative shall highlight any adverse effects these market conditions have on producing rental housing, promoting new homeownership opportunities, alleviating overcrowding, and meeting the needs of under-served population groups, such as large families.

The discussion of the overall housing inventory shall include an assessment of whether any rental housing is expected to be lost from the assisted housing inventory for any reason, including losses through public housing demolition or conversion to homeownership, or through prepayment or voluntary termination of a Federally-assisted mortgage.

The State must also identify and describe in the narrative any neighborhoods within nonentitled localities with concentrations of racial/ethnic minorities and low-income families. The location and degree of these concentrations must be identified. (Degree of concentration can be shown in terms of percentages). Concentrations must be considered and addressed in the Five-Year Strategy.

The narrative shall indicate how current and anticipated conditions can be expected to influence the use of funds made available for rental assistance, production of new units, rehabilitation of existing units (including needs for modifications necessary to enable elderly and disabled people to remain in their homes), and acquisition of existing units.

Inventory of Facilities and Services for Homeless Persons. The State shall describe in the narrative the facilities and services that assist homeless persons and persons at imminent risk of becoming homeless. The description must include the following:

a. Estimates, to the extent that data are available, of the number of emergency shelters, transitional housing facilities, permanent housing for the handicapped homeless, and of the total overnight sleeping capacity of those types of facilities;

b. The availability of day shelters, soup kitchens, and other facilities providing assistance to homeless persons on less than an overnight basis;

c. The nature and extent of programs providing vouchers to assist homeless persons in obtaining shelter, meals, services, etc.

d. The nature and extent of social service programs that assist the homeless; and

e. The nature and extent of programs to prevent individuals and families at imminent risk of homelessness from becoming homeless.

Inventory of Facilities and Services for Persons with Other Special Needs. The State must describe the facilities and services that assist persons with other special needs, as identified in part 1.

Supporting Documentation

The State must identify the location of concentrations of minority and low-income residents in the nonentitled portions of the State. It may do so by using clearly marked maps, by describing the geographic boundaries of the areas, or by stating in which census division (enumeration districts, tracts, or block groups) the concentrations are located.

Section II. Five-Year Strategy

Part 3. Strategies

This part states the State's general plans and priorities to be pursued over the five-year period of the CHAS. It flows from the State's overall analysis of needs and market and inventory conditions, as described in parts 1 and 2.

General Instructions

The five-year strategy describes the State's action plan for addressing imbalances between its needs for housing assistance and its affordable and supportive housing inventory by:

1. Determining general priorities for allocating investment among the types of affordable and supportive housing needs and interventions covered by the CHAS;

2. Analyzing likely effects of relevant public policies on the success of efforts to develop, maintain, or improve affordable and supportive housing;

3. Implementing programs, providing services, and undertaking special initiatives;

4. Identifying the institutional structure through which the action plan will be implemented; and

5. Coordinating public and private funding resources, programs, services,

and special initiatives in an integrated manner to achieve its strategic goals.

The State may summarize its investment priorities for very low-income and other low-income in table 3. Table 3 is not required for States, but States may wish to utilize table 3 as a convenient way to display their relative priorities. If the State chooses to utilize table 3, it is to be prepared on a consolidated basis for entitled and nonentitled areas. However, more than in any other part of the CHAS, the narrative is the most critical portion of the strategy.

Narratives

The outline provided below must be followed separately for (1) entitled areas, (2) nonentitled metropolitan areas, and (3) nonmetropolitan areas.

Priorities for Allocation Investment. The State shall discuss the reasoning behind the general priorities it has established for allocating available Federal and State resources within the State, and which, at its option, it may summarize in table 3. This discussion shall address the basis for assigning relative priorities:

1. Among different categories of very-low and low-income households with needs for housing assistance, as identified in part 1, including type and size of family;

2. Among the activity types appropriate for meeting these identified needs in the context of the housing market and inventory conditions and the costs of different activities; and

3. Among the various geographical areas within the State.

The narrative should describe how the housing problems of households with "worst case" needs for housing assistance and of other households meeting Federal or State preferences for assistance, and the alternatives available for addressing such needs, were considered in developing the State's investment priorities.

The State shall consider the needs for housing assistance of various racial and ethnic low-income groups in determining its priorities for allocating investment.

The State shall identify the geographic areas it has selected for investments and the nature of the impact it hopes to achieve through such investment.

The determination of priorities should flow logically from analysis of how the size, distribution, condition, and cost of the housing inventory matches up with the needs and types of housing problems of various income, racial, family, and tenure groups. For example, there may be a sufficient housing stock in standard condition or suitable for rehabilitation available for small families, but at rent levels above 30 percent of their income.

This situation might suggest a priority on rental assistance and/or moderate levels of rehabilitation to meet the needs of those households. On the other hand, acquisition or substantial rehabilitation of existing larger units, or new construction where necessary, might be given priority to provide affordable units needed by large families.

While rehabilitation would normally be a reasonable strategy in low-income neighborhoods with older housing, for areas with very high concentration of minorities higher priority to acquisition of standard housing and/or rental assistance in non-impacted neighborhoods might be appropriate. Similarly, the analysis of homeowners may indicate that access to ownership has been constrained among certain family sizes or racial groups, contributing to pressure on the rental market in certain size categories, neighborhoods, or jurisdictions. This might lead to placing a high priority on promoting homeownership opportunities for such groups, possibly through conversion of portions of the public or assisted housing stock to homeownership.

Finally, when considering allocation of priorities, attention should be paid to the extent to which certain groups are already in assisted housing; while their needs may not be wholly met, other portions of the low-income community may have more pressing needs and have received less assistance.

A State receiving HOME program funds may use those funds for new construction of certain types of affordable housing (in areas of the State not already designated through the HOME program as new construction eligible), under certain circumstances, provided that the State presents objective data in this portion of the narrative that demonstrate a high priority need for such housing. The types of housing, and the circumstances under which HOME funds may be utilized for new construction of such housing are contained in the HOME program regulations.

In this portion of the narrative, the State shall also describe its strategy for coordinating the Low-Income Tax Credit with the development of housing for which rents are affordable to very low-income and low-income families, as determined in accordance with the U.S. tax laws.

Relevant Public Policies. The narrative shall explain the extent to which the costs or incentives to develop, maintain, or improve affordable housing in the State are affected by State public policies, as embodied in the State constitution, State enabling legislation, statutes, ordinances, regulations, or administrative procedures and processes.

The narrative shall specifically identify and address any excessive exclusionary, discriminatory, or duplicatory policies, rules, and regulations that may constitute barriers to affordability, including the tax policies affecting land and other property, land use controls, zoning ordinances, building codes, code enforcement, fees and charges, growth limits, and policies that affect the return on residential (including supportive housing) investment. This discussion should include an analysis of how State laws and policies permit local jurisdictions to develop or maintain excessive exclusionary, discriminatory or duplicative policies.

The State shall describe its strategy to remove or ameliorate any negative effects of these policies, rules, and regulations, including any effects contributing to concentration of racial/ethnic minorities. Such strategy should include specific proposals for reforms of policies to be undertaken in the next five years.

Programs, Services, and Special Initiative Strategies. The State shall describe the Federal, State, and, to the extent made available to the State, private programs and services to be provided, and the special initiatives to be undertaken with resources under the State's control to implement its five-year strategy.

This discussion shall identify the specific elements or portions of the strategy to which each of these programs and initiatives will be directed, in terms of the affordable and supportive housing needs to be addressed. Specific strategies to be implemented through programs, services, and special initiatives, and which are to be discussed in the narrative include:

Affordable Housing

- Increasing the supply of standard, affordable housing through the acquisition and/or rehabilitation of existing housing units, and, if appropriate, the construction of new units;
- Providing rental assistance to alleviate rental cost burden, including severe cost burden, experienced by lower income families and individuals;
- Promoting homeownership opportunities;

• Meeting the housing needs of large families, elderly persons, and persons with disabilities;

• Evaluating the energy efficiency of housing for lower income households and implementing programs and/or special initiatives to achieve lower overall housing costs by reducing energy costs.

• Alleviating overcrowding;

• Removing directly or ameliorating any negative effects, as well as to work with the units of general local government involved to remove or ameliorate any negative effects, including effects of local policies contributing to concentration of racial/ethnic minorities;

• Minimizing involuntary displacement;

• Ensuring no net loss in the assisted housing inventory as a result of public housing demolition or conversion to homeownership, prepayment or voluntary termination of a Federally-assisted mortgage, or any other actions;

• Encouraging public housing residents to become more involved in the management of public housing;

• Assisting public housing residents to become owners of their public housing units and/or developing other homeownership opportunities for these residents.

Supportive Housing for Homeless Persons

• Addressing the needs of various populations for emergency shelter and services, housing and services for transition to permanent housing and independent living, and housing and supportive services for those not capable of achieving independent living;

• Ensuring permanent affordable housing opportunities for persons who successfully complete a transitional housing program.

• Serving low-income families and individuals in imminent danger of residing in shelters or being unsheltered because they lack access to permanent housing and/or have an inadequate support network;

Supportive Housing and/or Services for Other Persons With Special Needs

• Addressing the unmet needs of persons with disabilities (mental, physical, developmental), the elderly, persons with AIDS, low income families who could benefit from participation in an organized program to achieve economic independence and self-sufficiency, and any other categories that the State specifies.

Institutional Structure. The State shall identify the institutional structure through which it will carry out its affordable and supportive housing strategy. Private industry, nonprofit organizations, and public institutions should be included in the discussion.

Each organization comprising the institutional structure shall be identified by type (public, private, nonprofit) and purpose (e.g., financial institution, State planning agency, State or local housing/community development agency, State public housing agency, social services agency, mental health agency, etc.). The State should identify each organization's respective role in carrying out affordable housing and supportive housing for homeless persons and other persons with special needs, and discuss the interrelationships among organizations in carrying out the strategy.

In describing the institutional structure for carrying out the State CHAS, the State shall specifically address the relationship between the State and local jurisdictions, their respective roles, and the extent to which the State plans to delegate responsibilities and subassign Federal funds (if permitted) or State funds to local jurisdictions.

The State shall provide an assessment of the institutional structure for carrying out its five-year strategy. This assessment shall discuss the existing strengths and gaps in the delivery of programs and services, including efforts to make use of available housing, social service, and mental and other health care resources, and shall identify proposed actions to strengthen, coordinate, and integrate those institutions and delivery systems. This assessment should also discuss the gaps in program and service delivery that result in persons becoming homeless (e.g., slow processing of public assistance payments, or release from institutions without housing resources identified).

Coordination of Resources. The State shall describe its plan for using available program, service, and special initiative resources under its control in a coordinated and integrated manner to achieve its affordable and supportive housing goals. This discussion should distinguish between programs for which the State may have an entitlement (e.g., CDBG, ESG, or HOME) and those for which it or State agencies may apply on a competitive basis.

The State should include in its discussion not only Federal programs administered through HUD, but also resources made available through other Federal agencies, such as resources available to support residential energy efficiency, or the supportive needs of the homeless and others with special needs. The State should also address the use of resources for activities intended to support housing, homeless assistance, or special needs programs, such as construction of water and sewer systems, public facilities, community centers, and parks.

Supporting Documentation

Supporting documentation in this part may include maps identifying concentrations of racial/ethnic or outlining the State's geographic resource allocation plan.

Section III. One-Year Plan/Annual Update

The two parts in section III, which constitutes the Annual Plan of a new five-year CHAS or the Annual Update in the subsequent four years, must be submitted every year. These two parts describe: (1) The resources the State reasonably expects will be available for the coming Federal fiscal year that will be used to address the needs and conditions described in section I (parts 1 and 2); and (2) the State's specific action plans and goals for that year toward carrying out the five-year strategy described in section II (part 3).

Part 4. Resources

General Instructions

The State shall quantify the resources it anticipates will be available and which it intends to commit during the year in the first two columns of table 4/5A. (The remaining columns of the table will be used to support part 5, Implementation). Resources to be invested in all entitled and unentitled areas, including any jurisdictions whose CHASs have been incorporated in the State CHAS, are to be consolidated in table 4/5A. Worksheet 4, which is not a required form, is provided to assist States in calculating the amounts to enter on table 4/5A. If the Worksheet is used, it should not be submitted as part of the State's CHAS.

The narrative portion of this part shall explain how these resources will be obtained, how it was determined which amounts would be committed, and actions to be taken to maximize resources.

Narratives

The narrative shall be divided into three sections, for: (1) Entitled areas; (2) nonentitled metropolitan areas; and (3) nonmetropolitan areas.

The State shall identify in the narrative all of the sources of funds for affordable and supportive housing that may reasonably be expected to be available, and that it reasonably expects

to commit—either directly to projects and activities, or, if funds are subassigned, by obligating funds to local jurisdictions—during the fiscal year covered to carry out its strategy. For States, commitment means the first level of obligation. For State program funds that are subassigned, this means the obligation of funds to a State Recipient. For State program funds directly administered by a State, this means the obligation or commitment of funds to a specific identifiable project. The sources of funds available for commitment is to include public resources that are awarded directly to the State and any related private resources.

It should be noted that the State is generally expected to plan to take actions leading to commitment of all such resources. Therefore, where the plan does not reflect the commitment of a particular public resource identified as available for commitment, the narrative must provide an explanation for such omission.

In some programs (such as the State Community Development Block Grant Program) funds provided or to be provided to the State may be used for a variety of activities, only some of which would be appropriate to meet CHAS needs. The grant awards made for specific activities under the State CDBG program would be determined by the State's method of distribution for a given fiscal year, and by the types of activities for which applications were submitted by eligible units of general local government. The narrative should explain how it was determined what portion of such funds should be used to address affordable and supportive housing objectives.

When a State is in doubt concerning the level of funding that may be available to it for a particular program, the agency responsible for administering that program should be contacted for advice.

The Interim Rule requires that if a State plans (or is required by law) to distribute its funds competitively among local jurisdictions, it should describe its priorities and procedures for distribution. The discussion should be based on the State's expected distribution plan. HUD recognizes that the distribution plan will be subject to possible changes as a result of the citizen's participation process.

The narrative must specifically describe how assistance will be distributed to nonmetropolitan areas in amounts that take into account the nonmetropolitan share of the State's total population.

The State shall address specifically any matching requirements of the various resources to be utilized, and how it expects those requirements to be met. It shall also specifically describe its strategy for leveraging private and non-Federal funds by the use of Federal funds.

The State shall specifically identify any court orders or consent decrees imposed on jurisdictions within the State that affect the provision of assisted housing or fair housing remedies in the State and address how that order or decree will impact on the distribution of the State's resources and the determination of its goals.

Part 5. Implementation

This part translates the State's Five-Year Strategy and anticipated available resources into a one-year action plan and goals which will guide the State's resource allocation and investment decisions during the coming year.

General Instructions

The State shall complete the remaining columns of table 4/5A to specify its investment plan for the covered Federal fiscal year. It will also complete table 5B to specify goals for individuals and families to be served through such investment plans. Like table 4/5A, table 5B consolidates goals for all entitled and nonentitled areas, including goals to be achieved by investment of State-controlled resources in jurisdictions whose CHASs have been incorporated in the State CHAS.

The State shall describe in its narrative the investment plan and goals specified in the two tables, and the specific actions it will take to achieve those commitment levels and goals. The State shall also describe actions to be taken to remove or ameliorate the negative effects on affordability of public policies.

Additionally, the State must include in the narrative a description of how it will monitor its programs for compliance with its strategy.

Narratives

The narrative shall consist of two parts: (1) A one-year action plan for providing affordable housing and supportive housing for homeless persons and others with special needs, and (2) a monitoring plan.

Action Plan. The action plan shall be divided into three sections for: (1) Entitled areas; (2) nonentitled metropolitan areas; and (3) nonmetropolitan areas. Each section of the plan shall outline responsibilities, financial resources, and timetables, including:

1. How the goals are consistent with the State's five-year strategy;

2. The geographic areas in which the State plans to target assistance;

3. The governmental or other entities responsibile for delivering and managing the assistance; and

4. The time required for the assistance provided to each type of activity in table 4/5a to reasonably be expected to result in benefits to program beneficiaries.

Affordable Housing. The narrative shall explicitly discuss the actions that will be taken in the coming year to assist those very low-income renters meeting Federal preferences for housing assistance and thus reduce unmet "worst case" needs.

The narrative shall also include a description of the actions the State will undertake in the coming year to carry out its strategy to remove or ameliorate the negatve effects of State policies impacting affordability, as described in part 3. The narrative should include specific proposals for reforms of such public policies that the State will implement within the coming year.

Supportive Housing for the Homeless. The State shall describe the goals, programs, and policy initiatives the community expects to accomplish during the coming year to address the unmet needs of:

a. Homeless families and individuals, including those who are mentally ill, alcohol and drug abusers, victims of domestic violence, runaway and abandoned youth, and other categories the State specifies for (1) emergency shelter and services, (2) housing and services for transition to permanent housing and independent living, and (3) housing and supportive services to those not capable of achieving independent living; and

b. Low-income families and individuals who are in imminent danger of becoming homeless and do not have permanent housing and an adequate support network.

Supportive Housing for Other Persons with Special Needs. The State shall describe the goals, programs, and policy initiatives the State expects to accomplish during the next year to address the unmet needs of persons with disabilities (mental, physical, developmental), the elderly, persons with AIDS, low-income families who could benefit from participation in an organized program to achieve economic independence and self-sufficiency, and any other categories which the State specifies.

Monitoring Plan. The monitoring plan shall describe how the State intends to conduct monitoring reviews to determine whether its programs are being carried out in accordance with its

CHAS, and in a timely manner. Such descriptions must provide for monitoring to be carried out on a regular basis to ensure that statutory and regulatory requirements are being met and that, where appropriate, information that is being submitted to a HUD cash and management information system is correct and complete.

Supporting Documentation

States must certify that they will affirmatively further fair housing, and that they are in compliance with a residential anti-displacement and relocation assistance plan. Those certifications are attached as appendix E.

Appendix A—Comprehensive Housing Affordability Strategy (CHAS)

Required State Chas Tables and Instructions

For 1992 CHAS (October, 1991 Submission) Only

General Definitions Used With the CHAS

Table 1A.* Housing Assistance Needs of Low and Moderate Income Households.
Table 1B.** Other Special Needs Population.
Table 2A.* Market and Inventory Conditions-Population and Minority Data.
Table 2B.* Market and Inventory Conditions—Housing Stock Inventory.
Table 2C.* Assisted Housing Inventory.
Table 3.** Summary of Priorities for Assistance-5-year Priorities for Very Low Income and Other Low Income Persons.
Table 4/5A. Anticipated Resources and Plan for Investment.
Worksheet 4.*** Anticipated Resources.
Table 5B. Goals for All Families to be Assisted with Housing.

*States are not required to submit these tables for the 1992 CHAS.

**States are not required to complete table 1B or table 3 for any CHAS submission, but may elect to do so.

***Worksheet 4 is not to be submitted with the CHAS.

General Definitions Used with the CHAS

Affordable Housing: Affordable housing is generally defined as housing where the occupant is paying no more than 30 percent of gross income for gross housing costs, including utility costs.

Affordable housing has a more specific definition for purposes of completing table 5B. That definition is included in the instructions for table 5B.

Committed: Generally means there has been a legally binding commitment of funds to a specific project to undertake specific activities, or an obligation of funds to a State recipient.

Expanded definitions for completing table 4/5A are included in the instructions for table 4/5A.

Cost Burden >30%: The extent to which gross housing costs, including utility costs, exceed 30 percent of gross income, based on data published by the U.S. Census Bureau.

Cost Burden >50% (Severe Cost Burden): The extent to which gross housing costs, including utility costs, exceed 50 percent of gross income, based on data published by the U.S. Census Bureau.

Disabled Household: A household composed of one or more persons at least one of whom is an adult (a person of at least 18 years of age) who has a disability. A person shall be considered to have a disability if the person is determined to have a physical, mental or emotional impairment that: (1) Is expected to be of long-continued and indefinite duration, (2) substantially impedes his or her ability to live independently, and (3) is of such a nature that the ability could be improved by more suitable housing conditions. A person shall also be considered to have a disability if he or she has a developmental disability as defined in the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001–6006). The term also includes the surviving member or members of any household described in the first sentence of this paragraph who were living in an assisted unit with the deceased member of the household at the time of his or her death.

Economic Independence and Self-Sufficiency Programs: Programs undertaken by Public Housing Agencies (PHAs) to promote economic independence and self-sufficiency for participating families. Such programs may include Project Self-Sufficiency and Operation Bootstrap programs that originated under earlier section 8 rental certificate and rental voucher initiatives, as well as the Family Self-Sufficiency program. In addition, PHAs may operate locally-developed programs or conduct a variety of special projects designed to promote economic independence and self-sufficiency.

Elderly Household: A family in which the head of the household or spouse is at least 62 years of age.

Existing Homeowner: An owner-occupant of residential property who holds legal title to the property and who uses the property as his/her principal residence.

Family: A household comprised of one or more individuals.

Family Self-Sufficiency (FSS) Program: A program enacted by section 554 of the National Affordable Housing Act which directs Public Housing Agencies (PHAs) and Indian Housing Authorities (IHAs) to use section 8 assistance under the rental certificate and rental voucher programs, together with public and private resources to provide supportive services, to enable participating families to achieve economic independence and self-sufficiency.

First Time Homebuyer: An individual or family who has not owned a home during the three-year period preceding the HUD-assisted purchase of a home that must be used as the principal residence of the homebuyer.

FmHA: The Farmers Home Administration, or programs it administers.

For Rent: Year round housing units which are vacant and offered/available for rent. (U.S. Census definition)

For Sale: Year round housing units which are vacant and offered/available for sale only. (U.S. Census definition)

Group Quarters: Facilities providing living quarters that are not classified as housing units. (U.S. Census definition). Examples include: prisons, nursing homes, dormitories, military barracks, and shelters.

HOME: The HOME Investment Partnerships Act, which is title II of the National Affordable Housing Act.

HOPE 1: The HOPE for Public and Indian Housing Homeownership Program, which is title IV, subtitle A of the National Affordable Housing Act.

HOPE 2: The HOPE for Homeownership of Multifamily Units Program, which is title IV, subtitle B of the National Affordable Housing Act.

HOPE 3: The HOPE for Homeownership of Single Family Homes Program, which is title IV, subtitle C of the National Affordable Housing Act.

Household: One or more persons occupying a housing unit. (U.S. Census definition).

Note: A special definition of household is used for table 1D, Supportive Housing and Services Population.

Table 1D Instructions provide a special definition of "household" as it is used in table 1D.

Housing Problems: Households with housing problems include those that: (1) Occupy units meeting the definition of Physical Defects; (2) meet the definition of Overcrowded; or (3) meet the definition of Cost Burde > 30%. Table 1A requests nonduplicative counts of households that meet one or more of these criteria.

Housing Unit: An occupied or vacant house, apartment, or a single room (SRO housing) that is intended as separate living quarters. (U.S. Census definition)

Institutions/Institutional: Group quarters for persons under care or custody. (U.S. Census definition)

Large Related: A household of 5 or more persons which includes at least 2 related persons.

LIHTC: (Federal) Low Income Housing Tax Credit.

Low Income: Households 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.

Note: HUD income limits are updated annually and are available from local HUD offices for the appropriate jurisdictions.

Middle Income: Households whose incomes are from 96 to 120 percent of the median income for the area, as determined by HUD, with adjustments for smaller or larger families, except that HUD may establish income ceilings higher or lower than 120 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.

If income adjustments are made by HUD and the low income limit for the area is set at higher or lower than 80 percent of median income, the middle income limits must be adjusted by multiplying the adjusted low income limit by 1.5. **Example:** With a median income for the area of $10,000 and a low income limit adjusted by HUD to $7,500, the adjusted middle income limit would be computed as follows: $7,500 x 1.5=$11,250 adjusted middle income limit.

Moderate Income: Households whose incomes are between 81 percent and 95 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 95 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.

If income adjustments are made by HUD and the low income limit for the area is set at higher or lower than 80 percent of median income, the moderate income limits must be adjusted by multiplying the adjusted low income limit by 1.1875. **Example:** With a median income for the area of $10,000 and a low income limit adjusted by HUD to $7,500, the adjusted moderate income limit would be computed as follows: $7,500 x 1.1875=$8,906 adjusted moderate income limit.

Moderate Rehabilitation: Rehabilitation of residential property at an average cost for the project not in excess of $25,000 per dwelling unit.

Needing Rehab: Dwelling units that do not meet standard conditions but are both financially and structurally feasible for rehabilitation. This does not include units that require only cosmetic work, correction of minor livability problems or maintenance work.

Non-Elderly Household: A household which does not meet the definition of "Elderly Household," as defined above.

Non-institutional: Group quarters for persons not under care or custody. (U.S. Census definition used in table 2A.)

Not Rehabbable: Dwelling units that are determined to be in such poor condition as to be neither structurally nor financially feasible for rehabilitation.

Occupied Housing Unit: A housing unit that is the usual place of residence of the occupant(s).

Other Household: A household of one or more persons that does not meet the definition of a Small Related household or a Large Related household, or is an elderly household comprised of 3 or more persons.

Other Income: Families or households whose incomes exceed 80 percent of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families.

Other Low Income: Households whose incomes are between 51 percent and 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.

Other Persons with Special Needs: Includes frail elderly persons, persons with AIDS, disabled families, and families participating in organized programs to achieve economic self-sufficiency. This category does not include homeless.

Other Vacant: Vacant year round housing units that are not For Sale, For Rent, or Vacant Awaiting Occupancy or Held. (U.S. Census definition)

Overcrowded: A housing unit containing more than one person per room. (U.S. Census definition used in table 1A.)

Owner: A household that owns the housing unit it occupies. (U.S. Census definition)

Physical Defects: A housing unit lacking complete kitchen, bathroom, or electricity (U.S. Census definition used in table 1A.). Jurisdictions may expand upon the Census definition.

Project-Based (Rental) Assistance: Rental Assistance provided for a project, not for a specific tenant. Tenants receiving project-based rental assistance give up the right to that assistance upon moving from the project.

Public Housing CIAP: Public Housing Comprehensive Improvement Assistance Program.

Public Housing MROP: Public Housing Major Reconstruction of Obsolete Projects.

Rent Burden > 30% (Cost Burden): The extent to which gross rents, including utility costs, exceed 30 percent of gross income, based on data published by the U.S. Census Bureau.

Rent Burden > 50% (Severe Cost Burden): The extent to which gross rents, including utility costs, exceed 50 percent of gross income, based on data published by the U.S. Census Bureau.

Renter: A household that rents the housing unit it occupies, including both units rented for cash and units occupied without cash payment of rent. (U.S. Census definition)

Renter Occupied Unit: Any occupied housing unit that is not owner occupied, including units rented for cash and those occupied without payment of cash rent.

Section 215: Section 215 of title II of the National Affordable Housing Act. Section 215 defines what constitutes "affordable" housing projects under the title II HOME program.

Service Needs: The particular services identified for special needs populations, which typically may include transportation, personal care, housekeeping, counseling, meals, case management, personal emergency response, and other services to prevent premature institutionalization and assist individuals to continue living independently.

Severe Cost Burden: See Cost Burden > 50%.

Sheltered: Families and persons whose primary nighttime residence is a supervised publicly or privately operated shelter (e.g., emergency, transitional, battered women, and homeless youth shelters; and commercial hotels or motels used to

house the homeless). Sheltered homeless does not include any individual imprisoned or otherwise detained pursuant to an Act of Congress or State law.

Small Related: A household of 2 to 4 persons which includes at least two related persons.

Substantial Rehabilitation: Rehabilitation of residential property at an average cost for the project in excess of $25,000 per dwelling unit.

Supportive Housing: Housing, including Housing Units and Group Quarters, that has a supportive environment and includes a planned service component.

Supportive Service Need in FSS Plan: The plan that PHAs administering a Family Self-Sufficiency program are required to develop to identify the services they will provide to participating families and the source of funding for those services. The supportive services may include child care; transportation; remedial education; education for completion of secondary or post secondary schooling; job training, preparation and counseling; substance abuse treatment and counseling; training in homemaking and parenting skills; money management, and household management; counseling in homeownership; job development and placement; follow-up assistance after job placement; and other appropriate services.

Supportive Services: Services provided to residents of supportive housing for the purpose of facilitating the independence of residents. Some examples are case management, medical or psychological counseling and supervision, child care, transportation, and job training.

Tenant Assistance: Rental assistance payments provided as either project-based rental assistance or tenant-based rental assistance.

Tenant-Based (Rental) Assistance: A form of rental assistance in which the assisted tenant may move from a dwelling unit with a right to continued assistance. The assistance is provided for the tenant, not for the project.

Total Vacant Housing Units: Unoccupied year round housing units. (U.S. Census definition)

Unsheltered: Families and individuals whose primary nighttime residence is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings (e.g., the street, sidewalks, cars, vacant and abandoned buildings).

Vacant Awaiting Occupancy or Held: Vacant year round housing units that have been rented or sold and are currently awaiting occupancy, and vacant year round housing units that are held by owners or renters for occasional use. (U.S. Census definition)

Vacant Housing Unit: Unoccupied year-round housing units that are available or intended for occupancy at any time during the year.

Very Low Income: Households whose incomes do not exceed 50 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families, and for areas with unusually high or low incomes or where needed because of prevailing levels of construction costs or fair market rents.

Year Round Housing Units: Occupied and vacant housing units intended for year round use. (U.S. Census definition). Housing units for seasonal or migratory use are excluded.

Note: Terms not defined above may be defined in the specific instructions for each table. If a term is not defined, the jurisdiction is to provide its own definition.

Table Instructions—General Information

The instructions for each table to be submitted with the State CHAS are instructions for the Fiscal Year 1992 submission only. On each table, a space is provided to enter the name of the submitting State. It is important that this space be filled in on all of the tables. Tables associated with parts 1, 2, and 3 of the CHAS (i.e. tables 1A, and 1B; tables 2A, 2B, 2C; and table 3) provide a space for identifying the five-year period the CHAS is to cover. For Fiscal Year 1992, States should enter "1992" through "1996." Similarly, tables 4/5A and 5B, which are to be submitted annually, has a space for the fiscal year the tables are covering.

Tables 1A and 1B, and tables 2A, 2B, and 2C are not required to be completed for Fiscal Year 1992 if the State does not have ready access to the data needed to complete those tables. (See the specific instructions for each table). Nonetheless, to avoid confusion, States are requested to submit all the series 1 (A and B) and series 2 (A through C) tables, even those tables where no numerical information is presented. Where data are not available for a table, write "NO DATA AVAILABLE" across the table and include those tables with the CHAS submission. This will help avoid a CHAS being disapproved because it is thought to be an incomplete CHAS submission.

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State CHAS Table 1A DRAFT

Housing Assistance Needs of Low & Moderate Income Households

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

Comprehensive Housing Affordability Strategy (CHAS)

Name of State

Mark one
- [ ] Nonentitled-Metro
- [ ] NonMetro
- [ ] Other (Specify)

Five Year Period
FY through FY

Mark one
- [ ] Current Estimate as of (enter date)
- [ ] Five-Year Projected Estimate as of (enter date)

Mark one
- [ ] All Households
- [ ] Racial/Ethnic Group Households (specify) [1]

Household by Type, Income, & Housing Problems	Renters: Elderly 1 & 2 Member Households (A)	Renters: Small Related (2 to 4) (B)	Renters: Large Related (5 or more) (C)	Renters: All Other Households (D)	Renters: Total Renters (E)	Owners: Elderly 1 & 2 Member Households (F)	Owners: Small Related (2 to 4) (G)	Owners: Large Related (5 or more) (H)	Owners: All Other Households (I)	Owners: All Owners (J)
1 **Very Low Income (0 to 50%)** *										
2 With Housing Problems										
3 Physical Defects										
4 Overcrowded										
5 Cost Burden > 30%										
6 Cost Burden > 50%										
7 **Other Low Income (51 to 80%)** *										
8 With Housing Problems										
9 Physical Defects										
10 Overcrowded										
11 Cost Burden > 30%										
12 Cost Burden > 50%										
13 **Total Low Income**										
14 **Moderate Income (81 to 95%)***										
15 With Housing Problems										
16 Physical Defects										
17 Overcrowded										
18 Cost Burden > 30%										
19 Cost Burden > 50%										
20 **Middle Income Hshlds.(96 to 120%)***										
21 **All Households**										

[1] See Table 2A for listing of Racial/Ethnic Groups

*Or, if appropriate, based on HUD income limits with required statutory adjustments

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BILLING CODE 4210-01-C

Instructions for Table 1A—Housing Assistance Needs of Low and Moderate Income Households

Refer to Appendix A, General Definitions Used with the CHAS, for definitions of terms used in this table.

General Instructions

For Fiscal Year 1992, States are not required to submit table 1A. However, they are encouraged to review State and Census data sources and submit, to the extent feasible, estimates based on available information. If a State elects to submit table 1A, but is unable to break out the date between (CDBG) nonentitled-metropolitan and nonmetropolitan areas, it is encouraged to complete the table on a consolidated basis for all nonentitled areas rather than submit no tabular data at all.

In future years, based on the Census data HUD will provide to States, a State will prepare a minimum of 12 versions of table 1A: One for all households in nonentitled/metropolitan areas; one for all households in nonmetropolitan areas; and for each of these two geographic categories of the nonentitled portion of the State, a separate table for each of five racial/ethnic groups. These groups are: (1) White (Non-Hispanic), (2) Black (Non-Hispanic), (3) Hispanic (All Races), (4) Native, American, and (5) Asian and Pacific Islanders.

If the State expects the needs of low income households to change significantly over the 5-year CHAS period, the State may also choose to submit two additional versions of table 1A to indicate these 5-year projections of needs, one for nonentitled/metropolitan areas and one for nonmetropolitan areas.

Finally, if the State elects to break out its needs data for additional sub-State geographic categories beyond the two required by HUD, additional versions of table 1A would be prepared for each of these categories.

Specific Instructions (For Fiscal Year 1992 Submission Only)

The State shall indicate whether the data presented in table 1A are for nonentitled-metropolitan areas, nonmetropolitan areas, or (at the State's option) other sub-State geographic category by placing an "x" in the appropriate box provided at the top of the table. If the State presents consolidated data for all (CDBG) nonentitled areas, it should place an "x" in the "Other" box and specify "consolidated nonentitled data," in the space provided. If data are presented for additional geographic areas, place an "x" in the "Other" box and specify the geographic category in the space provided.

The State will also indicate whether the data are for all households or for a particular racial/ethnic group by placing an "x" in the appropriate box at the top of the table. If the "Racial/Ethnic Group" box is marked, specify which of the five racial/ethnic groups the data are for.

For total household data for both nonentitled-metropolitan areas and nonmetropolitan areas the State shall indicate whether the data in table 1A represent its current estimate of need or its 5-year projection of needs by placing an "x" in the appropriate box.

For the current estimate enter "October 1, 1991" in the space provided for current estimate. For projected needs (if the State opts to prepare a separate table 1A to present projected needs), enter "September 30, 1996" in the space provided for 5-year projected estimate.

For Column A, enter data only for elderly households consisting of 1 or 2 members. Elderly households consisting of more than 2 members should be included in Column B, C or D, as appropriate.

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State CHAS Table 1B (Optional)

Other Special Needs Population

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

Comprehensive Housing Affordability Strategy (CHAS)

Name of State	Mark one: ☐ Nonentitled-Metro ☐ NonMetro ☐ Other (Specify)	Five Year Period: (enter fiscal yrs.) FY ____ through FY ____

Category	Households			
	Persons with Disabilities (A)	Elderly with Special Needs (B)	Persons with AIDS (C)	Participants in Economic Independence and Self Sufficiency Programs (D)
1 Number of Households				
2 Supportive Housing Need				
3 Service Needs				
4 Supportive Service Need Identified in FSS Plan				

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Instructions for Table 1B—Supportive Housing and Services Population

Special Definition

Number of Households: The total of households (including those with individuals and 2 or more persons who are sharing living quarters) plus persons living in group quarters.

Refer to Appendix A, General Definitions Used With The CHAS, for additional definitions of terms used, or programs cited in this table.

General Instructions

States are not required to submit Optional table 1B for any CHAS submission. However, should they elect to do so, Optional table 1B provides a format for estimating the need for supportive housing and services for the population with special needs.

If a State elects to submit table 1B, but is unable to break out the data between (CDBG) nonentitled-metropolitan and nonmetropolitan areas, it may complete the table on a consolidated basis for all nonentitled areas.

If a State elects to break out its supportive housing and services population data for additional sub-State geographic categories, additional versions of table 1B would be prepared for each of these categories.

For the categories of persons with disabilities, elderly with special needs, and persons with AIDS, the table calls for the estimated number of individuals in each category, and for the number of individuals with need for either supportive housing or services, or both. For participants in Family Self-Sufficiency (FSS) and similar economic independence programs operated by Public Housing Agencies, the table would provide an estimate of the number of individuals needing supportive services as identified in the PHA's FSS plan.

Some potential resource agencies and the client groups they serve include:

- State mental health agencies for persons with chronic mental illness;
- State agencies of mental retardation or State developmental disabilities councils for people with developmental disabilities;
- State rehabilitation agencies or State or local Centers for Independent Living for people with physical disabilities;
- State or area agencies on aging for elderly people;
- The Public Health Service's Center for Disease Control for persons with AIDS; and
- Public Housing Agencies for families eligible to participate in Family Self Sufficiency programs.

Specific Instructions

The State shall indicate whether the data presented in table 1B are for nonentitled-metropolitan areas, nonmetropolitan areas, or (at the State's option) other sub-State geographic category by placing an "x" in the appropriate box provided at the top of the table. If the State presents consolidated data for all (CDBG) nonentitled areas, it should place an "x" in the "Other" box and specify "consolidated nonentitled data," in the space provided. If data are presented for additional geographic areas, place an "x" in the "Other" box and specify the geographic category in the space provided.

Line 1—Enter the estimated number of households (as defined above) for each of the categories under columns A, B, and C.

Lines 2 and 3—Enter under each of the columns the estimated number of households from line 1 which have supportive housing needs or service needs, respectively, under Columns A, B, and C.

Line 4—Enter the number of participants in Economic Independence and Self-Sufficiency programs administered by the PHA(s) serving the State who will be provided services identified in the PHA's Family Self-Sufficiency (FSS) Plan.

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State CHAS Table 2A

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

Population and Minority Data

Comprehensive Housing Affordability Strategy (CHAS)

Name of State:	Mark one ☐ Nonentitled-Metro ☐ Other (Specify) ☐ NonMetro	Five Year Period (enter fiscal yrs.) FY: through FY

Category	1980 Census Data (A)	1990 Census Data or Current Estimate (B)
1. Total Population		
2. White (Non-Hispanic)		
3. Black (Non-Hispanic)		
4. Hispanic (All races)		
5 Native American		
6 Asian and Pacific Islanders		
7. Group Quarters		
8. Institutional		
9 Non-Institutional		
10 **Household Population**		

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Instructions for Table 2A—Market Inventory and Conditions—Population and Minority Data

Refer to Appendix A, General Definitions Used With The CHAS, for definitions of terms used in this table.

General Instructions

For Fiscal Year 1992, States are not required to submit table 2A. However, they are encouraged to review State and Census data sources and submit, to the extent feasible, estimates based on available information. If a State elects to submit table 2A, but is unable to break out the data between (CDBG) nonentitled-metropolitan and nonmetropolitan areas, it is encouraged to complete the table on a consolidated basis for all nonentitled areas rather than submit no tabular data at all.

The 1990 U.S. Census will ultimately provide all the information needed to complete Column B of this Table. Until HUD is able to provide that data, States that are completing table 2A may only be able to complete Column A data, which are currently available from 1980 U.S. Census data sources, as specified below. To the extent that States can provide U.S. Census data, or current estimates based on local data, States are encouraged to provide Column B data.

Specific Instructions

The State shall indicate whether the data presented in table 2A are for nonentitled-metropolitan areas, nonmetropolitan areas, or (at the State's option) other sub-State geographic category by placing an "x" in the appropriate box provided at the top of the table. If the State presents consolidated data for all (CDBG) nonentitled areas, it should place an "x" in the "Other" box and specify "consolidated nonentitled data," in the space provided. If data are presented for additional geographic areas, place an "x" in the "Other" box and specify the geographic category in the space provided.

The following instructions cite readily available 1980 Census resource publications where information for Column A may be found. Cited Census publication titles and publication numbers are generally published separately for each State.

Column A. Lines 1 and 10—Total Population (Line 1), and Household Population (Line 10), for States, for places of 1,000 or more and for counties may be found in U.S. Census publication "General Population Characteristics (PC80–1–B)," table 14.

Lines 2 through 6—Use the data provided for the non-Hispanic portions of White, Black, Native American, and Asian Pacific Islanders, as well as the data for Persons of Spanish Origin, as found for States, for places of 2,500 or more and for counties in U.S. Census publication "General Social and Economic Characteristics (PC80–1–C)," table 59.

Lines 7 through 9—Census data at the Statewide level is not reported.

Note: 1990 U.S. Census population data for racial/ethnic groups, group quarters (institutional and non-institutional) and households are being released on a State-by-State basis in tape form in STF 1A. Tables P1, P9, P10 and P15 contain these data. Where the data are available in tape form, and the State can gain access to the data, it may use those data to complete Column B.

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State CHAS Table 2B

Market and Inventory Conditions
Housing Stock Inventory

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

Comprehensive Housing Affordability Strategy (CHAS)

Name of State

Mark one
☐ Nonentitled-Metro ☐ Other (Specify)
☐ NonMetro

Five Year Period (enter fiscal yrs.)
FY _____ through FY _____

Mark one
☐ 19____ Census
☐ Current Estimate as of (enter date)

Category	Total (A)	0 or 1 bedrooms (B)	2 bedrooms (C)	3 or more bedrooms (D)
1. **Total Year-Round Housing**				
2. Total Occupied Units				
3. Renter Occupied Units				
4 Needing Rehab				
5 Not Rehabbable				
6 Owner Occupied Units				
7 Needing Rehab				
8. Not Rehabbable				
9 Total Vacant Units				
10 For Rent				
11 Needing Rehab				
12 Not Rehabbable				
13 For Sale				
14 Needing Rehab				
15 Not Rehabbable				
16 Awaiting Occupancy or Held				
17 Other				

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BILLING CODE 4210-01-C

Instructions for Table 2B—Market and Inventory Conditions—Housing Stock Inventory

Refer to Appendix A, General Definitions Used With The CHAS, for definitions of terms used in this table.

General Instructions

For Fiscal Year 1992, States are not required to submit table 2B. However, they are encouraged to review State and Census data sources and submit, to the extent feasible, estimates based on available information. If a State elects to submit table 2B, but is unable to break out the data between (CDBG) nonentitled-metropolitan and nonmetropolitan areas, it is encouraged to complete the table on a consolidated basis for all nonentitled areas rather than submit no tabular data at all.

Specific Instructions (For Fiscal Year 1992 Submission Only)

The State shall indicate whether the data presented in table 2B are for nonentitled-metropolitan areas, nonmetropolitan areas, or (at the State's option) other sub-State geographic category by placing an "x" in the appropriate box provided at the top of the table. If the State presents consolidated data for all (CDBG) nonentitled areas, it should place an "x" in the "Other" box and specify "consolidated nonentitled data," in the space provided. If data are presented for additional geographic areas, place an "x" in the "Other" box and specify the geographic category in the space provided.

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State CHAS Table 2C

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

Assisted Housing Inventory

Comprehensive Housing Affordability Strategy (CHAS)

Name of State

Mark one.
☐ Nonentitled-Metro ☐ Other (Specify)
☐ NonMetro

Five Year Period (enter fiscal yrs.)
FY | through FY

Current Estimate as of (enter date)

Category	Total Stock and Inventory				
	Total (A)	SRO (B)	0 or 1 bedrooms (C)	2 bedrooms (D)	3 or more bedrooms (E)
1. Project Based Tenant Assistance					
2. Public Housing					
3 Section 202					
4 Section 8					
5 Other HUD					
6. FmHA					
7. Tenant Based Tenant Assistance					
8. Section 8					
9 Other State/Local					
10. Homeowner Assistance					

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BILLING CODE 4210-01-C

Instructions for Table 2C—Assisted Housing Inventory

Refer to Appendix A, General Definitions Used With The CHAS, for definitions of terms used in this table.

General Instructions

For Fiscal Year 1992, States are not required to submit table 2C.

Data on existing housing units in a State are currently being refined by HUD and will be provided by HUD in future years. Such data will not be made available by HUD in time for a State's use in preparing the Fiscal Year 1992 CHAS. To the extent data on assisted housing units can be readily obtained, States are asked to provide that data in table 2C.

If a State elects to submit table 2C, but is unable to break out the data between (CDBG) nonentitled-metropolitan and nonmetropolitan areas, it is encouraged to complete the table on a consolidated basis for all nonentitled areas rather than submit no tabular data at all.

Specific Instructions

The State shall indicate whether the data presented in table 2C are for nonentitled-metropolitan areas, nonmetropolitan areas, or (at the State's option) other sub-State geographic category by placing an "x" in the appropriate box provided at the top of the table. If the State presents consolidated data for all (CDBG) nonentitled areas, it should place an "x" in the "Other" box and specify "consolidated nonentitled data," in the space provided. If data are presented for additional geographic areas, place an "x" in the "Other" box and specify the geographic category in the space provided.

Begin by completing lines 2 through 6 for each of the columns. (Line 1 is the sum of lines 2 through 6 for each of the columns.)

Line 2—Public Housing. Enter under the appropriate columns the number of housing units assisted through low income public housing programs under the U.S. Housing Act of 1937.

Line 3—Section 202. Enter the number of units assisted through non-profit sponsors and made available to elderly and handicapped individuals under section 202 of the U.S. Housing Act of 1959. Also include assisted units provided under section 811 of the National Affordable Housing Act.

Line 4—Section 8. Enter the number of units assisted through housing developed under the section 8 New Construction, Substantial Rehabilitation, Moderate Rehabilitation and project-based certificate programs. Do not include section 8 rental assistance provided in section 202 projects; section 8 certificate or voucher assistance; or section 8 rental assistance provided through other HUD programs (see line 5).

Line 5—Other HUD. Enter the number of units assisted through housing developed under the section 236 and section 221(d)(3) Below Market Interest Rate (BMIR) programs, and under the Rent Supplement program.

Line 6—FmHA. Enter the number of units assisted through housing developed under the section 515 program of the Farmers Home Adminstration.

Line 1—Project-Based Tenant Assistance. Sum lines 2 through 6 for each of the columns.

Next complete lines 8 and 9. (Line 7 is the sum of lines 8 and 9 for each of the columns).

Line 8—Section 8. Enter the number of families currently receiving tenant-based rental assistance under the section 8 certificate and voucher programs. Do not include project-based certificates.

Line 9—Other. Enter the number of families currently receiving tenant-based rental assistance through housing programs other than section 8 (e.g., State-funded programs that offer assistance comparable to that of section 8 certificates or vouchers).

Line 7—Tenant-Based Tenant Assistance. Sum lines 8 and 9 for each of the columns.

Line 10—Homeowner Assistance. Enter the number of homeowners with current assistance being provided through interest subsidies or other comparable subsidies under HUD's section 235 program, or under the section 502 program administered through the Farmers Home Administration.

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State CHAS Table 3 (Optional)

Priorities for Assistance 5-Year Plan

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

Comprehensive Housing Affordability Strategy (CHAS)

Name of State:

Five Year Period: (enter fiscal yrs.)
FY through FY

	Activity	Renters				Owners			Homeless Persons (H)	Other Persons with Special Needs (I)
		Elderly 1 & 2 Member Households (A)	Small Related (2 to 4) (B)	Large Related (5 or more) (C)	All Other Households (D)	Existing Homeowners (E)	First-Time Homebuyers With Children (F)	First-Time Homebuyers All Others (G)		
Very Low Income Persons	1. Moderate Rehabilitation / Acquisition									
	2. New Construction, Substantial Rehabilitation, Related Infrastructure									
	3. Rental Assistance									
	4. Homebuyers Assistance									
	5. Support Facilities and Services									
Other Low Income Persons	6. Moderate Rehabilitation / Acquisition									
	7. New Construction, Substantial Rehabilitation, Related Infrastructure									
	8. Rental Assistance									
	9. Homebuyers Assistance									
	10. Support Facilities and Services									

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Instructions for Table 3—5-Year Priorities for Assistance to Very and Other Low-Income Persons for FY 1992

Refer to appendix A, General Definitions Used With The CHAS, for definitions of terms used in this table.

In determining the categories of very low income (0 to 50 percent of median income) and other low income (51 to 80 percent of median income), States should use the following basis:

- For metropolitan areas, use the HUD income limits for the appropriate metropolitan area;
- For nonmetropolitan areas, use either State-wide median income figures or the HUD income limits for the appropriate County, whichever is higher.

General Instructions

States are not required to submit Optional Table 3 for any CHAS submission. If they elect to do so, however, the following instructions apply.

The State's relative priorities are to be developed by weighing the severity of needs for assistance among all groups and subgroups, including the relative need between very low-income and other low-income persons. Priorities are not to be established separately for very low-income and other low-income persons. The establishment of priorities will emerge based on many considerations, among them the State's analysis of its housing stock and market conditions, its analysis of the relative housing needs of its very low and other low income families, and its assessment of the resources likely to be available over the five year period.

Based on the State's overall priorities, it is to identify on table 3 the relative priority ("first," "second," or "third") it will give in providing various types of assistance to renters, homeowners, homeless persons and other persons with special needs over the five year CHAS period. In establishing its five year priorities, the State must consider not only who among the various categories of low income households are most in need of these housing activities, but also determine which of these activities will best meet the housing needs of the identified households.

Because the purpose of the table is to be used to distinguish relative priorities, it is not acceptable to assign "first" priority consideration to every group.

The State's narrative is to thoroughly discuss the assignment of priorities.

Specific Instructions

For table 3, lines 1 through 10, enter the relative priority to be given over the 5-year CHAS period to each of the household types and persons designated in Columns A through H. Enter under the appropriate column the number "1" for "first priority consideration," the number "2" for "second priority consideration," or "3" for "third priority consideration." The number "0" should be entered in the appropriate box(es) where the State does not anticipate providing assistance to fund one or more of the activities listed and/or one or more of the household types displayed. The narrative must discuss the basis for not assigning a priority to any of the categories for which a "0" is entered.

The State may include modifications to housing to accommodate special needs of elderly or people with disabilities as moderate rehabilitation (line 1).

No entries are to be made in shaded areas.

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State CHAS Table 4/5A

Anticipated Resources & Plan for Investment

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

Comprehensive Housing Affordability Strategy (CHAS)

Name of State: FY

Funding Source Federal Funds Awarded or to be Awarded to State	Anticipate to be Available (A)	Expect to Commit (B)	Anticipated resources expected to be committed to projects/activities during FY ($000's) Rehabilitation (C)	Acquisition (D)	Tenant Assistance (E)	New Construction (F)	Home Buyer Assistance (G)	Planning Grants (H)	Support Services (I)	Operating Costs (J)
1. Home										
2. Hope 1										
3. Hope 2										
4. Hope 3										
5. CDBG										
6. DOE/Other Energy Prg.										
7. LIHTC										
8. Other (Specify)										
9. **Subtotal - Housing**										
10. CDBG (Homeless)										
11. ESG										
12. Perm. Housing for Handicapped										
13. Transitional Housing										
14. Shelter Plus Care										
15. Other (Specify)										
16.										
17.										
18. Subtotal - Homeless										
19. Total Federal										

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Funding Source **Non-Federal Funds**	Anticipate to be Available (A)	Expect to Commit (B)	Anticipated resources expected to be committed to projects/activities during FY ($000's) Rehabilitation (C)	Acquisition (D)	Tenant Assistance (E)	New Construction (F)	Home Buyer Assistance (G)	Planning Grants (H)	Support Services (I)	Operating Costs (J)
20. Total State Funds										
21. Total Private Funds to State										
22. **Total - Non-Federal Funds**										
23. **Grand Total All Funds**										
24. Entitlement Jurisdictions										
25. Nonentitlement MetroJurisdictions										
26. Nonentitlement NonmetroJurisdictions										

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Instructions for Table 4/5A—Anticipated Resources and Plan for Investment

Note: The FY 1992 CHAS Submission Table 4/5A for Anticipated Resources and Plan for Investment has been Revised from Previous Draft Instructions.

Special Definitions

Acquisition: (Column D) For purposes of completing table 4/5A, acquisition means acquisition of housing not in need of rehabilitation, with no expectation of other listed activities being carried out in conjunction with the acquisition. Where acquisition is intended to be carried out in conjunction with another activity (e.g., rehabilitation), the amount expected to be committed for the acquisition should be included under the activity column of the associated other activity. For example, a property is expected to be acquired and rehabilitated; the amount of funds expected to be committed for both acquisition and rehabilitation should be entered under Column C—Rehabilitation.

Committed: For table 4/5A purposes, this means, the first level of obligation. For States that subassign funds, this is the obligation of funds to a State recipient.

For States that directly administer programs, this is funds that are set aside for a specific project usually through a binding legal agreement. The instructions below elaborate on what is meant by committed for the various activities for which funding commitments are expected to be made.

Operating Costs: (Column J) Costs to carry out the actual operations of a project, such as electricity, rent and utilities. Funds expected to be committed for operating costs are only to be provided for those listed programs which are unshaded under Column J—Operating Costs.

General Instructions

For table 4/5A, "resources anticipated to be committed during the fiscal year" means (1) The anticipated commitment of funds to a state recipient, where the State subassigns funds, or (2) the anticipated commitment of funds to a specific identifiable project, where the State directly administers a program. Further, "project" may refer to a multifamily project or a single family home. Following are some examples to help clarify what "committed" means for different types of projects or activities:

(a) Rehabilitation or new construction of a privately owned project: A written legally binding agreement is signed between the State and the owner under which the State agrees to provide assistance to the owner of an identifiable project that can be expected to start construction within a reasonable period of time.

(b) Rehabilitation or new construction of a publicly owned project: The Project Set-Up Report is submitted under a HUD Cash and Management Information (C/MI) system which identifies a specific project that will start construction within 6 months of receipt of the Project Set-Up Report. If Project Set-Up Reports are not required, such other public document or action is completed that identifies an amount of funds to be provided for the rehabilitation or construction of the project.

(c) Acquisition: A written legally binding agreement (i.e., a contract for sale) is signed between the State and the project owner under which the State agrees to provide funds to the owner for the purchase of the project that can be expected to be accomplished within a reasonable period of time and the owner agrees to transfer title within a reasonable period.

(d) Tenant-based rental assistance: The State has entered into a rental assistance contract with the owner or the tenant to provide the assistance.

(e) First-time home buyer assistance: A written legally binding agreement (i.e., a contract for sale) is signed between the State and the proposed home buyer under which the State agrees to provide assistance to the home buyer for the purchase (whether conditional or otherwise) of the property that can be expected to be accomplished within a reasonable period of time.

All dollar amounts should be rounded to the nearest thousand dollars for this table. Thus, $829,247 would be reported as 829.

Cells have been shaded for individual Federal programs where information is not desired, or where the general funding activity is not an eligible activity for the specific program listed. For State and private funding sources, if an activity is not an eligible activity under the specified program, enter "N/A" in the cell. For all other unshaded cells, enter "0" where no funds will be committed for a particular activity.

Optional Worksheet 4 may be used by the State in deriving the figures to be entered under Columns A and B. Worksheet 4 is not to be submitted to HUD.

Specific Instructions—Funding Source. This column lists various funds available to a State by category. The first category, "Federal funds awarded or to be awarded to State," is broken down into housing programs and homeless programs. On line 8, "Other," the State is to specify any funds available for affordable housing through programs other than those listed. Especially in the early years of completing this form, States may have funds available from other programs that have been terminated, such as the Rental Rehabilitation Program (RRP). States with funds available from a prior year RRP or other terminated programs should include them in the spaces provided for "other" programs. If there is not sufficient space to list all other programs, the State should list the additional programs at the bottom of the last page of the table or append a separate page.

For line 9, "Subtotal, Housing," sum the amounts for lines 1 through 8 for each column. Remember to add in funds from any other programs that may have been listed at the bottom of the last page or appended on a separate page.

For line 18, enter the sum of lines 10 through 17 for each column. For line 19, enter the sum of lines 9 and 18 for each column.

Identify in lines 20 and 21 the total amount of funds from State and private funding sources available for affordable housing under "Funding Source/Non-Federal Funds" on page 2 of table 4/5A. Enter in the appropriate columns the funds for each such funding source. For line 22 enter the sum of lines 20 and 21 for each column. For line 23, enter the sum of lines 19 and 22 for each column.

Column A. Enter the amount of funds that are expected to be available during the Federal fiscal year for each program under the Funding Source column. This amount is the sum of what was available and not committed as of October 1 of the latest Federal fiscal year and what is anticipated to become available during the current Federal fiscal year (October 1 through September 30). This should include anticipated appropriated funds as well as any anticipated program income. For example, for the CHAS to be submitted October 31, 1991, add the amount of funds available and not committed as of October 1, 1991 and the amount anticipated to be made available between October 1, 1991 and September 30, 1992. If Worksheet 4 is used, the amounts in column C of Worksheet 4 should be entered in column A of table 4/5A.

For CDBG (line 5), indicate the total amount of all funds (not just those allocated for housing activities) that are available and not committed to specific local projects.

For line 6, DOE and Other Energy Programs, enter the amount of funds available through the Department of

Energy or other Federal program funding sources expected to be committed to improve energy efficiency of housing.

For line 10, CDBG (Homeless), enter only the amount of CDBG funds expected to be committed to assist the homeless.

Column B. Of the amounts available in Column A, indicate by program, the amount of funds estimated to be committed to specific projects during the current Federal fiscal year. If no funds will be committed, enter "0."

For CDBG (line 5), enter the amount estimated to be committed for all affordable housing except for homeless programs or activities. The amount of CDBG funds to be committed for homeless activities is to be entered on line 10.

For line 6, DOE and Other Energy Programs, enter the amount of funds available through the Department of Energy or other Federal program funding sources expected to be committed to improve energy efficiency of housing.

For line 10, CDBG (Homeless), enter only the amount of CDBG funds expected to be committed to assist the homeless.

For lines 24, 25, and 26 of Column B should total line 23, Column B.

For line 24, this should be the portion of line 23, Column B, that is expected to be committed to entitlement jurisdictions.

For line 25, this should be the portion of line 23, Column B, that is expected to be committed to nonentitlement metropolitan jurisdictions.

For line 26, this should be the portion of line 23, Column B, that is expected to be committed to nonmetropolitan jurisdictions.

Columns C Through J.—Enter in each unshaded column, for each funding source for which there is an entry in Column B, a specific dollar amount, "0," or "N/A," as appropriate. Leave no unshaded cell blank (unless there is no entry, or a "0" in Column B). The sum of all entries in Column C through J should equal the amount in Column B.

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State Worksheet 4

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

Anticipated Resources

Comprehensive Housing Affordability Strategy (CHAS)

Funding Source Federal Funds Awarded or to be Awarded to State	On Hand but not Committed at Start of Fiscal Year (A)	Anticipated to be Received During Fiscal Year (B)	Total Anticipated to be Available for Commitment (A + B) (C)	Anticipated to be Committed from Total Available (D)
1. Home				
2. Hope 1				
3. Hope 2				
4. Hope 3				
5. CDBG				
6. DOE/Other Energy Prg.				
7. LIHTC				
8. Other (Specify)				
9. **Subtotal - Housing**				
10. CDBG (Homeless)				
11. ESG				
12. Perm. Housing for Handicapped				
13. Transitional Housing				
14 Shelter Plus Care				
15. Other (Specify)				
16.				
17.				
18. **Subtotal - Homeless**				
19. **Total Federal**				

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Funding Source Non-Federal Funds	On Hand but not Committed at Start of Fiscal Year (A)	Anticipated to be Received Dunng Fiscal Year (B)	Total Anticipated to be Available for Commitment (A + B) (C)	Anticipated to be Committed from Total Available (D)
State Funds (Specify)				
20				
21				
22				
23				
24 Subtotal - State Funds				
Private Funds to State (Specify)				
25				
26				
27				
28				
29 Subtotal - Private Funds				
30 Total Non-Federal Funds				
31 Grand Total (All Funds)				

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form HUD-40091

BILLING CODE 4210-01-E

Optional Worksheet 4—Anticipated Resources

Optional Worksheet 4 is not to be provided to HUD. It is provided for those States that wish to use it to help them complete table 4/5A. Instruction for table 4/5A may be referred to in using this Worksheet.

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State CHAS Table 5B

Goals for Families to be Assisted with Housing

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U.S. Department of Housing and Urban Development
Office of Community Planning and Development

Comprehensive Housing Affordability Strategy (CHAS)

Name of State: | FY:

Assistance Provided by Income Group	Total Section 215 Goals (A)	Total Goals (B)	Renters					Owners			
			Elderly 1 & 2 Member Households (C)	Small Related (2 to 4) (D)	Large Related (5 or more) (E)	All Other Households (F)	Total Renters (G)	Existing Homeowners (H)	First-Time Homebuyers With Children (I)	First-Time Homebuyers All Others (J)	Total Homeowners (K)
1. Very Low Income (0 to 50% of MFI)*											
2. Mod Rehab & Acquisition											
3. New Const, Sub Rehab, Related Infrastructure											
4. Rental Assistance											
5. Homebuyer Assistance											
6. Support Services											
7. Other Low Income (51% to 80% of MFI)*											
8. Mod Rehab & Acquisition											
9. New Const, Sub Rehab, Related Infrastructure											
10. Rental Assistance											
11. Homebuyer Assistance											
12. Support Services											
13. Total Low Income (Lines 1 and 7)											
14. Other Income (More than 80% of MFI)*											
15. Grand Total (Lines 13 and 14)											

*Or, if appropriate, based on HUD income limits with required statutory adjustments.

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Instructions for Table 5B—Annual Goals for all Families to be Assisted

Special Definitions

Section 215 Goals (Affordable Housing):

1. *Rental Housing:* A rental housing unit is considered to be an affordable housing unit if it is occupied by a low income household and bears a rent that is the lesser of (1) the Existing Section 8 Fair Market Rent (FMR) for comparable units in the area or, (2) 30 percent of the adjusted income of a family whose income equals 65 percent of the median income for the area. An exception is for those cases where, depending on the prevailing market conditions, HUD specifically establishes higher or lower FMRs for a jurisdiction.

2. *Homeownership:*

(a) Housing that is for purchase (with or without rehabilitation) qualifies as affordable housing if it (1) is purchased by a low-income, first-time homebuyer who will make the housing his/her principal residence; and (2) has a sale price which does not exceed the mortgage limit for the type of single family housing for the area under HUD's single family insuring authority under the National Housing Act.

(b) Housing that is to be rehabilitated, but is already owned by a family when assistance is provided, qualifies as affordable if the housing (1) is occupied by a low-income family which uses the housing as its principal residence, and (2) has a value, after rehabilitation, that does not exceed the mortgage limit for the type of single family housing for the area, as described in 2(a) above.

Note: These definitions apply for CHAS purposes, regardless of the Federal, State or local funding source, i.e., even if the unit is not assisted with HOME funds. Rental and homeownership projects assisted with title II, HOME program funds are subject to "affordable housing" requirements, as contained in § 92.252 (rental housing) and § 92.254 (homeownership housing) of 24 CFR part 92, which define "affordable housing" for purposes of the HOME program.

Refer to appendix A, General Definitions Used With The CHAS, for definitions of additional terms used in this table. It is particularly important to refer to the definitions provided for the different types of households (i.e., "elderly," "small related," "large related," and "other households").

General Instructions

The State shall enter on table 5B the estimated number of families to be assisted through the provision of housing or supportive services. Of those families, the State shall estimate the number to be provided housing that will meet the above definition of "affordable housing" (section 215 goals).

Estimates of the number of families assisted should be limited to those families who are either homeowners or renters, and who will be assisted with HUD funds (alone or in combination with other funds) made available to the State, and which can reasonably be expected to be committed in the coming Federal fiscal year. Federal funds expected to be committed during the year are those Federal funds identified in table 4/5A, Column B "Expect to Commit."

The State shall include families that will receive assistance as a result of projects or activities for which commitments are expected to be made during the covered year, even though the project/activity may not be completed (and actual assistance provided to the family) until after the end of the Federal fiscal year. Conversely, the State should not include families to be assisted by activities for which funding commitments were made prior to the beginning of the covered fiscal year, and which are not shown in Column B of table 4/5A.

The total number of families expected to be assisted is to be provided by:

- Income group (i.e., very low income—line 1, other low income—line 7, and other income—line 14); and
- Housing type (i.e., renters—Column C through Column F; and homeowners, both existing homeowners—Column H, and first-time homebuyers—Columns I and J).

For all families expected to be assisted (Column B) the State must estimate in Column A the number of "very low income" and "other low income" families which, based on family income and housing cost, will meet the section 215 "affordable housing" criteria.

All goals for low income renters and homeowners in lines 2 through 6 (very low income) and lines 8 through 12 (other low income) are to be broken out by the type of assistance expected to be provided.

Shaded areas are not to be filled in.

The sum of the numbers entered on each line under Column G (Total Renters) and Column K (Total Homeowners) should always equal the number entered under Column B (Total Goals). However, since some families assisted may receive more than one kind of assistance, the sum of lines 2 through 6, or 8 through 12, may often exceed the amount on lines 1 or 7, respectively, under any column.

Specific Instructions

Goals

Column A—Total Section 215 Goals. Line 1—Enter the number of very low income families (incomes at or below 50% of median family income) for which the State expects to provide assistance, either directly or through State recipients, and for whom section 215 "affordable housing" goals are expected to be achieved.

Lines 2 through 5—For each of lines 2, 3, 4 and 5, enter the number of very low income families from line 1 who will be provided the type of assistance specified. The total number of families entered for lines 2, 3, 4 and 5 will exceed the number of families listed on line 1 if more than one type of assistance is provided to one or more families. For example, if a family's rental unit receives a moderate level of rehabilitation, and the family receives tenant-based rental assistance, then the family should be included in both the number entered on line 2 and the number entered on line 4.

Line 6—Do not enter a number.

Line 7—Enter the number of other low income families (incomes between 51% and 80% of median family income) for which the State expects to provide assistance, either directly or through State recipients, and for whom section 215 "affordable housing" goals are expected to be achieved.

Lines 8 through 10, Line 12—For each of lines 8, 9, 10 and 11, enter the number of other low income families from line 7 who will be provided the type of assistance specified. The toal number of families entered on lines 8 through 11 may exceed the number entered on line 7, if one or more families receive more than one type of assistance. Do not enter a number for line 11.

Line 13—Enter the sum of the numbers entered on lines 1 and 7.

Lines 14 and 15—Do not enter numbers.

Column B—Total Goals. Line 1—Enter the total number of very low income families for which the State expects to provide assistance, either directly or through State recipients. The total number entered on line 1 is to include both the number of families for whom section 215 "affordable housing" goals are expected to be achieved and the number of families assisted, but for which the State does not expect to achieve "affordable housing" goals.

Lines 2 through 6—For each of lines 2, 3, 4, 5 and 6, enter the number of very low income families from line 1 who will be provided the type of assistance specified.

Line 7—Enter the total number of other low income families for which the State expects to provide assistance, either directly or through State recipients. Include the number of families for whom section 215 "affordable housing" goals are expected to be achieved and the number of families for which the State does not expect to achieve "affordable housing" goals.

Lines 8 through 12—For each of lines 8, 9, 10, 11 and 12, enter the number of other low income families from line 7 who will be provided the type of assistance specified.

Line 13—Enter the sum of the numbers entered on lines 1 and 7.

Line 14—Enter the number of other income families (incomes which exceed 80% of median family income) for which the State expects to provide assistance.

Line 15—Enter the sum of lines 13 and 14.

Renter Goals

Column C—Elderly Households. Line 1 and 7—Of the total number entered under Column B enter the number of elderly renter households (1 or 2 persons elderly households only; elderly households consisting of more than 2 members should be entered under Columns D, E, or F, as appropriate).

Lines 2, 3, 4 and 6; Lines 8, 9, 10 and 12—Enter the number of elderly households (1 or 2 person elderly households only) from lines 1 and 7, respectively, who will be provided the type of assistance specified.

Line 13—Enter the sum of lines 1 and 7.

Line 14—Of the total number entered under Column B enter the number of other income elderly renter households (1 or 2 person elderly households only).

Line 15—Enter the sum of lines 13 and 14.

Columns D, E and F. Columns D through F are to be filled out in the same manner as Column C. Columns D and E pertain to renter households which have at least 2 members related by blood, marriage or adoption, and excludes 1 or 2 person elderly households. Column F includes all households not included in Columns C, D, or E.

Column G—Total Renters. Enter for each line the sums of Columns C, D, E and F.

Homeowner Goals

Column H—Existing Homeowners. Column H goals for existing owners are to be filled out in the same manner as preceding columns.

Column I and J—First-time Homebuyers. For Column I enter goals for first-time homebuyers with minor children residing with the family. For Column J enter goals for first-time homebuyers without minor children residing with the family.

Column K—Total Homeowners. Enter for each line the sum of Columns H, I, and J.

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State Comprehensive Housing Affordability Strategy (CHAS)

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

APPENDIX B

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Name of State

Name of Agency

Contact Person

Telephone Number

Address

Type of Submission:

(mark one)
- ☐ New Five Year CHAS For Fiscal Year_____ through Fiscal Year_____.
- ☐ Annual Update * For Fiscal Year_____

(mark one)
- ☐ Initial Submission
- ☐ Resubmission
- ☐ Amendment **

* If an Annual Update mark one:
- ☐ Parts 4 (Resources) & 5 (Implementation) Only
- ☐ Parts 4 & 5, plus minor changes: (mark all those which apply)
  - Part 1 - Needs Assessment ___ Narrative ___ Tables
  - Part 2 - Market & Inventory Conditions ___ Narrative ___ Tables
  - Part 3 - Strategies ___ Narrative ___ Tables

** For all amendments, specify the nature of the amendment below and attach amended portions to this cover sheet.

State

Name of Authorized Official:

Signature & Date:

X

HUD Approval

Name of Authorized Official:

Signature & Date:

X

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Appendix C—Comprehensive Housing Affordability Strategy (CHAS)

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(For States Submitting Existing Housing Strategy in Place of New CHAS for FY 1992)

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Summary of Citizen Comments.

Appendix E—Comprehensive Housing Affordability Strategy (CHAS)

Certification

The State hereby certifies that it will affirmatively further fair housing.

Signature (Certifying Official) ———————

Certification

The State hereby certifies that it will comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, implementing regulations at 49 CFR 24, and the requirements at 24 CFR 570.496a(C) governing the residential antidisplacement and relocation assistance plan under section 104(d) of the Housing and Community Development Act of 1974 (including a certification that the State is following such a plan).

Signature (Certifying Official) ———————

Note: The State's execution of these certifications acknowledges that it will maintain supporting evidence, which shall be kept available for inspection by the Secretary, the Comptroller General of the United States or its designees, the Inspector General or its designees, and the public.

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PREPARING A

COMPREHENSIVE HOUSING AFFORDABILITY STRATEGY

FOR FISCAL YEAR 1992

INSTRUCTIONS FOR

UNITS OF GENERAL LOCAL GOVERNMENT

NOTICE; THESE FORMS AND INSTRUCTIONS ARE BASED ON THE INTERIM RULE PUBLISHED FOR EFFECT ON FEBRUARY 4, 1991, AND ARE FOR USE IN SUBMITTING THE CHAS FOR FY 1992 ONLY. THE RULE IS SUBJECT TO CHANGE WHEN PUBLISHED AS A FINAL RULE. PLEASE SEND YOUR COMMENTS ON THE INSTRUCTIONS AND FORMS TO BOTH THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND TO THE OFFICE OF MANAGEMENT AND BUDGET AT THE ADDRESSES LISTED BELOW SO THEY MAY BE CONSIDERED IN FORMULATING THE CHAS REQUIREMENTS FOR FUTURE YEARS.

Public reporting burden for this collection of information is estimated to average 248 hours per response, including the time for reviewing instructions, searching existing data resources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2506-XXXX), Washington, D.C. 20503.

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Comprehensive Housing Affordability Strategy (CHAS)

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General Information

As specified in Interim Rule, 24 CFR part 91, published February 4, 1991, the Comprehensive Housing Affordability Strategy (CHAS) will consist of five parts. These parts integrate the 14 elements of information required by the statute and described in detail in the regulations.

The prescribed format described in these instructions further groups the five parts of the CHAS into three major sections. These three sections and their component parts are:

- *Community Profile*
  1. Needs Assessment.
  2. Market and Inventory Conditions.
- *5-Year Strategy*
  3. Strategies.
- *1-Year Plan/Annual Update*
  4. Resources.
  5. Implementation.

Each part contains narrative discussions of affordable housing and supportive housing for homeless persons and others with special needs, supported by tables and other documentation. Tables and instructions for filling out the tables are located in appendix A. Definitions for terms used in these instructions may also be found in appendix A under the Section entitled "General Definitions Used With The CHAS." Where a term is not defined, in either the general definitions or in the instructions for specific tables, jurisdictions are to provide their own definition.

The related tables and documentation for each part are to be attached at the back of the narrative for that part. The cover sheet included as appendix B shall be completed and placed at the front of the CHAS package. The jurisdiction must also provide a table of contents at the beginning of the CHAS indicating the location of the narrative and tables and other supporting documentation for each part of its submission. The format for the table of contents may be found in appendices C and D of these instructions.

The tables contained in appendix A have been designed for use beyond Fiscal Year 1992. However, the instructions for each of the tables are for the Fiscal Year 1992 submission only. The instructions will be revised for future submissions. For the Fiscal Year 1992 CHAS, a relatively small amount of supporting needs assessment and market and inventory conditions data are required to be submitted. Most of the data that are required can be obtained from the Housing Assistance Plans (HAP) submitted by CDBG Entitlement grantees or from U.S. Census Bureau data publications which are readily available. The instructions for each of the applicable tables include specific guidance on which portions of the HAP or which U.S. Census publications contain the required data. HAP data are not required to be submitted by new CDBG Entitlement grantees, or smaller units of local government, which have never constructed a HAP, but which must submit a CHAS to receive direct funding from HUD.

The CHAS represents a jurisdiction's assessment of its needs for affordable housing and supportive housing for homeless and other persons and its strategy and action plan for addressing those needs. Therefore, jurisdictions are free to expand the contents of their CHAS beyond what is minimally required to be submitted for HUD review and approval.

Section I. Community Profile

Part 1. Needs Assessment

This part summarizes available data on the most significant current housing needs of very low income, low income and moderate income families and projects those needs over the five-year CHAS period. This part also summarizes the most significant current supportive housing needs of homeless persons and others with special needs.

General Instructions

The narrative should describe the jurisdiction's assessment of the most significant current needs as presented in the tables, as well as its projected needs. It is also where the jurisdiction will discuss those needs or issues which are not or cannot be quantified or presented in tabular form.

Jurisdictions shall quantify their current needs utilizing tables 1A and 1B, or provide required data using other tabular formats at least as detailed. Projected 5-year affordable housing needs may be described in narrative form, or, if the 5-year projected needs are significantly different in several categories of need, on a second table 1A.

A 5-year projection of supportive housing needs of homeless persons or others with special needs is not required. However, where the jurisdiction anticipates there will be a significant change in supportive housing needs in the foreseeable future, it should discuss those future needs in the narrative sections which address current needs.

In some cases, the Census Bureau can only provide a minimum estimate of need. Jurisdictions should make reasonable efforts to go beyond the minimally required data by providing updated estimates or more complete information than what is available from Census. However, jurisdictions should not undertake unplanned special surveys. Jurisdictions are not required to complete those cells in tables 1A that are not already available from the Census, their most recent HAP or State/local sources.

Table 1B is an optional table which may be used to organize data. The table can serve as a resource in developing the narrative on the estimated needs for supportive housing and/or services for people with special needs other than homeless persons. Table 1B is not required to be submitted, but may be submitted as supporting documentation at the jurisdiction's option.

Narratives

Housing Needs. Current Estimates—The narrative is to discuss the jurisdiction's estimate of current needs for housing assistance for very low income, low income and moderate income families and households for the various categories described in table 1A. Where supporting data are not available, the narrative is to describe to the best possible extent the significant needs which exist. The narrative must identify the source(s) of the family and household needs data presented in table 1A or as discussed in the narrative. Where modified or expanded data other than HAP data or Census data are provided in table 1A as the basis of current estimates, the jurisdiction must indicate in the narrative the source of additional data or the projection techniques and assumptions applied in developing the modified data.

The narrative shall include a discussion of the estimated extent to which cost burden and severe cost burden are being experienced by low and moderate income persons in the

jurisdiction, as well as a discussion of the estimated extent to which families already receive housing assistance. In particular, the narrative shall describe the number and family type of households who meet the Federal preferences for priority admission to rental assistance programs. Those with "worst case" needs for assistance are unassisted very low income renter households who pay more than half of their income for rent, live in seriously substandard housing (which includes homeless people) or have been involuntarily displaced. If the jurisdiction has established its own preferences for admission to public housing or rental assistance programs, these also should be described.

The narrative shall also discuss the housing needs of the elderly and persons with disabilities who do not require supportive housing services.

Five-Year Projections—A jurisdiction must consider whether and how its current housing needs will change over the five-year CHAS period. If the jurisdiction does not believe there will be significant changes in its current estimate of needs, it should so indicate in the narrative. If it believes there will be significant changes in its current estimate of needs, it should present those five-year projected needs in another table 1A, or present that data in a tabular format at least as detailed. The jurisdiction should describe in its narrative the projected changes for some or all of the years covered by the CHAS, as appropriate.

In developing its five-year projection, the jurisdiction must consider and discuss any foreseeable changes in housing needs that may result from those employed or expected to be employed in the jurisdiction but not currently residing there.

Supportive Housing Needs of Homeless Persons

Note: The FY 1992 Submission for the Supportive Needs of Homeless has been Revised from Previous Draft Instructions.

For the fiscal year 1992 CHAS submission, localities are required to provide ONLY a narrative description of their homeless population. For the fiscal year 1993 CHAS submission, HUD intends to provide localities with guidance on acceptable methodologies and definitions to estimate the size or their homeless populations. HUD is currently developing this guidance.

Localities are required to provide the following on Supportive Housing Needs of Homeless Persons:

Current needs estimates. To the extent reliable information is available, the unit of general local government shall describe in its narrative the nature and extent of homelessness within the jurisdiction. The description may contain an estimated total number of homeless persons living in shelters in the locality, although this information is not required. The locality shall briefly describe the source of these estimates and the methods. However, localities are not required to submit the complete data source or study to HUD. The source of the numbers must be made available to citizens upon request.

Note: Localities are not required for this year to break down total number of homeless persons by component (i.e. family versus single) or provide an estimate of the number of unsheltered. Localities need only describe the nature and extent of their unsheltered population and homeless families.

Special and Supportive Needs Population: Localities shall provide a description of the special needs population. If available, this description may include an estimated proportion of the total number of homeless persons who have special needs (i.e. persons who are mentally ill, alcohol or drug abusers, runaway or abandoned youth, victims of domestic violence and other categories that the jurisdiction may specify).

If available, the racial and ethnic status of homeless population and of the special needs populations may be provided.

The narrative shall include a description of special needs of homeless persons (e.g. need for supportive housing, drug treatment, mental health counseling), if the information is available.

Supportive Housing Needs for Others With Special Needs

Current Estimates. The jurisdiction shall describe in the narrative the characteristics, services and special housing needs of persons requiring special services other than the homeless, including the elderly, frail elderly, persons with disabilities (mental, physical, developmental), persons with AIDS, and any other categories which the jurisdiction specifies. This description must include those persons returning to the community from mental and physical health care institutions, as well as low income families who could benefit from participating in an organized program to achieve economic independence and self-sufficiency, as identified in the Public Housing Agency's (PHA) Family Self-Sufficiency Program Plan.

Supportive housing is defined as housing with a supportive environment, including intermediate care facilities, group homes single room occupancy (SRO) housing and other housing that includes a planned services component. In addition, the narrative should consider the supportive service needs of persons in other home settings, whether in assisted housing or the general community, such as PHA Self-Sufficiency Program services.

This discussion should indicate the extent of existing supportive services and the documented need, summarized as appropriate from the plan of the jurisdiction's area agency on aging, or equivalent plans from agencies serving the non-elderly handicapped populations, with appropriate references to any approved local and State plans.

Part 2. Market and Inventory Conditions

This part summarizes local housing market and inventory characteristics, including trends in population, household formation and housing, as well as information on the assisted housing and public housing stock. It also summarizes the facilities and services available for homeless persons and other persons with special needs.

General Instructions

The Market and Inventory Conditions narrative must describe the jurisdiction's assessment of the significant characteristics of its market as it relates to housing and supportive housing for homeless persons and others with special needs. The narrative should discuss any significant trends in total population, household population, and total housing inventory or in the provision of supportive housing facilities and services, which may influence the development of the jurisdiction's overall strategy.

Jurisdictions are responsible for providing sufficient information in the narrative and in the tables for this part to serve as a basis for the "Strategies" and "Implementation" sections of their submissions. Jurisdictions shall quantify their housing market and inventory conditions utilizing tables 2A, 2B, and 2C or provide the required data utilizing other tabular formats at least as detailed.

For the October 1991 submission, data to be used in tables 2A and 2B will be based on 1980 Census data or data now presented in the HAP. Data from the 1990 U.S. Census may be used, if available, for table 2A. In future years, HUD will provide 1990 Census data to jurisdictions for use in these tables. The instructions for each table identify the required data elements and the appropriate HAP tables and Census

publications containing those data elements.

Jurisdictions should make reasonable efforts to provide additional data beyond that minimally required, but should not undertake special surveys.

For Fiscal Year 1991, jurisdictions need only submit Table 2C data relative to their inventory of assisted housing that is readily available from local sources. HUD cannot provide data on assisted housing in a readily usable format for each jurisdiction in time for the October 1991 submission. While HUD maintains data on assisted housing, much of the coding is done at the county level, rather than at the jurisdictional level. However, HUD does expect to provide jurisdictions with data on their assisted housing inventory for use with table 2C in future years. Tabular data are not required for supportive housing for the homeless or for other persons with special needs.

Narratives

Housing Conditions. Based on the analysis of data and information available to the jurisdiction, the narrative must include a description of the most significant market and inventory conditions in the jurisdiction. The narrative must also describe the nature and extent of the cost burden and severe cost burden experienced by renters within the jurisdiction.

The narrative shall include a discussion of the jurisdiction's housing market in terms of supply, demand and cost of housing. The narrative shall highlight any adverse effects these market conditions have on producing rental housing, promoting new homeownership opportunities, alleviating overcrowding and meeting the needs of underserved population groups, such as large families.

The discussion of the overall housing inventory shall include an estimate of the number of public housing units in the jurisdiction, and the condition and rehabilitation needs of those units. It shall also include an assessment of whether any rental housing is expected to be lost from the assisted housing inventory for any reason, including losses through public housing demolition or conversion to homeownership or through prepayment or voluntary termination of a Federally-assisted mortgage.

The jurisdiction must also identify and describe in the narrative any areas within the jurisdiction with concentrations of racial/ethnic minorities and low income families. The location and degree of these concentrations must be identified. (Degree of concentration can be shown in terms of percentages.) Concentrations must be considered and addressed in the Five-Year Strategy.

The narrative shall indicate how the current and anticipated conditions in the area can be expected to influence the use of funds made available for rental assistance, production of new units, rehabilitation of existing units (including needs for modifications necessary to enable elderly and disabled people to remain in their homes) and acquisition of existing units.

Inventory of Facilities and Services for Homeless Persons. The jurisdiction shall describe in the narrative the facilities and services that assist homeless persons and persons at imminent risk of becoming homeless. The description must include the following:

a. Estimates, to the extent that data are available, of the number of emergency shelters, transitional housing facilities, permanent housing for the handicapped homeless and of the total overnight sleeping capacity of those types of facilities;

b. The availability of day shelters, soup kitchens, and other facilities providing assistance to homeless persons on less than an overnight basis;

c. The nature and extent of programs providing vouchers to assist homeless persons in obtaining shelter, meals, services, etc;

d. The nature and extent of social service programs that assist the homeless; and

e. The nature and extent of programs and services to prevent individuals and families at imminent risk of homelessness from becoming homeless.

Inventory of Facilities and Services for Persons with Other Special Needs. The jurisdiction must describe the facilities and services that assist persons with other special needs, as identified in part 1.

Supporting Documentation

The jurisdiction must identify the location of concentrations of minority and low income residents. It may do so by using clearly marked local maps, by describing the geographic boundaries of the area or by stating in which census division (enumeration districts, tracts, or block groups) the concentrations are located.

Section II. Five-Year Strategy

Part 3. Strategies

This part states the jurisdiction's general plans and priorities to be pursued over the five-year period of the CHAS. It flows from the jurisdiction's overall analysis of needs and market and inventory conditions, as described in parts 1 and 2.

General Instructions

The five-year strategy describes the jurisdiction's action plan for addressing imbalances between its needs for housing assistance and its affordable housing and supportive housing and services inventory by:

1. Determining general priorities for allocating investment among the types of affordable housing and supportive housing needs and interventions covered by the CHAS;

2. Analyzing likely effects of relevant public policies on the success of efforts to develop, maintain or improve affordable and supportive housing;

3. Implementing programs, providing services and undertaking special initiatives to carry out the strategy;

4. Identifying the institutional structure through which the action plan will be implemented; and

5. Coordinating public and private funding resources, services and special initiatives in an integrated manner to achieve its strategic goals.

The jurisdiction shall summarize its investment priorities for very low-income and other low income in table 3. However, more than in any other part of the CHAS, the narrative is the most critical portion of the strategy.

Narratives

Priorities for Allocating Investment. The jurisdiction shall discuss the reasoning behind the general priorities it has established for allocating available Federal, State and local resources within the jurisdiction, as summarized in table 3. This discussion shall address the basis for assigning relative priortities:

1. Among different categories of very low and low income households with needs for housing assistance, as identified in table 1A, including type and size of family;

2. Among the activity types appropriate for meeting these identified needs in the context of the local housing market and inventory conditions and the costs of different activities; and

3. Among the various geographical areas within the jurisdiction.

The narative should describe how the housing problems of households with "worst case" needs for housing assistance and of other households meeting Federal or local preferences for assistance, and the alternatives available for addressing such needs, were considered in developing the jurisdiction's investment priorities.

The jurisdiction shall consider the needs for housing assistance of various racial and ethnic low income groups in determining its priorities for allocating investment.

The jurisdiction shall identify the geographic areas it has selected for investments and the nature of the impact it hopes to achieve through such investment.

The determination of priorities should flow logically from analysis of how the size, distribution, condition and cost of the housing inventory matches up with the needs and types of housing problems of various income, racial, family, and tenure groups. For example, there may be a sufficient housing stock in standard condition or suitable for rehabilitation available for small families, but at rent levels above 30% of their income. This situation might suggest a priority on rental assistance and/or moderate levels of rehabilitation to meet the needs of those households. On the other hand, acquisition or substantial rehabilitation of existing larger units, or new construction where necessary, might be given priority to provide afforadable units needed by large families.

While rehabilitation would normally be a reasonable strategy in low income neighborhoods with older housing, for areas with very high concentration of minorities higher priority to acquisition of standard housing and/or rental assistance in non-impacted neighborhoods might be appropriate. Similarly, the analysis of homeowners may indicate that access to ownership has been constrained among certain family sizes or racial groups, contributing to pressure on the rental market in certain size categories or neighborhoods. This might lead to placing a high priority on promoting homeownership opportunities for such groups, possible through conversion of portions of the public or assisted housing stock to homeownship.

Finally, when considering allocation of priorities, attention should be paid to the extent to which certain groups are already in assisted housing; while their needs may not be wholly met, other portions of the low income community may have more pressing needs and have received less assistance.

A Jurisdiction receiving HOME program funds, but not receiving a new construction set-aside, may still use HOME funds for new construction of certain types of affordable housing, under certain circumstances, provided that the Jurisdiction presents objective data in this portion of the narrative that demonstrates a high priority need for such housing. The types of housing, and the circumstances under which HOME funds may be utilized for new construction of such housing are contained in the HOME program regulations.

Relevant Public Policies. The narrative shall explain the extent to which the costs or incentives to develop, maintain or improve affordable housing in the jurisdiction are affected by State or local public policies, as embodied in statutes, ordinances, regulations, or administrative procedures and processes. The narrative shall specifically identify and address any excessive, exclusionary, discriminatory or duplicatory policies, rules and regulations that may constitute barriers to affordability, including the jurisdiction's tax policies affecting land and other property, land use controls, zoning ordinances, building codes, code enforcement, fees and charges, growth limits, and policies that affect the return on residential (including supportive housing) investment.

The jurisdiction shall describe its strategy to remove or ameliorate any negative effects of these policies, rules, and regulations, including any effects contributing to concentration of racial/ethnic minorities. Such strategy should include specific proposals for reforms of policies to be undertaken in the next five years, and the jurisdiction should explain how these reforms relate to current relevant State policies.

Programs, Services, and Special Initiative Strategies. The jurisdiction shall describe the Federal, State, local and private programs and services to be provided, and the special initiatives to be undertaken, to implement its five-year strategy. This discussion shall identify the specific elements or portions of the strategy to which each of these programs and initiatives will be directed, in terms of the affordable and supportive housing needs to be addressed. Specific strategies to be implemented through programs, services and special initiatives, and which are to be discussed in the narrative include:

Affordable Housing

- Increasing the supply of standard, affordable housing through the acquisition and/or rehabilitation of existing housing units and, if appropriate, the construction of new units;
- Providing rental assistance to alleviate rental cost burden, including severe cost burden, experienced by lower income families and individuals;
- Promoting homeownership opportunities;
- Meeting the housing needs of large families, elderly persons and persons with disabilities;
- Evaluating the energy efficiency of housing for lower income households and implementing programs and/or special initiatives to achieve lower overall housing costs by reducing energy costs;
- Alleviating overcrowding;
- Removing or ameliorating any negative effects of policies contributing to concentration of racial/ethnic minorities;
- Minimizing involuntary displacement;
- Ensuring no net loss in the assisted housing inventory as a result of public housing demolition or conversion to homeownership, prepayment or voluntary termination of a Federally-assisted mortgage, or any other actions;
- Improving, in coordination with the local public housing agency, the management of public housing and the living environment of public housing residents;
- Encouraging public housing residents to become more involved in the management of public housing; and
- Assisting public housing residents to become owners of their public housing units and/or developing other homeownership opportunities for these residents.

Supportive Housing for Homeless Persons

- Addressing the needs of various populations for emergency shelter and services, housing and services for transition to permanent housing and independent living and housing and supportive services for those not capable of achieving independent living;
- Ensuring permanent affordable housing opportunities for persons who successfully complete a transitional housing program; and
- Serving low-income families and individuals in imminent danger of residing in shelters or being unsheltered because they lack access to permanent housing and/or have an inadequate support network.

Supportive Housing for Other Persons with Special Needs

- Addressing the unmet housing and service needs of persons with disabilities (mental, physical, developmental), the elderly, persons with AIDS, low income families who could benefit from participation in an organized program to achieve economic independence and self-sufficiency, and any other categories that the jurisdiction specifies.

Institutional Structure. The jurisdiction shall identify the institutional structure through which it

will carry out its affordable and supportive housing strategy. Private industry, nonprofit organizations and public institutions should be included in the discussion. Each organization comprising the institutional structure should be identified by type (public, private, nonprofit) and purpose (e.g., financial institution, planning agency, housing/community development agency, public housing agency, social services agency, mental health agency, etc.). The jurisdiction should identify each organization's respective role in carrying out affordable housing and supportive housing for homeless persons and other persons with special needs, and discuss the interrelationships among organizations in carrying out the strategy.

The jurisdiction shall provide an assessment of the institutional structure for carrying out its five-year strategy. This assessment shall discuss the existing strengths and gaps in the delivery of programs and services, including efforts to make use of available housing, social service and mental and other health care resources and shall identify proposed actions to strengthen, coordinate and integrate those institutions and delivery systems. This assessment should also discuss the gaps in program and service delivery that result in persons becoming homeless (e.g., slow processing of public assistance payments, or release from institutions without housing resources identified).

Coordination of Resources. The jurisdiction shall describe its plan for using available program, service and special initiative resources in a coordinated and integrated manner to achieve its affordable and supportive housing goals. This discussion should distinguish between programs for which the jurisdiction may have an entitlement (e.g., CDBG, ESG or HOME), those for which it may apply itself, and those for which others (e.g., PHAs, developers, private or nonprofit organizations) may reasonably be expected to apply. The jurisdiction should include in its discussion not only programs administered through HUD, but also resources made available through other Federal, State and local agencies, such as resources available to support residential energy efficiency, or the supportive needs of the homeless and others with special needs. The jurisdiction should also address the use of resources for activities intended to support housing, homeless assistance or special needs programs, such as construction of water and sewer systems, public facilities, community centers and parks.

Supporting Documentation

Supporting documentation in this part may include maps identifying concentrations of racial/ethnic minorities or outlining the jurisdiction's geographic resource allocation plan.

Section III. One-Year Plan/Annual Update

The two parts in section III, which constitute the Annual Plan of a new five-year CHAS or the Annual Update in the subsequent four years, must be submitted every year. These two parts describe: (1) The resources the jurisdiction reasonably expects to be available for the coming Federal fiscal year that will be used to address the needs and conditions described in section I (parts 1 and 2); and (2) the jurisdiction's specific action plans and goals for that year toward carrying out the five-year strategy described in section II (part 3).

Part 4. Resources

General Instructions

The jurisdiction shall quantify the resources it anticipates will be available and which it intends to commit during the year in the first two columns of table 4/5A. (The remaining columns of the table will be used to support part 5, Implementation.) Worksheet 4, which is not a required form, is provided to assist jurisdictions in calculating the amounts to enter on table 4/5A. If the Worksheet is used, it should not be submitted as part of the CHAS.

The narrative portion of this part shall explain how these resources will be obtained, how it was determined which amounts would be committed and the actions to be taken to maximize resources.

Narratives

The jurisdiction shall identify in the narrative all of the sources of funds for affordable and supportive housing that may reasonably be expected to be available, and that it reasonably expects to commit, during the fiscal year covered to carry out its strategy. This is to include both public and private resources.

It should be noted that the jurisdiction is generally expected to plan to take actions leading to commitment of all such resources. Therefore, where the plan does not reflect the commitment of a particular public resource identified as available for commitment, the narrative must provide a reasonable justification for such omission.

In some programs (such as the Entitlement Community Development Block Grant Program) funds provided or to be provided to the jurisdiction may be used for a variety of activities, only some of which would be appropriate to meet CHAS needs. The narrative should explain how it was determined what portion of such funds should be used to address affordable and supportive housing objectives.

When a jurisdiction is in doubt concerning the level of funding that may be available for a particular program for use by, or within, the jurisdiction, the agency responsible for administering that program should be contacted for advice.

The jurisdiction shall describe the actions it will take to influence other entities to apply for and/or make use of funds for affordable and supportive housing under programs for which it is not itself eligible to apply, or for which it elects to have others apply.

The jurisdiction shall address specifically any matching requirements of the various resources to be utilized, and how it expects those requirements to be met. It shall also specifically describe its strategy for leveraging private and non-Federal funds by the use of Federal funds.

The jurisdiction shall specifically identify any court orders or consent decrees that affect the provision of assisted housing or fair housing remedies in that jurisdiction, and address how that order or decree will impact resources and goals of the jurisdiction.

Part 5. Implementation

This part translates the jurisdiction's five-year strategy and anticipated available resources into a one-year action plan and goals which will guide the jurisdiction's resource allocation and investment decisions during the coming year.

General Instructions

The jurisdiction shall complete the remaining columns of table 4/5A to specify its investment plan for the covered Federal fiscal year. It will also complete table 5B to specify its goals for individuals and families to be served through such investment plans.

The jurisdiction shall describe in its narrative the investment plans and goals specified in the two tables and the specific actions it will take to achieve those commitment levels and goals. The jurisdiction shall also describe actions to be taken to remove or ameliorate the negative effects on affordability of public policies.

Additionally, all jurisdictions must include in the narrative a description of how they will monitor their programs for compliance with their strategy.

Narratives

The narrative shall consist of two parts: (1) A one-year action plan for providing affordable housing and supportive housing for homeless persons and others with special needs, and (2) a monitoring plan.

Action Plan. The action plan shall outline responsibilities, financial resources and timetables, including:

1. How the goals are consistent with the jurisdiction's five-year strategy;
2. The geographic areas in which the jurisdiction plans to target assistance;
3. The governments or other entities responsible for delivering and managing the assistance; and
4. The time required for the assistance provided to each type of activity in table 4/5a to reasonably be expected to result in benefits to program beneficiaries.

Affordable Housing. The narrative shall explicitly discuss the actions that will be taken in the coming year to assist those very low income renters meeting Federal preferences for housing assistance and thus reduce unmet "worst case" needs.

The narrative shall also include a description of the actions the jurisdiction will undertake in the coming year to carry out its strategy to remove or ameliorate the negative effects of local policies impacting affordability, as described in part 3. The narrative should include specific proposals for reforms of such public policies that the jurisdiction will implement within the coming year. In each subsequent year, the jurisdiction shall also discuss its progress in implementing such reforms.

Supportive Housing for the Homeless. The jurisdiction shall describe the goals, programs and policy initiatives the community expects to accomplish during the coming year to address the unmet needs of:

a. Homeless families and individuals, including those who are mentally ill, alcohol and drug abusers, victims of domestic violence, runaway and abandoned youth and other categories the jurisdiction specifies for (1) emergency shelter and services, (2) housing and services for transition to permanent housing and independent living, and (3) housing and supportive services to those not capable of achieving independent living; and

b. Low income families and individuals, especially those with incomes below 30 percent of the median, who are in imminent danger of becoming homeless and do not have permanent housing and an adequate support network.

Supportive Housing for Other Persons with Special Needs. The jurisdiction shall describe the goals, programs and policy initiatives the community expects to accomplish during the next year to address the unmet needs of persons with disabilities (mental, physical, developmental), the elderly, persons with AIDS, low income families who could benefit from participation in an organized program to achieve economic independence and self-sufficiency, and any other categories which the jurisdiction specifies.

Monitoring Plan. The monitoring plan shall describe how the jurisdiction intends to conduct monitoring reviews to determine whether its programs are being carried out in accordance with its CHAS and in a timely manner. Such descriptions must provide for monitoring to be carried out on a regular basis to ensure that statutory and regulatory requirements are being met and that, where appropriate, information that is being submitted to a HUD cash and management information system is correct and complete.

Supporting Documentation

Jurisdictions must certify that they will affirmatively further fair housing, and that they are in compliance with a residential anti-displacement and relocation assistance plan. Those certifications are attached as appendix E.

Appendix A—Comprehensive Housing Affordability Strategy (CHAS)

Required CHAS Tables and Instructions

For 1992 CHAS (October, 1991 Submission) Only

General Defintions Used with the CHAS

Table 1A. Housing Assistance Needs of Low and Moderate Income Households.
Table 1B.* Other Special Needs Population.
Table 2A. Market and Inventory Conditions—Population and Minority Data.
Table 2B. Market and Inventory Conditions—Housing Stock Inventory.
Table 2C. Assisted Housing Inventory.
Table 3. Summary of Priorities for Assistance—5-Year Priorities for Very Low Income and Other Low Income Persons.
Table 4/5A. Anticipated Resources and Plan for Investment.
Worksheet 4.** Anticipated Resources.
Table 5B. Goals for All Families to be Assisted with Housing.

* Table 1B is not required to be submitted, but may be submitted.

** Worksheet 4 is not to be submitted with CHAS.

General Definitions Used With the CHAS

Affordable Housing: Affordable housing is generally defined as housing where the occupant is paying no more than 30 percent of gross income for gross housing costs, including utility costs.

Affordable housing has a more specific definition for purposes of completing table 5B. That definition is included in the instructions for table 5B.

Committed: Generally means there has been a legally binding commitment of funds to a specific project to undertake specific activities.

Expanded definitions for completing table 4/5A are included in the instructions for table 4/5A.

Cost Burden > 30%: The extent to which gross housing costs, including utility costs, exceed 30 percent of gross income, based on data published by the U.S. Census Bureau.

Cost Burden > 50% (Severe Cost Burden): The extent to which gross housing costs, including utility costs, exceed 50 percent of gross income, based on data published by the U.S. Census Bureau.

Disabled Household: A household composed of one or more persons at least one of whom is an adult (a person of at least 18 years of age) who has a disability. A person shall be considered to have a disability if the person is determined to have a physical, mental or emotional impairment that: (1) Is expected to be of long-continued and indefinite duration, (2) substantially impeded his or her ability to live independently, and (3) is of such a nature that the ability could be improved by more suitable housing conditions. A person shall also be considered to have a disability if he or she has a developmental disability as defined in the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001–6006). The term also includes the surviving member or members of any household described in the first sentence of this paragraph who were living in an assisted unit with the deceased member of the household at the time of his or her death.

Economic Independence and Self-Sufficiency Programs: Programs undertaken by Public Housing Agencies (PHAs) to promote economic independence and self-sufficiency for participating families. Such programs may include Project Self-Sufficiency and Operation Bootstrap programs that originated under earlier section 8 rental certificate and rental voucher initiatives, as well as the Family Self-Sufficiency program. In addition, PHAs may operate

locally-developed programs or conduct a variety of special projects designed to promote economic independence and self sufficiency.

Elderly Household: A family in which the head of the household or spouse is at least 62 years of age.

Existing Homeowner: An owner-occupant of residential property who holds legal title to the property and who uses the property as his/her principal residence.

Family: A household comprised of one or more individuals.

Family Self-Sufficiency (FSS) Program: A program enacted by section 554 of the National Affordable Housing Act which directs Public Housing Agencies (PHAs) and Indian Housing Authorities (IHAs) to use section 8 assistance undr the rental certificate and rental voucher programs, together with public and private resources to provide supportive services, to enable participating families to achieve economic independence and self-sufficiency.

First Time Homebuyer: An individual or family who has not owned a home during the three-year period preceding the HUD-assisted purchase of a home that must be used as the principal residence of the homebuyer.

FmHA: The Farmers Home Administration, or programs it administers.

For Rent: Year round housing units which are vacant and offered/available for rent. (U.S. Census definition)

For Sale: Year round housing units which are vacant and offered/available for sale only. (U.S. Census definition)

Group Quarters: Facilities providing living quarters that are not classified as housing units. (U.S. Census definition). Examples include: prisons, nursing homes, dormitories, military barracks, and shelters.

HOME: The HOME Investment Partnerships Act, which is title II of the National Affordable Housing Act.

HOPE 1: The HOPE for Public and Indian Housing Homeownership Program, which is title IV, subtitle A of the National Affordable Housing Act.

HOPE 2: The HOPE for Homeownership of Multifamily Units Program, which is title IV, subtitle B of the National Affordable Housing Act.

HOPE 3: The HOPE for Homeownership of Single Family Homes Program, which is title IV, subtitle C of the National Affordable Housing Act.

Household: One or more persons occupying a housing unit. (U.S. Census definition).

Note: A special definition of household is used for table 1D, Supportive Housing and Services Population. Table 1D instructions provide a special definition of "household" as it is used in table 1D.

Housing Problems: Households with housing problems include those that: (1) Occupy units meeting the definition of Physical Defects; (2) meet the definition of overcrowded; and (3) meet the definition of cost burden > 30%. Table 1A requests nonduplicative counts of households that meet one or more of these criteria.

Housing Unit: An occupied or vacant house, apartment, or a single room (SRO housing) that is intended as separate living quarters. (U.S. Census definition)

Institutions/Institutional: Group quarters for persons under care or custody. (U.S. Census definition)

Large Related: A household of 5 or more persons which includes at least 2 related persons.

LIHTC: (Federal) Low Income Housing Tax Credit.

Low Income: Households 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. NOTE: HUD income limits are updated annually and are available from local HUD offices for the appropriate jurisdictions.

Middle Income: Households whose incomes are from 96 to 120 percent of the median income for the area, as determined by HUD, with adjustments for smaller or larger families, except that HUD may establish income ceilings higher or lower than 120 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.

If income adjustments are made by HUD and the low income limit for the area is set at higher or lower than 80 percent of median income, the middle income limits must be adjusted by multiplying the adjusted low income limit by 1.5. **Example:** With a median income for the area of $10,000 and a low income limit adjusted by HUD to $7,500, the adjusted middle income limit would be computed as follows: $7,500 × 1.5 = $11,250 adjusted middle income limit.

Moderate Income: Households whose incomes are between 81 percent and 95 percent of the median income for the area, as determined by HUD, with adjustments for smaller or larger families, except that HUD may establish income ceilings higher or lower than 95 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.

If income adjustments are made by HUD and the low income limit for the area is set at higher or lower than 80 percent of median income, the moderate income limits must be adjusted by multiplying the adjusted low income limit by 1.1875. Example: With a median income for the area of $10,000 and a low income limit adjusted by HUD to $7,500, the adjusted moderate income limit would be computed as follows: $7,500 × 1.1875 = $8,906 adjusted moderate income limit.

Needing Rehab: Dwelling units that do not meet standard conditions but are both financially and structurally feasible for rehabilitation. This does not include units that require only cosmetic work, correction or minor livability problems or maintenance work.

Non-Elderly Household: A household which does not meet the definition of "Elderly Household," as defined above.

Non-institutional: Group quarters for persons not under care or custody. (U.S. Census definition used in table 2A.)

Not Rehabbable: Dwelling units that are determined to be in such poor condition as to be neither structurally nor financially feasible for rehabilitation.

Occupied Housing Unit: A housing unit that is the usual place of residence of the occupant(s).

Other Household: A household of one or more persons that does not meet the definition of a Small Related household or a Large Related household, or is an elderly household comprised of 3 or more persons.

Other Income: Households whose incomes exceed 80 percent of the median income for the area, as determined by the Secretary, with adjustments for smaller and larger families.

Other Low Income: Households whose incomes are between 51 percent and 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.

Other Persons with Special Needs: Includes frail elderly persons, persons with AIDS, disabled families, and families participating in organized programs to achieve economic self-sufficiency. This category does not include homeless.

Other Vacant: Vacant year round housing units that are not For Rent, For Sale, or Vacant Awaiting Occupancy or Held. (U.S. Census definition)

Overcrowded: A housing unit containing more than one person per room. (U.S. Census definition used in table 1A.)

Owner: A household that owns the housing unit it occupies. (U.S. Census definition)

Physical Defects: A housing unit lacking complete kitchen, bathroom, or electricity (U.S. Census definition used in table 1A.). Jurisdictions may expand upon the Census definition.

Project-Based (Rental) Assistance: Rental Assistance provided for a project, not for a specific tenant. Tenants receiving project-based rental assistance give up the right to that assistance upon moving from the project.

Public Housing CIAP: Public Housing Comprehensive Improvement Assistance Program.

Public Housing MROP: Public Housing Major Reconstruction of Obsolete Projects.

Rent Burden > 30% (Cost Burden): The extent to which gross rents, including utility costs, exceed 30 percent of gross income, based on data published by the U.S. Census Bureau.

Rent Burden > 50% (Severe Cost burden): The extent to which gross rents, including utility costs, exceed 50 percent of gross income, based on data published by the U.S. Census Bureau.

Renter: A household that rents the housing unit it occupies, including both units rented for cash and units occupied without cash payment of rent. (U.S. Census definition)

Renter Occupied Unit: Any occupied housing unit that is not owner occupied, including units rented for cash and those occupied without payment of cash rent.

Section 215: Section 215 of title II of the National Affordable Housing Act. Section 215 defines what constitutes "affordable" housing projects under the title II HOME program.

Service Needs: The particular services identified for special needs populations, which typically may include transportation, personal care, housekeeping, counseling, meals, case management, personal emergency response, and other services to prevent premature institutionalization and assist individuals to continue living independently.

Severe Cost Burden: See Cost Burden > 50 %.

Sheltered: Families and persons whose primary nighttime residence is a supervised publicly or privately operated shelter (e.g., emergency, transitional, battered women, and homeless youth shelters; and commercial hotels or motels used to house the homeless). Sheltered homeless does not include any individual imprisoned or otherwise detained pursuant to an Act of Congress or State law.

Small Related: A household of 2 to 4 persons which includes at least two related persons.

Substantial Rehabilitation: Rehabilitation of residential property at an average cost for the project in excess of $25,000 per dwelling unit.

Supportive Housing: Housing, including Housing Units and Group Quarters, that have a supportive environment and includes a planned service component.

Supportive Service Need in FSS Plan: The plan that PHAs administering a Family Self-Sufficiency program are required to develop to identify the services they will provide to participating families and the source of funding for those services. The supportive services may include child care; transportation; remedial education; education for completion of secondary or post secondary schooling; job training, preparation and counseling; substance abuse treatment and counseling; training in homemaking and parenting skills; money management, and household management; counseling in homeownership; job development and placement; follow-up assistance after job placement; and other appropriate services.

Supportive Services: Services provided to residents of supportive housing for the purpose of facilitating the independence of residents. Some examples are case management, medical or psychological counseling and supervision, child care, transportation, and job training.

Tenant Assistance: Rental assistance payments provided as either project-based rental assistance or tenant-based rental assistance.

Tenant-Based (Rental) Assistance: A form of rental assistance in which the assisted tenant may move from a dwelling unit with a right to continued assistance. The assistance is provided for the tenant, not for the project.

Total Vacant Housing Units: Unoccupied year round housing units. (U.S. Census definition)

Unsheltered: Families and individuals whose primary nighttime residence is a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings (e.g., the street, sidewalks, cars, vacant and abandoned buildings).

Vacant Awaiting Occupancy or Held: Vacant year round housing units that have been rented or sold and are currently awaiting occupancy, and vacant year round housing units that are held by owners or renters for occasional use. (U.S. Census definition)

Vacant Housing Unit: Unoccupied year-round housing units that are available or intended for occupancy at any time during the year.

Very Low Income: Households whose incomes do not exceed 50 percent of the median area income for the area, as determined by HUD, with adjustments for smaller and larger families and for areas with unusually high or low incomes or where needed because of prevailing levels of construction costs or fair market rents.

Year Round Housing Units: Occupied and vacant housing units intended for year round use. (U.S. Census definition). Housing units for seasonal or migratory use are excluded.

Note: Terms not defined above may be defined in the specific instructions for each table. If a term is not defined, the jurisdiction is to provide its own definition.

Table Instructions—General Information

The instructions for each table to be submitted with the CHAS are instructions for the Fiscal Year 1992 submission only. On each table, a space is provided to enter the name of the submitting jurisdiction(s) or consortium. It is important that this space be filled in on all of the tables. Tables associated with parts 1, 2, and 3 of the CHAS (i.e. tables 1A, and 1B; tables 2A, 2B, 2C; and table 3) provide a space for identifying the five-year period the CHAS is to cover. For Fiscal Year 1992, jurisdictions should enter "1992" through "1996." Similarly, tables 4/5A and 5B, which are to be submitted annually, has a space for the fiscal year the tables are covering.

Some of the tables are not required to be completed for Fiscal Year 1992 if a jurisdiction does not have ready access to the data needed to complete those tables. (See the specific instructions for each table). Nonetheless, to avoid confusion, jurisdictions are to submit all tables, even those tables where no numerical information is presented. Where data are not available for a table, write "NO DATA AVAILABLE" across the table and include those tables with

the CHAS submission. This will help avoid a CHAS being disapproved because it is thought to be an incomplete CHAS submission.

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CHAS Table 1A

Housing Assistance Needs of Low & Moderate Income Households

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

JUN 15 1991

Comprehensive Housing Affordability Strategy (CHAS)

Name of Jurisdiction(s) or Consortium:

Five Year Period:
FY: through FY:

Mark one:
- [ ] Current Estimate as of: (enter date)
- [ ] Five-Year Projected Estimate as of: (enter date)

Mark one:
- [ ] All Households
- [ ] Racial/Ethnic Group Households: (specify) [1]

Household by Type, Income, & Housing Problems	Renters					Owners				
	Elderly 1 & 2 Member Households (A)	Small Related (2 to 4) (B)	Large Related (5 or more) (C)	All Other Households (D)	Total Renters (E)	Elderly 1 & 2 Member Households (F)	Small Related (2 to 4) (G)	Large Related (5 or more) (H)	All Other Households (I)	All Owners (J)
1. **Very Low Income (0 to 50%)***										
2. With Housing Problems										
3. Physical Defects										
4. Overcrowded										
5. Cost Burden > 30%										
6. Cost Burden > 50%										
7. **Other Low-Income (51 to 80%)***										
8. With Housing Problems										
9. Physical Defects										
10. Overcrowded										
11. Cost Burden > 30%										
12. Cost Burden > 50%										
13. **Total Low-Income**										
14. **Moderate Income (81 to 95%)***										
15. With Housing Problems										
16. Physical Defects										
17. Overcrowded										
18. Cost Burden > 30%										
19. Cost Burden > 50%										
20. **Middle-Income Hshlds.(96 to 120%)***										
21. **All Households**										

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[1] See Table 2A for listing of Racial/Ethnic Groups

* Or, if appropriate, based on HUD income limits with required statutory adjustments.

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Instructions for Table 1A—Housing Assistance Needs of Low and Moderate Income Households

Refer to Appendix A, General Definitions Used With The CHAS, for definitions of terms used in this table.

General Instructions

For Fiscal Year 1992, jurisdictions are required to submit only a minimal amount of data for their current estimate of need. Five versions of table 1A will be required, one for total low income renter households and one for each of four racial/ethnic groups. A sixth table 1A may be needed for the 5-year projection of needs, if the needs of total low income renter households are expected to change significantly.

For jurisdictions which have HAPs, table 1A data for lines 1, 7 and 13 under columns A, B, C and E must be provided for all low-income renter households. (Column D—All Other Households totals are included in the HAP totals to be transferred to table 1A, Columns B and C, and thus it is not necessary to complete table 1A, Column D.) In addition, separate table 1A data for line 13, columns A, B, C and E must be provided for all racial/ethnic renter households. Data for all low income renter households may be obtained from renter data for all very low income and other low income by family type contained in Table II—Rental Subsidy Needs of Lower Income Households, of their most recent Housing Assistance Plan (HAP) submission; Data for each of four low income racial/ethnic groups by family type may be obtained from the HAP "Housing Assistance Needs" narrative section.

Jurisdictions which have never developed a HAP are not required to submit any household needs data, although they are encouraged to provide estimates.

Data contained in a HAP does not always parallel data sought in table 1A but may, nonetheless, serve as estimates of need for Fiscal Year 1992. To the extent that jurisdictions have the capability to provide additional data sought in table 1A, they are encouraged to do so.

Specific Instructions (For Fiscal Year 1992 Submission Only)

The jurisdiction is to indicate whether the data presented on table 1A is for all households or for a racial/ethnic group by placing an "x" in the appropriate box provided at the top of the table. If the data is for a racial/ethnic group, place an "x" in the box labeled "Racial/Ethnic Group" and specify the applicable racial/ethnic group in the space provided. The four racial/ethnic groups for which data must be provided are: (1) Black, Non-Hispanic; (2) American Indians or Alaskan Native; (3) Hispanic; and (4) Asian or Pacific Islanders. (In future years, data will be provided by HUD, and reported by jurisdictions, for each of 5 racial/ethnic groups.)

For data presented for all households the jurisdiction is to indicate whether the figures presented on table 1A represent its current estimate of need or its 5-year projection of needs by placing an "x" in the appropriate box provided. For the current estimate enter "October 1, 1991" in the space provided for current estimate. If using another table 1A to present projected needs, enter "September 30, 1996" in the space provided for five-year projected estimate. (5-year projected needs may be presented in the narrative, or, if significantly different in several categories of need, may be presented using a separate table 1A.)

If using the most recently submitted HAP table II—Rental Subsidy Needs of Lower Income Households data as the jurisdiction's current estimate of need, then take the HAP table II figures from the reference columns and lines below, and use those figures for the CHAS table 1A columns and lines referenced below.

HAP table II	CHAS table 1A
Column, H, Line 8	Column A, Line 1.
Column, I, Line 8	Column B, Line 1.
Column, J, Line 8	Column C, Line 1.
Column, K, Line 8	Column E, Line 1.
Column, H, Line 10	Column A, Line 7.
Column, I, Line 10	Column B, Line 7.
Column, J, Line 10	Column C, Line 7.
Column, K, Line 10	Column E, Line 7.
Column, H, Line 8+10	Column A, Line 13.
Column, I, Line 8+10	Column B, Line 13.
Column, J, Line 8+10	Column C, Line 13.
Column, K, Line 8+10	Column E, Line 13.

BILLING CODE 4210-01-M

CHAS Table 1B (Optional)

Other Special Needs Population

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

Comprehensive Housing Affordability Strategy (CHAS)

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Name of Jurisdiction(s) or Consortium

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Five Year Period: (enter fiscal yrs.)
FY through FY

Category	Households			
	Persons with Disabilities (A)	Elderly with Special Needs (B)	Persons with AIDS (C)	Participants in Economic Independence and Self Sufficiency Programs (D)
1. Number of Households				
2. Supportive Housing Need				
3. Service Needs				
4. Supportive Service Need Identified in FSS Plan				

BILLING CODE 4210-01-C

Instructions for Table 1B—Supportive Housing and Services Population

Special Definition

Number of Households: The total of households (including those with individuals and 2 or more persons who are sharing living quarters) plus persons living in group quarters.

Refer to Appendix A, General Definitions Used With The CHAS, for additional definitions of terms used, or programs cited in this table.

General Instructions

Optional Table 1B provides a format for estimating the need for supportive housing and services for the population with special needs. For the categories of people with disabilities, elderly with special needs, and persons with AIDS, the table calls for the estimated number of individuals in each category, and for the number of individuals with need for either supportive housing or services, or both. For participants in Family Self-Sufficiency (FSS) and similar economic independence programs operated by Public Housing Agencies, the table would provide an estimate of the number of individuals needing supportive services as identified in the PHA's FSS plan.

Some potential resource agencies and the client groups they serve include:

- State mental health agencies for persons with chronic mental illness;
- State agencies of mental retardation or State developmental disabilities councils for people with developmental disabilities;
- State rehabilitation agencies or State or local Centers for Independent Living for people with physical disabilities;
- State or area agencies on aging for elderly people;
- The Public Health Service's Center for Disease Control for persons with AIDS; and
- Public Housing Agencies for families eligible to participate in Family Self Sufficiency programs.

Specific Instructions

Line 1—Enter the estimated number of households (as defined above) for each of the categories under columns A, B, and C.

Lines 2 and 3—Enter under each of the columns the estimated number of households from line 1 which have supportive housing needs or service needs, respectively, under Columns A, B, and C.

Line 4—Enter the number of participants in Economic Independence and Self-Sufficiency programs administered by the PHA(s) serving the jurisdiction who will be provided services identified in the PHA's Family Self-Sufficiency (FSS) Plan.

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CHAS Table 2A

JUN 15 1991

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

Population and Minority Data

Comprehensive Housing Affordability Strategy (CHAS)

Name of Jurisdiction(s) or Consortium:

Five Year Period: (enter fiscal yrs.)
FY: through FY:

Category	1980 Census Data (A)	1990 Census Data or Current Estimate (B)
1. **Total Population**		
2. White (Non-Hispanic)		
3. Black (Non-Hispanic)		
4. Hispanic (All races)		
5. Native American		
6. Asian and Pacific Islanders		
7. **Group Quarters**		
8. Institutional		
9. Non-Institutional		
10. **Household Population**		

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BILLING CODE 4210-01-C

Instructions for table 2A—Market Inventory and Conditions-Population and Minority Data

Refer to Appendix A, General Definitions Used With The CHAS, for definitions of terms used in this table.

General Instructions

The 1990 U.S. Census will ultimately provide all the information needed to complete Column B of this Table. Until HUD is able to provide that data, jurisdictions need only complete Column A data, which is currently available from 1980 U.S. Census data sources, as specified below. The provision of Column B data is optional for Fiscal Year 1992. To the extent that jurisdictions can provide 1990 U.S. Census data, or current estimates based on local data, jurisdictions are encouraged to provide Column B data.

Specific Instructions

The following instructions provide readily available 1980 Census resource publications where required information may be found. Cited Census publication titles and publication numbers are generally published separately for each State.

Column A. Lines 1 and 10—Total Population (Line 1), and Household Population (Line 10), for places of 1,000 or more and for counties may be found in U.S. Census publication "General Population Characteristics (PC80–1–B)," table 14.

Lines 2 through 6—Use the data provided for the non-Hispanic portions of White, Black, Native American, and Asian Pacific Islanders, as well as the data for Persons of Spanish Origin, as found for places of 2,500 or more and for counties in U.S. Census publication "General Social and Economic Characteristics (PC80–1–C)," table 59.

Lines 7, 8, and 9—The U.S. Census report "Persons in Institutions and Other Group Quarters" (PC80–2–4D), provides data for persons in group quarters by institutional and non-institutional population. Table 41 in that report identifies the number of inmates of institutions and non-institutional persons for counties, and places and towns of 2,500 or more (with 1,000 or more in group quarters).

Note: 1990 U.S. Census population data for racial/ethnic groups, group quarters (institutional and non-institutional) and households are being released on a State-by-State basis in tape form in STF 1A. Tables P1, P9, P10 and P15 contain these data. Where the data are available in tape form, and the jurisdiction can gain access to the data, it may use those data to complete Column B.

BILLING CODE 4210-01-M

CHAS Table 2B

JUN 15 1991

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

Market and Inventory Conditions
Housing Stock Inventory

Comprehensive Housing Affordability Strategy (CHAS)

Name of Jurisdiction(s) or Consortium:

Five Year Period: (enter fiscal yrs.)
FY: through FY

Check one
☐ 19____ Census
☐ Current Estimate as of: (enter date)

Category	Total (A)	0 or 1 bedrooms (B)	2 bedrooms (C)	3 or more bedrooms (D)
1. **Total Year-Round Housing**				
2. Total Occupied Units				
3. Renter Occupied Units				
4. Needing Rehab				
5 Not Rehabbable				
6 Owner Occupied Units				
7. Needing Rehab				
8. Not Rehabbable				
9. Total Vacant Units				
10. For Rent				
11. Needing Rehab				
12. Not Rehabbable				
13 For Sale				
14 Needing Rehab				
15 Not Rehabbable				
16 Awaiting Occupancy or Held				
17 Other				

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BILLING CODE 4210-01-C

Instructions for Table 2B—Market and Inventory Conditions—Housing Stock Inventory

Refer to Appendix A, General Definitions Used With the CHAS, for definitions of terms used in this table.

General Instructions

For the Fiscal Year 1992, jurisdictions are only required to complete Column A for their estimate of current housing stock conditions. Most of the information needed to complete Column A can be obtained from the jurisdiction's most recently submitted HAP. Column A, Lines 5, 8, 12 and 15 should be completed based on best estimates of the number of units which are in such poor condition they cannot possibly be rehabilitated. Lines 16 and 17 are not to be filled in. The data required are data contained in part I, Table I—Housing Stock Conditions, of the HAP. The HAP can be used to estimate total housing stock, even though the HAP does not contain data which can be used to complete lines 16 and 17, which in future years will be included in total housing unit counts. Those figures will be provided to jurisdictions when 1990 Census data is provided.

Jurisdictions are encouraged to provide data by bedroom size (Columns B, C & D) if such data are available to them.

Specific Instructions

If using the most recently submitted HAP part I, Table I—Housing Stock Conditions data as the jurisdiction's current estimate of housing stock inventory, then take the HAP table I figures and utilize those figures for the CHAS table 2B, Column A, as referenced below.

CHAS Table 2B		HAP Table 1
Line 7, Column A	>	Line 6, Column E
Line 14, Column A	>	Line 6, Column G
Line 4, Column A	>	Line 7, Column E
Line 11, Column A	>	Line 7, Column G

Line 3, Column A, enter the sum of Line 7, Columns A, and C.

Line 6, Column A, enter the sum of Line 6, Columns A and C.

Line 10, Column A, enter the sum of Line 7, Columns B and D.

Line 13, Column A, enter the sum of Line 6, Columns B and D.

Once the above figures have been "transferred" from the HAP to CHAS Table 2B, complete the following lines under Column A of CHAS Table 2B:

CHAS Table 2B, Column A

Line 1—Enter the sum of lines 2 and 9.

Line 2—Enter the sum of lines 3 and 6.

Line 9—Enter the sum of lines 10 and 13.

Lines 16 and 17—Do not enter a number.

Note: To the extent feasible, jurisdictions are requested to provide the information for Column A, Lines 5, 8, 12 and 15.

BILLING CODE 4210-01-M

CHAS Table 2C

JUN 15 1991

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

Assisted Housing Inventory

Comprehensive Housing Affordability Strategy (CHAS)

Name of Jurisdiction(s) or Consortium

Five Year Period (enter fiscal yrs.)
FY through FY

Current Estimate as of (enter date)

Category	Total Stock and Inventory				
	Total (A)	SRO (B)	0 or 1 bedrooms (C)	2 bedrooms (D)	3 or more bedrooms (E)
1. Project Based Tenant Assistance					
2 Public Housing					
3 Section 202					
4 Section 8					
5 Other HUD					
6 FmHA					
7. Tenant Based Tenant Assistance					
8 Section 8					
9 Other State/Local					
10. Homeowner Assistance					

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BILLING CODE 4210-01-M

Instructions for Table 2C—Assisted Housing Inventory

Refer to Appendix A, General Definitions Used With The CHAS, for definitions of terms used in this table.

General Instructions

Data on existing assisted housing units in a jurisdiction is currently being refined by HUD and will be provided by HUD in future years. It is unlikely such data will be made available by HUD in time for a jurisdiction's use in preparing the Fiscal Year 1992 CHAS. To the extent data on assisted housing units can be readily obtained from local sources, such as from the local PHA serving the jurisdiction, jurisdictions are asked to provide that data in table 2C.

Specific Instructions

Begin by completing lines 2 through 6 for each of the columns. (Line 1 is the sum of lines 2 through 6 for each of the columns.)

Line 2—Public Housing. Enter under the appropriate columns the number of housing units assisted through low income public housing programs under the U.S. Housing Act of 1937.

Line 3—Section 202. Enter the number of units assisted through non-profit sponsors and made available to elderly and handicapped individuals under section 202 of the U.S. Housing Act of 1959. Also include assisted units provided under section 811 of the National Affordable Housing Act.

Line 4—Section 8. Enter the number of units assisted through housing developed under the section 8 New Construction, Substantial Rehabilitation, Moderate Rehabilitation and project-based certificate programs. Do not include section 8 rental assistance provided in section 202 projects; section 8 certificate or voucher assistance; or section 8 rental assistance provided through other HUD programs (see line 5).

Line 5—Other HUD. Enter the number of units assisted through housing developed under the section 236 and section 221(d)(3) Below Market Interest Rate (BMIR) programs, and under the Rent Supplement program.

Line 6—FmHA. Enter the number of units assisted through housing developed under the section 515 program of the Farmers Home Administration.

Line 1—Project-Based Tenant Assistance. Sum lines 2 through 6 for each of the columns.

Next complete lines 8 and 9. (Line 7 is the sum of lines 8 and 9 for each of the columns.)

Line 8—Section 8. Enter the number of families currently receiving tenaent-based rental assistance under the section 8 certificate and voucher programs. Do not include project-based certificates.

Line 9—Other. Enter the number of families currently receiving tenant-based rental assistance through housing programs other than section 8 (e.g., State-funded programs that offer assistance comparable to that of section 8 certificates or vouchers).

Line 7—Tenant-Based Tenant Assistance. Sum lines 8 and 9 for each of the columns.

Line 10—Homeowner Assistance. Enter the number of homeowners with current assistance being provided through interest subsidies or other comparable subsidies under HUD's section 235 program, or under the section 502 program administered through the Farmers Home Administration.

BILLING CODE 4210-01-M

CHAS Table 3

JUN 15 1991

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

Priorities for Assistance 5-Year Plan

Comprehensive Housing Affordability Strategy (CHAS)

Name of Jurisdiction(s) or Consortium:

Five Year Period (enter fiscal yrs.)

FY _____ through FY _____

	Activity	Renters				Owners			Homeless Persons (H)	Other Persons with Special Needs (I)
		Elderly 1 & 2 Member Households (A)	Small Related (2 to 4) (B)	Large Related (5 or more) (C)	All Other Households (D)	Existing Homeowners (E)	First-Time Homebuyers: With Children (F)	First-Time Homebuyers: All Others (G)		
Very Low-Income Persons	1. Moderate Rehabilitation / Acquisition									
	2. New Construction, Substantial Rehabilitation, Related Infrastructure									
	3. Rental Assistance									
	4. Homebuyers Assistance									
	5. Support Facilities and Services									
Other Low-Income Persons	6. Moderate Rehabilitation / Acquisition									
	7. New Construction, Substantial Rehabilitation, Related Infrastructure									
	8. Rental Assistance									
	9. Homebuyers Assistance									
	10. Support Facilities and Services									

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BILLING CODE 4210-01-C

Instructions for Table 3–5-year Priorities for Assistance to Very and Other Low-Income Persons for FY 1992

Refer to Appendix A, General Definitions Used With The CHAS, for definitions of terms used in this table.

General Instructions

The jurisdiction's relative priorities are to be developed by weighing the severity of needs for assistance among all groups and subgroups, including the relative need between very low-income and other low-income persons. Priorities are not to be established separately for very low-income and other low-income persons. The establishment of priorities will emerge based on many considerations, among them the jurisdiction's analysis of its housing stock and market conditions, its analysis of the relative housing needs of its very low and other low-income families, and its assessment of the resources likely to be available over the five year period.

Based on the jurisdiction's overall priorities, it is to identify on table 3 the relative priority ("first" "second," or "third") it will give in providing various types of assistance to renters, homeowners, homeless persons and other persons with special needs over the five year CHAS period. In establishing its five year priorities, the jurisdiction must consider not only who among the various categories of low-income households are most in need of these housing activities, but also determine which of these activities will best meet the housing needs of the identified households.

Because the purpose of the table is to be used to distinguish relative priorities, it is not acceptable to assign "first" priority consideration to every group.

The jurisdiction's narrative is to thoroughly discuss the assignment of priorities.

Specific Instructions

For table 3, lines 1 through 10, enter the relative priority to be given over the 5-year CHAS period to each of the household types and persons designated in Columns A through H. Enter under the appropriate column the number "1" for "first priority consideration," the number "2" for "second priority consideration," or "3" for "third priority consideration." The number "0" should be entered in the appropriate box(es) where the jurisdiction does not anticipate providing assistance to fund one or more of the activities listed and/or one or more of the family types displayed. The narrative must discuss the basis for not assigning a priority to any of the categories for which a "0" is entered.

The jurisdiction may include modifications to housing to accommodate special needs of elderly or people with disabilities as moderate rehabilitation (line 1).

No entries are to be made in shaded areas.

BILLING CODE 4210-01-M

CHAS Table 4/5A

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

Anticipated Resources & Plan for Investment

Comprehensive Housing Affordability Strategy (CHAS)

Name of Jurisdiction(s) or Consortium:

FY

Funding Source Federal Funds Awarded or to be Awarded to Jurisdiction	Anticipate to be Available (A)	Expect to Commit (B)	Anticipated resources expected to be committed to projects/activites during FY ($000's) Rehabilitation (C)	Acquisition (D)	Tenant Assistance (E)	New Construction (F)	Home Buyer Assistance (G)	Planning Grants (H)	Support Services (I)	Operating Costs (J)
1. Home										
2. Hope 1										
3. Hope 2										
4. Hope 3										
5. CDBG										
6. DOE/Other Energy Prg.										
7. Other (Specify)										
8.										
9. Subtotal - Housing										
10. CDBG (Homeless)										
11. ESG										
12. Perm. Housing for Handicapped										
13. Transitional Housing										
14. Shelter Plus Care										
15. Other (Specify)										
16.										
17.										
18. Subtotal - Homeless										
19. Total to Jurisdiction										

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Funding Source Federal Funds Awarded or to be Awarded to Other Entities	Anticipate to be Available (A)	Expect to Commit (B)	Anticipated resources expected to be committed to projects/activities during FY ($000's) Rehabilitation (C)	Acquisition (D)	Tenant Assistance (E)	New Construction (F)	Home Buyer Assistance (G)	Planning Grants (H)	Support Services (I)	Operating Costs (J)
20. Hope 1										
21. Hope 2										
22. Hope 3										
23. Section 202 Elderly										
24. Section 811 Handicapped										
25. Rental Certificates										
26. Rental Vouchers										
27. Mod Rehab SROs Proj.										
28. Perm. Housing for Handicapped										
29. Transitional Housing										
30. LIHTC										
31. Public Housing MROP										
32. Public Housing Develop.										
33. Public Housing CIAP										
34. Public Housing Comprehensive Grant Program										
35. FmHA										
36. Other (Specify)										
37.										
38.										
39. **Total - Other Entities**										
40. **Total - Federal**										

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form HUD-40090

Funding Source **Non-Federal Funds**	Anticipate to be Available (A)	Expect to Commit (B)	Anticipated resources expected to be committed to projects/activities during FY ($000's) Rehabilitation (C)	Acquisition (D)	Tenant Assistance (E)	New Construction (F)	Home Buyer Assistance (G)	Planning Grants (H)	Support Services (I)	Operating Costs (J)
41. Total State Funds										
42. Total Local Funds										
43. Total Private Funds										
44. Total - Non-Federal Funds										
45. Grand Total All Funds										

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Instructions for Table 4/5A—Anticipated Resources and Plan for Investment

Note: The FY 1992 CHAS Submission Table 4/5A for Anticipated Resources and Plan for Investment has been Revised from Previous Draft Instructions.

Special Definitions

Acquisition: (Column D) For purposes of completing table 3, acquisition means acquisition of standard housing only, with no expectation of other listed activities being carried out in conjunction with the acquisition. Where acquisition is intended to be carried out in conjunction with another activity (e.g., rehabilitation), the amount expected to be committed for the acquisition should be included under the activity column of the associated other activity. For example, a property is expected to be acquired and rehabilitated; the amount of funds expected to be committed for both acquisition and rehabilitation should be entered under Column C—Rehabilitation.

Committed: Funds that are set aside for a specific project usually through a binding legal agreement. The instructions below elaborate on what is meant by committed for the various activities for which funding commitments are expected to be made.

Operating Costs: (Column J) Costs to carry out the actual operations of a project, such as electricity, rent and utilities. Funds expected to be committed for operating costs are only to be provided for those listed programs which are unshaded under Column J—Operating Costs.

General Instructions

For table 4/5A, "resources anticipated to be committed during the fiscal year" means the anticipated commitment of funds to a specific identifiable project and not just a block of funds that have been committed or obligated to a subrecipient, which will, in turn, provide those funds to individual owners for specific projects. Further, "project" may refer to a multifamily project or a single family home. Following are some examples to help clarify what "committed" means for different types of projects or activities:

(a) *Rehabilitation or new construction of a privately owned project:* A written legally binding agreement is signed between the jurisdiction (or other administering entity) and the owner under which the jurisdiction (or other entity) agrees to provide assistance to the owner of an identifiable project that can be expected to start construction within a reasonable period of time.

(b) *Rehabilitation or new construction of a publicly owned project:* The Project Set-Up Report is submitted under a HUD Cash and Management Information (C/MI) system which identifies a specific project that will start construction within 6 months of receipt of the Project Set-Up Report. If Project Set-Up Reports are not required, such other public document or action is completed that identifies an amount of funds to be provided for the rehabilitation or construction of the project.

(c) *Acquisition:* A written legally binding agreement (i.e., a contract for sale) is signed between the jurisdiction (or other administering entity) and the project owner under which the jurisdiction (or other entity) agrees to provide funds to the owner for the purchase of the project that can be expected to be accomplished within a reasonable period of time and the owner agrees to transfer title within a reasonable period.

(d) *Tenant-based rental assistance:* The jurisdiction (or other administering entity) has entered into a rental assistance contract with the owner or the tenant to provide the assistance.

(e) *First-time home buyer assistance:* A written legally binding agreement (i.e., a contract for sale) is signed between the jurisdiction or other administering entity and the proposed home buyer under which the jurisdiction (or other entity) agrees to provide assistance to the home buyer for the purchase (whether conditional or otherwise) of the property that can be expected to be accomplished within a reasonable period of time.

All dollar amounts should be rounded to the nearest thousand dollars for this table. Thus, $829,247 would be reported as 829.

Cells have been shaded for individual Federal programs where information is not desired, or where the general funding activity is not an eligible activity for the specific program listed. For State, local and private funding sources, if an activity is not an eligible activity under the specified program, enter "N/A" in the cell. For all other unshaded cells, enter "0" where no funds will be committed for a particular activity.

Optinal Worksheet 4 may be used by the jurisdiction in deriving the figures to be entered under Columns A and B. Worksheet 4 is not to be submitted to HUD.

Specific Instructions—Funding Source. This column lists various funds available to a jurisdiction by category. The first category, "Federal funds awarded or to be awarded to jurisdiction," is broken down into housing programs and homeless programs. On lines 7 and 8, "Other," the jurisdiction is to specify any funds available for affordable housing through programs other than those listed. Especially in the early years of completing this form, jurisdictions may have funds available from other programs that have been terminated, such as the Rental Rehabilitation Program (RRP). Jurisdictions with funds available from a prior year RRP or other terminated programs should include them in the spaces provided for "other" programs. If there is not sufficient space to list all other programs, the jurisdiction should list the additional programs at the bottom of the last page of the table or append a separate page.

For line 9, "Subtotal, Housing," sum the amounts for lines 1 through 8 for each column. Remember to add in funds from any other programs that may have been listed at the bottom of the last page or appended on a separate page.

For line 18, enter the sum of lines 10 through 17 for each column. For line 19, enter the sum of lines 9 and 18 for each column.

The second category of Federal funds, on page 2 of table 4/5A, is for funds that are "awarded or to be awarded to other entities." Most of the line items are self-explanatory and/or are well known programs. However, there are a few that are abbreviated. These are defined in appendix A, General Definitions Used With The CHAS. For line 39, enter the sum of line 20 through 38. For line 40, enter the sum of lines 19 and 39.

Identify in lines 41, 42, and 43 the total amount of funds from State, local and private funding sources available for affordable housing under "FUNDING SOURCE/NON-FEDERAL FUNDS" on page 3 of table 4/5A. Enter in the appropriate columns the funds for each such funding source. For line 44, enter the sum of lines 41, 42, and 43 for each column. For line 45, enter the sum of lines 40 and 44 for each column.

Column A. Enter the amount of funds that are expected to be available during the Federal fiscal year for each program under the FUNDING SOURCE column. This amount is the sum of what was available and not committed as of October 1 of the latest Federal fiscal year and what is anticipated to become available during the current Federal fiscal year (October 1 through September 30). This should include anticipated appropriated funds as well as any anticipated program income. For example, for the CHAS to be submitted October 31, 1991, add the amount of funds available and not committed as of October 1, 1991 and the amount

anticipated to be made available between October 1, 1991 and September 30, 1992. If Worksheet 4 is used, the amounts in column C of Worksheet 4 should be entered in column A of table 4/5A.

For CDBG (line 5), indicate the total amount of all funds (not just those allocated for housing activities) that are available and not committed to specific local projects.

For line 6, DOE and Other Energy Programs, enter the amount of funds available through the Department of Energy or other Federal program funding sources expected to be committed to improve energy efficiency of housing.

For line 10, CDBG (Homeless), enter only the amount of CDBG funds expected to be committed to assist the homeless.

Column B. Of the amounts available in Column A, indicate by program, the amount of funds estimated to be committed to specific projects during the current Federal fiscal year. If no funds will be committed, enter "0."

For CDBG (line 5), enter the amount estimated to be committed for all affordable housing except for homeless programs or activities. The amount of CDBG funds to be committed for homeless activities is to be entered on line 10.

For line 6, DOE and Other Energy Programs, enter the amount of funds available through the Department of Energy or other Federal program funding sources expected to be committed to improve energy efficiency of housing.

For line 10, CDBG (Homeless), enter only the amount of CDBG funds expected to be committed to assist the homeless.

Columns C Through J. Enter in each unshaded column, for each funding source for which there is an entry in Column B, a specific dollar amount, "0," or "N/A," as appropriate. Leave no unshaded cell blank (unless there is no entry, or a "0" in Column B). The sum of all entries in Column C through J should equal the amount in Column B.

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Worksheet 4

JUN 15 1991

Anticipated Resources

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

Comprehensive Housing Affordability Strategy (CHAS)

Funding Source Federal Funds Awarded or to be Awarded to Jurisdiction	On Hand but not Committed at Start of Fiscal Year (A)	Anticipated to be Received During Fiscal Year (B)	Total Anticipated to be Available for Commitment (A + B) (C)	Anticipated to be Committed from Total Available (D)
1 Home				
2 Hope 1				
3. Hope 2				
4 Hope 3				
5 CDBG				
6. DOE/Other Energy Prg.				
7 Other (Specify)				
8				
9. **Subtotal - Housing**				
10 CDBG (Homeless)				
11. ESG				
12. Perm. Housing for Handicapped				
13. Transitional Housing				
14. Shelter Plus Care				
15 Other (Specify)				
16.				
17				
18. **Subtotal - Homeless**				
19. **Total to Jurisdiction**				

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Funding Source Federal Funds Awarded or to be Awarded to Entities	On Hand but not Committed at Start of Fiscal Year (A)	Anticipated to be Received During Fiscal Year (B)	Total Anticipated to be Available for Commitment (A + B) (C)	Anticipated to be Committed from Total Available (D)
20. Hope 1				
21 Hope 2				
22. Hope 3		JUN 15 1991		
23. Section 202 Elderly				
24. Section 811				
25 Rental Certificates				
26. Rental Vouchers		DRAFT		
27 Mod Rehab SROs				
28 Perm Housing for Handicapped				
29 Transitional Housing				
30. LIHTC				
31 Public Housing MROP				
32 Public Housing Development				
33. Public Housing CIAP				
34 Public Housing Comprehensive Grant Program				
35 FmHA				
36 Other (Specify)				
37				
38				
39 Total - Other Entities				
40. Total - Federal				

Funding Source Non-Federal Funds	On Hand but not Committed at Start of Fiscal Year (A)	Anticipated to be Received During Fiscal Year (B)	Total Anticipated to be Available for Commitment (A + B) (C)	Anticipated to be Committed from Total Available (D)
State Funds (Specify)				
41		JUN 15 1991		
42.				
43.		DRAFT		
44.				
45 Subtotal - State Funds				
Local Funds (Specify)				
46				
47				
48.				
49				
50. Subtotal - Local Funds				
Private Funds (Specify)				
51				
52				
53				
54				
55. Subtotal - Private Funds				
56 Total - Non-Federal Funds				
57 Grand Total (All Funds)				

Optional Worksheet 4—Anticipated Resources

Optional Worksheet 4 is not to be provided to HUD. It is provided for those jurisdictions which wish to use it to help them complete table 4/5A. Instruction for table 4/5A may be referred to in using this Worksheet.

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CHAS Table 5B

Goals for Families to be Assisted with Housing

JUN 15 1991

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

Comprehensive Housing Affordability Strategy (CHAS)

Name of Jurisdiction(s) or Consortium:

FY:

Assistance Provided by Income Group	Total Section 215 Goals (A)	Total Goals (B)	Renters: Elderly 1 & 2 Member Households (C)	Renters: Small Related (2 to 4) (D)	Renters: Large Related (5 or more) (E)	Renters: All Other Households (F)	Renters: Total Renters (G)	Owners: Existing Homeowners (H)	Owners: First-Time Homebuyers With Children (I)	Owners: First-Time Homebuyers All Others (J)	Owners: Total Homeowners (K)
1. Very Low-Income (0 to 50% of MFI)*											
2. Mod Rehab & Acquisition											
3. New Const, Sub Rehab, Related Infrastructure											
4. Rental Assistance											
5. Homebuyer Assistance											
6. Support Services											
7. Other Low-Income (51% to 80% of MFI)*											
8. Mod Rehab & Acquisition											
9. New Const, Sub Rehab, Related Infrastructure											
10. Rental Assistance											
11. Homebuyer Assistance											
12. Support Services											
13. Total Low-Income (Lines 1 and 7)											
14. Other Income (More than 80% of MFI)*											
15. Grand Total (Lines 13 and 14)											

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*Or, if appropriate, based on HUD income limits with required statutory adjustments.

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BILLING CODE 4210-01-C

Instructions for Table 5B—Annual Goals for All Families To Be Assisted

Special Definitions

Section 215 Goals (Affordable Housing)

1. *Rental Housing:* A rental housing unit is considered to be an affordable housing unit if it is occupied by a low income family or individual and bears a rent that is the lesser of (1) the Existing Section 8 Fair Market Rent (FMR) for comparable units in the area or, (2) 30 percent of the adjusted income of a family whose income equals 65 percent of the median income for the area. An exception is for those cases where, depending on the prevailing market conditions, HUD specifically establishes higher or lower FMRs for a jurisdiction.

2. *Homeownership:*

(a) Housing that is for purchase (with or without rehabilitation) qualifies as affordable housing if it (1) is purchased by a low-income, first-time homebuyer who will make the housing his/her principal residence; and (2) has a sale price which does not exceed the mortgage limit for the type of single family housing for the area under HUD's single family insuring authority under the National Housing Act.

(b) Housing that is to be rehabilitated, but is already owned by a family when assistance is provided, qualifies as affordable if the housing (1) is occupied by a low-income family which uses the housing as its principal residence, and (2) has a value, after rehabilitation, that does not exceed the mortgage limit for the type of single family housing for the area, as described in 2(a) above.

Note: These definitions apply for CHAS purposes, regardless of the Federal, State or local funding source, i.e., even if the unit is not assisted with HOME funds. Rental and homeownership projects assisted with title II, HOME program funds are subject to "affordable housing" requirements, as contained in § 92.252 (rental housing) and § 92.254 (homeownership housing) of 24 CFR part 92, which define "affordable housing" for purposes of the HOME program.

Refer to Appendix A, General Definitions Used With the CHAS, for definitions of additional terms used in this table. It is particularly important to refer to the definitions provided for the different types of households (i.e., "elderly," "small-related," and "large-related households").

General Instructions

The jurisdiction shall enter on table 5B the estimated number of families to be assisted through the provision of housing or supportive services. Of those families, the jurisdiction shall estimate the number to be provided housing that will meet the above definition of "affordable housing" (section 215 goals).

Estimates of the number of families assisted should be limited to those families who are either homeowners or renters, and who will be assisted with HUD funds (alone or in combination with other funds) which can reasonably be expected to be committed in the coming Federal fiscal year. Federal funds expected to be committed during the year are those Federal funds identified in table 4/5A, Column B "Expect to Commit."

The jurisdiction shall include families that will receive assistance as a result of projects or activities for which commitments are expected to be made during the covered year, even though the project/activity may not be completed (and actual assistance provided to the family) until after the end of the Federal fiscal year. Conversely, the jurisdiction should not include families to be assisted by activities for which funding commitments were made prior to the beginning of the covered fiscal year, and which are not shown in Column B of table 4/5A.

The total number of families expected to be assisted is to be provided by:

- Income group (i.e., very low-income—line 1, other low-income—7, and other income—line 14); and
- Housing type (i.e., renters—Column C through Column F; and homeowners, both existing homeowners—Column H, and first-time homebuyers—Columns I and J).

For all families expected to be assisted (Column B) the jurisdiction must estimate in Column A the number of "very low-income" and "other low-income" families which, based on family income and housing cost, will meet the section 215 "affordable housing" criteria.

All goals for low-income renters and homeowners in lines 2 through 6 (very low-income) and lines 8 through 12 (other low-income) are to be broken out by the type of assistance expected to be provided.

Shaded areas are not to be filled in.

The sum of the numbers entered on each line under Column G (Total Renters) and Column K (Total Homeowners) should always equal the number entered under Column B (Total Goals). However, since some families assisted may receive more than one kind of assistance, the sum of lines 2 through 6, or 8 through 12, may often exceed the amount on lines 1 or 7, respectively, under any column.

Specific Instructions

Goals

Column A—Total Section 215 Goals. Line 1—Enter the number of very low-income families (incomes at or below 50% of median family income) for which the jurisdiction expects to provide assistance, and for whom Section 215 "affordable housing" goals are expected to be achieved.

Lines 2 through 5—For each of lines 2, 3, 4 and 5, enter the number of very low-income families from line 1 who will be provided the type of assistance specified. The total number of families entered for lines 2, 3, 4 and 5 will exceed the number of families listed on line 1 if more than one type of assistance is provided to one or more families. For example, if a family's rental unit receives a moderate level of rehabilitation, and the family receives tenant-based rental assistance, then the family should be included in both the number entered on line 2 and the number entered on line 4.

Line 6—Do not enter a number.

Line 7—Enter the number of other low-income families (incomes between 51% and 80% of median family income) for which the jurisdiction expects to provide assistance, and for whom Section 215 "affordable housing" goals are expected to be achieved.

Lines 8 through 10, Line 12—For each of lines 8, 9, 10 and 11, enter the number of other low-income families from line 7 who will be provided the type of assistance specified. The total number of families entered on lines 8 through 11 may exceed the number entered on line 7, if one or more families receive more than one type of assistance. Do not enter a number for line 11.

Line 13—Enter the sum of the numbers entered on lines 1 and 7.

Lines 14 and 15—Do not enter numbers.

Line Column B—Total Goals.—Line 1—Enter the total number of very low-income families for which the jurisdiction expects to provide assistance. The total number entered on line 1 is to include both the number of families for whom section 215 "affordable housing" goals are expected to be achieved and the number of families assisted, but for which the jurisdiction does not expect to achieve "affordable housing" goals.

Lines 2 through 6—For each of lines 2, 3, 4, 5 and 6, enter the number of very low-income families from line 1 who will be provided the type of assistance specified.

Line 7—Enter the total number of other low-income families for which the

jurisdiction expects to provide assistance. Include the number of families for whom Section 215 "affordable housing" goals are expected to be achieved and the number of families for which the jurisdiction does not expect to achieve "affordable housing" goals.

Lines 8 through 12—For each of lines 8, 9, 10, 11 and 12, enter the number of other low-income families from line 7 who will be provided the type of assistance specified.

Line 13—Enter the sum of the numbers entered on lines 1 and 7.

Line 14—Enter the number of other income families (incomes which exceed 80% of median family income) for which the jurisdiction expects to provide assistance.

Line 15—Enter the sum of lines 13 and 14.

Renter Goals

Column C—Elderly 1 or 2 Member Households—Line 1 and 7—Of the total number entered under Column B enter the number of elderly renter households (1 or 2 person elderly households only; elderly households with more than 2 members should be entered under Columns D, E, or F, as appropriate).

Lines 2, 3, 4 and 6; Lines 8, 9, 10 and 12—Enter the number of elderly households (1 or 2 person households only) from lines 1 and 7, respectively, who will be provided the type of assistance specified.

Line 13—Enter the sum of lines 1 and 7.

Line 14—Of the total number entered under Column B enter the number of other income elderly renter households (1 or 2 person households only).

Line 15—Enter the sum of lines 13 and 14.

Columns D, E and F. Columns D through F are to be filled out in the same manner as Column C. Columns D and E pertain to renter households with 2 or more members of the household related by blood, marriage, or adoption, and excludes 1 or 2 person elderly households. Column F is for all households not entered under Columns C through E.

Column G—Total Renters. Enter for each line the sums of Columns C, D, E and F.

Homeowner Goals

Column H—Existing Homeowners. Column H goals for existing owners are to be filled out in the same manner as preceding columns.

Columns I and J—First-time Homebuyers. For Column I enter goals for first-time homebuyers who have minor children residing with the family. For Column J enter goals for first-time homebuyers *without* minor children residing with the family.

Column K—Total Homeowners. Enter for each line the sum of Columns H, I, and J.

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Comprehensive Housing Affordability Strategy (CHAS)

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

APPENDIX B

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Name of Jurisdiction(s) or Consortium:

Contact Person: Telephone Number:

Address:

Type of Submission: (mark one)

- ☐ New Five Year CHAS — For Fiscal Year_____ through Fiscal Year_____.
- ☐ Annual Update * — For Fiscal Year_____.

(mark one)

- ☐ Initial Submission
- ☐ Resubmission
- ☐ Amendment **

* If an Annual Update, mark one:

- ☐ Parts 4 (Resources) & 5 (Implementation) Only
- ☐ Parts 4 & 5, plus minor changes: (mark all those which apply)

Part 1 - Needs Assessment	☐ Narrative	☐ Tables
Part 2 - Market & Inventory Conditions	☐ Narrative	☐ Tables
Part 3 - Strategies	☐ Narrative	☐ Tables

** For all amendments, specify the nature of the amendment below and attach amended portions to this cover sheet.

Jurisdiction	HUD Approval
Name of Authorized Official:	Name of Authorized Official:
Signature & Date: X	Signature & Date: X

BILLING CODE 4210-01-C

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Appendix E—Comprehensive Housing Affordability Strategy (CHAS)

Certification

The jurisdiction hereby certifies that it will affirmatively further fair housing.

Signature (Certifying Official) _____

Certification

The jurisdiction hereby certifies that it will comply with the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, implementing regulations at 49 CFR 24, and the requirements governing the residential antidisplacement and relocation assistance plan under section 104(d) of the Housing and Community Development Act of 1974 (including a certification that the jurisdiction is following such a plan).

Signature (Certifying Official) _____

Note: The jurisdiction's execution of these certifications acknowledges that it will maintain supporting evidence, which shall be kept available for inspection by the Secretary, the Comptroller General of the United States or its designees, the Inspector General or its designees, and the public.

[FR Doc. 91-18790 Filed 8-9-91; 8:45 am]
BILLING CODE 4210-01-M

federal register

Monday
August 12, 1991

Part III

Department of Transportation

Urban Mass Transportation Administration

49 CFR Part 630

Uniform System of Accounts and Records and Reporting System; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Urban Mass Transportation Administration

49 CFR Part 630

[Docket No. 90-B]

RIN 2132-A36

Uniform System of Accounts and Records and Reporting System

AGENCY: Urban Mass Transportation Administration (UMTA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Urban Mass Transportation Administration evaluated the Uniform System of Accounts and Records and Reporting System, (the Section 15 program), to determine its future direction. This Notice of Proposed Rulemaking lists proposed changes to the "Section 15 program", based upon this evaluation. These changes are intended to reduce the burden of reporting and improve the value of the reported data for analysis.

DATES: Comments must be submitted by October 11, 1991.

ADDRESSES: Comments may be mailed to the Office of the Chief Counsel, Legislation and Regulations Division, UCC-10, Urban Mass Transportation Administration, Department of Transportation, room 9316, Docket 90-B, 400 Seventh St., SW., Washington, DC 20590. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., Monday through Friday. Receipt of comments will be acknowledged by UMTA if a self-addressed, stamped post card is included with the comment.

FOR FURTHER INFORMATION CONTACT: Susan Brown, Urban Mass Transportation Administration, Office of Capital and Formula Assistance, (202) 366-1645, 400 Seventh Street, SW., Washington, DC 20590.

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Overview

This Notice of Proposed Rulemaking lists several proposed changes to UMTA's Uniform System of Accounts and Records and Reporting System (the Section 15 program). These proposed changes are intended to reduce the burden of reporting and improve the value of the reported data for analysis.

The proposed changes are the result of an extensive evaluation undertaken by UMTA into the future direction of the section 15 program. The evaluation considered trade-offs between the usefulness of the data base and the burden of reporting. In its review, UMTA considered comments and recommendations from all constituencies of the transit industry. UMTA also considered the 59 public comments in response to an Advanced Notice of Proposed Rulemaking requesting comments on the direction of the section 15 program and proposals to change the structure and content of the Uniform System of Accounts and Records and Reporting System.

Major proposed changes are as follows.

- The basic reporting structure will be simplified. Three voluntary and one required report level will be replaced with one minimum and one expanded report level.
- Voluntary level financial details, the most complex component of the Systems, will be reduced by over half.
- The threshold for complete reports on purchased transportation service will be raised from the current 50 or more vehicles to 100 or more vehicles. This will decrease reporting burden by allowing a larger amount of contract service to be reported using a basic subset of forms.
- Security and ticketing costs will be moved from the administration to the operations grouping. This responds to industry concern that the Systems exaggerate administrative costs. The trade-off for this more logical alignment is a reduction in the historical continuity of summary expenses for most reporters.
- Capital reporting will be revised by the addition of sources and uses of capital in place of the balance sheet. This proposal overcomes a major weakness in the application of section 15 data. The absence of capital costs has encouraged an over-emphasis on operating rather than capital costs. This can distort comparisons between modes or operators with different labor or capital intensity.
- Accounts will be redefined and employee contributions will be eliminated on the fringe benefits schedule. This revision simplifies reporting with only a minor loss in data.
- Labor equivalents will be redefined. Measuring labor in terms of hours instead of an arbitrary national standard for a labor year will increase data consistency without increasing burden.
- Fleet inventory information from three different forms will be consolidated onto a single form.
- Reports of operators' work time will be restructured. This proposal greatly simplifies reporting with only a minor loss in data.
- The option of indicating percentage of paid hours by part-time operators will be added. These data will be valuable in assessments of the effect of part-time labor on performance.
- The following required reports will be eliminated because their reporting burden out-weighs the value of the data to analysts.

Statement from the local Metropolitan Planning Organization of service area and population.

Pension plans. These data are inapplicable to many operators, difficult to compile, and seldom used in analysis.

Balance sheet. These object classes are inconsistently reported and of minimal value to analysts.

I. Introduction

The Uniform System of Accounts and Records and Reporting System were authorized in 1974 under section 15 of the Urban Mass Transportation Act of 1964, as amended, and prescribed in January, 1977, as called for in the law. Section 15 requires the Secretary of Transportation to establish a uniform system of accounts and records and a reporting system to collect and disseminate public mass transportation financial and operating data. Over 500 public transit operators use the section

15 Systems to record summary information in annual reports to UMTA. UMTA applies quality checks to the reported data, works with reporters to correct errors, and publicly distributes data in reports and on computer media.

Section 15 information is used for management and planning by transit systems, and policy analysis and investment decision-making at all levels of government. It provides a resource for consultants, researchers, and industry suppliers. In addition, the section 9 formula grant program apportions approximately $1.5 billion in UMTA grant funds annually based on a statutory formula which in part uses section 15 data. No grant may be made under section 9 unless the applicant and any person or organization to receive benefits directly from the grant are each subject to both the Reporting System and the Uniform System of Accounts and Records prescribed by section 15.

UMTA has considered fundamental questions about the objectives of the program and its strengths and weaknesses from the perspective of production of ten annual reports. Several potential improvements were identified based on an extensive evaluation of the section 15 program. In deciding whether to modify the Systems, UMTA balanced the benefits of the data to a broad range of constituent groups that currently or potentially might use the data, against the costs to operators of reporting and to UMTA of developing the annual data bases.

As part of its review to determine future directions of the section 15 program, UMTA solicited comments and recommendations from experts representing operators, public agencies, and other constituencies of the public transit industry. Detailed recommendations and proposals were received from the UMTA section 15 Reporting System Advisory Committee, the American Public Transit Association (APTA) section 15 Committee, and the Transportation Research Board. Comments were also received from other representatives of the public and private sectors and academia.

Based on industry comments and proposals and those in response to the Advanced Notice of Proposed Rulemaking (ANPRM), UMTA now proposes modifications to the program in this Notice of Proposed Rulemaking (NPRM). References in the NPRM to comments refer to those received in response to the ANPRM. UMTA will review comments on the NPRM, develop and publish a Final Rule, and make program changes, as required. The proposed Rule, which incorporates major improvements to the Uniform System of Accounts and Records and Reporting System, represents a major stage in the fourteen year evolution of the section 15 program. UMTA plans to publish the Final Rule by the end of calendar year 1991. Program changes and any structural changes described in the Rule would then be effective for the 1992 report year.

UMTA intends to continue to make annual improvements to the program, as required, which will be formally announced in the annual Reporting Manual or regulatory amendments, as appropriate. Any reference documents issued by UMTA are procedural only. Substantive changes to the Rule will be announced in the **Federal Register** and will be open for public comment.

II. Major Issues

As part of its review, UMTA considered the fundamental purpose of the section 15 Systems, and whether the Systems should continue or be significantly modified in the future. The questions framed and issues identified in this section are intended to focus and encourage comments, and are not exhaustive. The evaluation will consider all concerns related to the Systems. Additional issues and proposals related to the specific forms referred to in this section are discussed in section III.

A. General Issues

(1) Does the section 15 program satisfy legislative intent? How successfully does the program serve the requirements of a broad range of current and potential data users?

As stated in section 15 of the Act, the Uniform System of Accounts and Records and the Reporting System were to be designed to provide information on which to base planning for public transportation services and public sector investment decisions at all levels of government.

The ANPRM asked how effectively section 15 provides information for the overall transit industry, including Federal, state, and regional policy-makers, local transit operators, consultants, suppliers, and academic researchers. Considering the impossibility of satisfying all needs of all data users, while limiting the costs and burden of reporting, does the current structure, format, and content represent a successful compromise among competing interests, or are changes necessary?

In general, industry commenters found section 15 to have a broad range of applications, including: As a source of standardized definitions; as a resource for academic research; and for local management use (six responses). Four commenters expressed the view that section 15 is most useful for national policy analysis. Twelve commenters found section 15 unsuited for local management and planning and six described it as unsuited for small systems, while eleven found it useful for local applications.

Comments indicate that in general the program satisfies legislative intent. Thirteen comments suggested operational improvements or streamlining to improve the balance between reporting burden and the value of the data.

(2) What should be the future direction of the Systems? Should they continue?

All comments from the transit industry and public supported continuing the section 15 program. UMTA also received numerous comments requesting a reduction in the level of required details, particularly for smaller operators, and operational improvements to stream-line reporting and improve data access.

Proposal—In response to these comments, UMTA proposes to do the following:

- Develop software for the 1991 report year that will allow interested reporters to perform basic validation checks before the section 15 report is filed with UMTA. The report may be filed in machine-readable form. This capability was supported by 26 commenters.
- Raise the requirement for a full section 15 report for contract service from 50 to 100 vehicles in maximum service. This will substantially reduce the burden for reporting information on the growing number of contract services. Three comments advocated reducing the level of detail for purchased service. Additional details are provided in section III.A.
- UMTA will continue to waive specific reporting requirements that are particularly burdensome for small reporters. Reporters with 25 or fewer revenue vehicles operated in maximum service are currently not required to provide data on operators wages (Form 321), Fringe Benefits (Form 331), and Pension Plans (Form 332). In addition, sampling or other procedures that meet prescribed precision and confidence levels need only be applied every third year by reporters: (1) That serve urbanized areas of less than 500,000 population; (2) that directly operate fewer than 100 revenue vehicles for all modes in maximum service; or (3) that utilize purchased transportation service (i.e., private or public carriers providing transit service under contract to a public agency except those purchased

transportation services submitting separate section 15 reports).

B. Structural Issues

This section focuses on proposed changes to fundamental aspects of the structure of the section 15 Systems. These proposals and related issues cut across several components of the Systems or address areas identified by commenters as major weaknesses. Proposals to modify specific components of the Systems, including data reported on many of the forms mentioned in this section, are elaborated upon in section III.

(1) How many reporting levels should there be, and should the level of reporting be voluntary or required?

A major characteristic of the current Reporting System structure is the use of different reporting formats. The required (R) level applies to all operators and specifies the minimum data that must be reported by all beneficiaries of UMTA section 9 funds. Currently, operators have the option of reporting additional details at any of three voluntary (A, B, or C) levels. In order of detail, the A level requires the most information, followed by B, C, and R levels.

The only difference between the required and voluntary levels of reporting is in the amount of detail provided for operating expenses and revenues. All other information is required of all reporters and is filed on the same forms. Voluntary levels of expense and revenues have the same basic structure as the required level, but expand into greater detail. There is no difference in the underlying Uniform System of Accounts and Records.

Although UMTA suggests that operators with certain fleet sizes report at specific voluntary levels, this is not a requirement. Several of the largest operators report at the required level, while some small operators report at voluntary levels. Operators that received UMTA grants for Management Information Systems (MIS) have been obligated to report at voluntary levels. Beginning with the 1991 report year, reporters who received MIS grants will be able to report at either the Expanded or Minimum level (see section III.D).

The ANPRM asked whether voluntary reporting should continue, considering the usefulness of a data base that provides different levels of financial details for different operators. Is a subset of the national data base with more detailed information of value for important analysis or does it encourage biased results? Is the current system unnecessarily burdensome or excessively detailed? And how many levels should there be, whether required or voluntary?

There were a great range of views on voluntary reporting and number of reporting levels. Six commenters supported voluntary reporting, with three in favor of the current approach. Of the 22 comments advocating required reporting only, ten supported one level only, ten supported two levels, and one each supported three and four levels. In addition, two comments supported establishing a new less detailed level for small operators. Comments on the number of details proposed for different reporting levels are described in sections III.C and D.

In its evaluation of proposals to change the current approach to reporting expenses and revenues, UMTA has reached the following conclusions:

(1) The current structure is unnecessarily complex; the value of a large number of voluntary expense and revenue details to analysts is insufficient to justify their continued reporting.

(2) The current required level alone does not provide enough details on costs and revenues to meet section 15 program objectives of providing data to support management, policy, and investment analysis.

(3) Assuming there is no need for data to support management, policy and investment analysis, UMTA will strive to limit net increases in financial reporting requirements for the large number of operators reporting at the minimum level who have increased requirements under any proposals for two or more required levels. This is because UMTA does not want to burden these reporters with requirements for data, if these data are not absolutely necessary.

(4) Most large operators have internal accounting systems, based on the section 15 Accounting System, with a greater level of detail than the current required level.

(5) Forms or data cells that are inapplicable to most operators do not create a reporting burden for those operators. For example, the existence of expense details or maintenance of roadway and track or communications systems do not create a burden to the majority of operators who can ignore costs items.

(6) Data reported for some but not all operators can have valid and important applications. Valuable and undistorted analysis can be performed using an incomplete data set, if sources are identified and no universal conclusions are attempted without statistically valid methods. For example, voluntary costs such as fare collection, maintenance of roadway and track and passenger stations, and security could be useful in deriving unit costs of analysis of investments in alternative modes.

The following proposal is based on the above conclusions.

Proposal—Reporting levels will be reduced from three voluntary and one required to one required and one voluntary level. The current required level will be retained but will be renamed "Minimum (M) level" and the current three voluntary levels will be consolidated into one voluntary level renamed "Expanded (E) level". The proposed new structure, which is described in section III.D and detailed in section VII, the Revision to 49 CFR part 63, will reduce the number of voluntary functions (A level), expense object classes, and revenue object classes by over half in the new Level E.

Proposal—Reporters who received UMTA MIS grants will be able to report at either the Expanded or Minimum level, beginning in the 1991 report year. UMTA will continue to encourage expanded reporting for large operators and will make these additional details easily accessible as an incentive for operators to contribute to the national data base.

(2) How frequently should reports be made?

Eighteen commenters supported continuation of annual reporting, while eight proposed less frequent reporting—three for reports every second year and five for reports every three to five years. In addition, three commenters suggested less frequent reports from operators with small fleets.

Proposal—In response to this clear consensus, UMTA will continue annual reporting. The burden of annual reporting will be eased through overall reduction in required forms, as proposed in this NPRM.

(3) Should reports be made for the overall operations of a transit system or should some details be separated by mode?

Operating expenses, operators' wages, labor years, ridership, and service operated are reported separately by mode in the case of multi-mode operators. Operating expenses reported separately by function (operations, vehicle and non-vehicle maintenance, and administration) are reported by mode. However, operating expenses that are reported by object class (for example, wages, contracts, and fuel) are not reported separately by mode.

The only comment favoring elimination of current modal reporting was from one organization that requested that small operators not

report by mode. Four comments endorsed the current level of modal reporting, with eight advocating additional modal details. Six comments requested a modal split of fare revenue, one requested modal allocation of capital grants, and one operator requested modal allocation of object class expenses.

Proposal—UMTA will maintain the current structure of modal separation.

(4) Should demographic data be revised or expanded?

At the time of the ANPRM, each reporting agency was required to submit a statement from the local Metropolitan Planning Organization (MPO) stating the agency's service area and population, and describing the planning methods used to determine service area. UMTA is eliminating the MPO statement.

UMTA assigns a single Census-defined urbanized area code (UZA), with population and surface area, to each reporter. This code, which is used to apportion section 9 funds, can be an inexact measure of service area and population.

The ANPRM asked whether the demographic data in the MPO statement should be retained, redefined, or expanded to permit better matches between service outputs and ridership and population served, service area, population density, or other demographic factors.

Commenters generally supported continuing to report or expanding demographic data. Twelve comments requested additional demographic information, two proposed continuing current information, and two requested that service area definitions be standardized. Ten commenters opposed adding new demographic data to the MPO statement.

Proposal—Consistent with the general objective of simplifying reporting, UMTA would prefer to eliminate the requirement for a summary from the MPO of the operating agency's service area and population. However, given that Census data provides an inexact measure of service area and population; and the general support among commenters for the continued reporting of demographic data, service area and population will be added to the transit system identification form and will continue to be collected.

(5) Should the current means of access to the data base be modified?

All data submitted to UMTA by section 15 reporters are currently stored on magnetic tapes available for public use. A subset of the complete data base, containing some but not all required level data, is published in the Annual Report and distributed on diskettes for use in spreadsheets on IBM compatible microcomputers. For example, much of the revenue and financial details provided by voluntary level reporters are available only on tape for use with mainframe computers. Some required level details, including operators' time and fleet inventories, are also only available on tape.

UMTA received comments that analysts find access to the tapes to be too difficult. Three commenters requested better automated access to the data base through new computer formats or on-line access.

Proposal—UMTA proposes to take several steps to improve access to the data base. The entire data base described in this NPRM will be accessible to the public for use on microcomputers running standard spreadsheet and data base software. Beginning with the 1990 data base, all operating expense and revenue data, including that which has in the past only been available on tape, will be available for microcomputer applications. Beginning with the 1991 report year, UMTA will improve the ease of access to and application of important data by developing three products: summary reports for individual reporters, with key data items, performance measures, and graphic displays; a new annual report of national transportation trends; and an analysis data base of key information for use with standard data base management software.

III. Proposals to Change the Detailed Structure of the Section 15 Systems, With Related Issues

Section II.B focused on proposals to change fundamental aspects of the Systems. These aspects cut across several forms or components of the Systems. In contrast, this section presents proposals to modify specific components of the Systems and formulates related issues to encourage public comment.

General comments on reducing voluntary level details. UMTA's proposal to replace three voluntary and one required level with one required and one simplified voluntary level was described in section II.B.1. In restructuring and simplifying the number of voluntarily reported expense and revenue details, the intent is to carefully balance reporting burdens against any losses of valuable detail for analysis and in historical continuity. UMTA used the following criteria to consolidate the number of voluntary details to the proposed number in the new single expanded (E) level.

a. Consolidate minor cost items (in terms of dollars and reporters providing that item);

b. Disaggregate large items;

c. Retain easy-to-collect items;

d. Avoid irrelevant or analytically meaningless items;

e. Retain items that are key decision variables;

f. Avoid realignments from one category to another in the interests of preserving the continuity of twelve years of historical data.

A. Basic Information

Purchased Transportation Services

Transportation service provided under contract is described on several reporting forms. Form 002 describes contractual relationships. Costs of contracts are reported as expenses on the 300-series forms. Complete reports must be filed by or for contractors providing over 50 revenue vehicles. A public agency contracting for under 50 revenue vehicles also describes contract service on separate Forms 004 and 408 for vehicles operated, 403 for transit way mileage, and 406/407 for service supplied and ridership.

The ANPRM asked whether the information on service provided under purchased service contracts to public agencies should be increased or decreased by changing the fleet size level at which a complete section 15 report must be filed. One comment suggested raising the level for a full report from 50 to 200 vehicles, another opposed any increase in purchased service reporting, and two proposed reducing specific items to be reported for contract service. No comments proposed decreasing the fleet level threshold for a complete report.

Proposal—The threshold for submission of a separate section 15 report by a purchased transportation provider is being raised from 50 to 100 vehicles in maximum service. This change is consistent with UMTA's objective of easing the reporting burden for small transit agencies and operators.

B. Capital Expenses

The Reporting System collects a limited amount of information on capital expenses relative to the detail provided on operating expenses. Capital expense information includes a balance sheet (Form 101) with basic financial information on assets, liabilities, and capital at the end of the financial year. Rolling stock, facilities, and equipment are combined into a single category. Unlike operating expenses, which are structured to allow modal separation of

costs, capital accounts are not separated by mode.

In addition, a single depreciation figure for all modes combined is reported on the expense forms (300 series) with no separations to identify depreciation of vehicles or other asset categories or assets by mode. The Accounting System does not provide or recommend standardized approaches to depreciation or require reporters to identify the approaches they use. The amount and source of public assistance funds dedicated to capital are also identified for all modes.

It is likely that the lack of capital cost data encourages over-emphasis on operating costs in analysis of performance and alternative investments, and limits thorough evaluation of all expenses, revenues, and outputs. Capital expense data can include purchases and depreciation of capital assets, including rolling stock, plant, or other equipment.

The ANPRM comments generally recognized the importance of capital information in the national Reporting System, and of adding annual sources and uses of capital to improve the usefulness of the data base. Of the fifteen commenters requesting an expansion of capital information, nine supported addition of sources and uses of capital. Seven commenters requested that the balance sheet be eliminated as inconsistent and of little value. Of the seven for eliminating the balance sheet, four also proposed adding sources and uses of capital.

Eight commenters supported the status quo for capital data, while only three proposed eliminating all capital expense information.

Proposal—UMTA will make revisions to the capital data form similar to those proposed by APTA to report sources and uses of capital. The form will combine current information on private and public sources of revenues for capital with new information on uses of capital. Uses of capital will identify purchases of rolling stock; transit way, structures and equipment; passenger facilities; land; and other assets. This new information, which was supported by industry and ANPRM comments, should provide some valuable information for analysis without adding significantly to the reporting burden. All major categories for use of capital will be identified by mode.

To compensate for any additional effort to report uses of capital, UMTA will eliminate the balance sheet. Although there is some support in the industry to retain the balance sheet, it is felt that this information does not provide a useful description of capital expenses, is often inconsistent, and is of limited value for analysis. In the interest of limiting the information in the national data base to that which is most useful for analysis, UMTA believes that sources and uses of capital should replace the balance sheet.

C. Revenues

Information on revenues is reported in several different categories. The required level Form 201 contains information on fares, other earnings, and Federal, state, and local grants, with identification of total subsidies for handicapped, senior, or student passengers combined. Form 202, used by all voluntary level reporters, expands the Form 201 structure into greater detail. For example, Form 202 expands the single fare total on 201 into seven categories. Forms 201 and 202 identify revenues for publicly operated but not contracted service. Multi-mode operators only provide system-wide totals on Forms 201 and 202, although all reporters have the option of separating fares by mode.

Voluntary revenues details are consolidated to the required level in the Annual Report and on the section 15 diskettes. Complete revenue information is available only on computer tape.

Forms 103 and 203 describe revenues by governmental source (Federal, state, and local) and by means used to collect revenues (for example, sales, income, and gasoline taxes and tolls) for revenues for operating and capital assistance.

Proposal—Consistent with the proposed approach to reporting expanded details described in section II.B.1, UMTA proposes to retain Form 202 as a simplified but voluntary form. The proposed new structure, which is described in the Revision to 49 CFR part 630 in section VII, is the result of applying the criteria described in the introduction to section III. The proposal replaces the current voluntary structure, which has 67 revenue object classes, with a simplified structure of 31 revenue object classes, for a reduction of 54%.

Six commenters proposed adding modal separation of fare revenues, while only one commenter opposed this separation. Although voluntary or required level reporters have had the option of allocating fares by mode since the 1984 report, few have done so despite the fact that most operators collect this information for their own use. Few analysts have used modal fares primarily because it is available only on tapes.

Proposal—UMTA proposes to encourage a greater degree of reporting of modal fares by highlighting this option in the Reporters' Manual, published annually, and improving access to modal fares through published reports and microcomputer files. UMTA recognizes the high level of interest by analysts in modal splits of fares, which would allow section 15 data to be used to analyze a broad range of valuable modal performance measures, including farebox recovery rates, and average fares and subsidies per rider. UMTA will not require modal fares because of the difficulty this would present for operators with large numbers of transfers and monthly or other passes.

D. Operating Expenses

Transit systems use the 300-series Forms to report operating expenses in function (operations, vehicle and non-vehicle maintenance, and general administration) and object class (wages, fringe benefit, and other) categories. A reporter at the minimum or required (R) level uses the basic four functions and 14 object classes. This detail expands for operators at any of the three voluntary levels up to 44 functions and 47 object classes at the most detailed A level. Voluntary expense details are consolidated to the required level in the Annual Report and on the section 15 diskettes. Complete expense information is available only on computer tape.

Functions and object classes can be cross-classified, allowing, for example, fringe benefits paid to vehicle operators to be identified. There is, however, limited ability to separate modal costs for multi-mode operators. Modal costs can be separated by function (for example, light rail vehicle maintenance), but usually not by object class (for example, light rail wages) or by function and object class (for example, light rail operators' wages).

There was a great range of views on voluntary reporting, the number of reporting levels, and the number of details in each level. Of the six commenters supporting voluntary reporting, three supported retaining the current system, and two proposed a reduced level of voluntary details. Of the 22 commenters supporting all required reporting, nine supported use of the current required level alone, one recommended that the current B level be used for all reporters, ten proposed two required levels, and one each supported three and four required levels.

The ten commenters proposing two required levels all supported a minimum level that approximates the current required level; proposals for the second more detailed level are as follows:

Three favored a second level with details similar to those in the current B level.

Four proposed a second level that would add five functions to the current four functions; all reporters would use 17 object codes which would be an increase from 14 to 17 for current required level reporters, and a decrease for current voluntary reporters from 47 to 17.

Proposal—Establish two reporting levels. The current required level will be retained (the "Minimum (M) level"), and the current three voluntary levels will be consolidated and simplified into a single voluntary level (the new "Expanded (E) level"). Level E will have 21 functions, a reduction of 52% in the number of current A level functions, and the same number as the current B level. The specific Level E functions will be slightly different from those in the current B level. Level E will have 26 expense object classes, a 45% reduction from the 47 currently used in all three voluntary levels. The proposed revisions to the Uniform System of Accounts and Records and Reporting System are described in the Revision to 49 CFR part 630 in section VII.

As stated in section II.B.1, reporters who received UMTA MIS grants will be able to report at either the Expanded or Minimum level. UMTA will, however, encourage large operators and others that have the data available to satisfy the expanded level to report at that level. UMTA will also make all expanded data easily accessible as an incentive for operators to contribute to the national data base.

Proposal—Realign the Uniform System of Accounts to move Ticketing & Fare Collection (151) and System Security (161) from the General Administration to the Operations category. These functions are major cost items for the current A level reporters, representing the fourth and fifth largest cost items of the 44 reported. Realigning these costs will be disruptive to the continuity of twelve years of historical costs, since the definitions and value of Operations and General Administration will change. However, there is a logic to moving these items into operations. Also, the proposed Level E will allow these costs to be disaggregated in historical cost analysis for the large operators, although this will not be possible for the Minimum Level reporters.

E. Other Financial Data

Operators Wages and Hours Schedule

The current Form 321 provides a detailed breakdown of the hours and wages paid to revenue vehicle operators, including major categories of dollars and hours for operating and non-operating paid work.

Seven commenters requested that the Operators Wages and Hours Schedule either be eliminated or that the detailed categories be consolidated. One commenter suggested that this information be voluntary.

Proposal—UMTA will simplify the Operators Wages and Hours Schedule by consolidating details.

Fringe Benefit Contributions

Fringe benefit contributions of both employers and employees are reported on Form 331.

Of five commenters proposing a revision to fringe benefit reporting, four suggested eliminating employee contributions. One commenter proposed eliminating all reports of fringe benefit contributions, while one supported retaining all fringe benefit contributions for accurate comparisons of benefits.

Proposal—UMTA will eliminate reports of employee contributions to fringe benefits. This change is consistent with specific comments on fringe benefits and general support for simplifying reporting.

Pension Plans

Information on the cost components of the various pension plans that reporters provide for their employees are reported on Form 332. Pension plan data are not published.

Commenters universally supported elimination of the pension plan data. While 20 supported eliminating Form 332, one commenter supported consolidation with the fringe benefit schedule, and no other commenters defended the data for analysis. Employee contributions to fringe benefits are proposed to be eliminated because employee contributions come out of wages, which are already reported by the operators. Consequently, the inclusion of employee contributions would result in double counting. In addition, these data are not useful for analysis because the data involve plan specific details.

Proposal—UMTA is eliminating Form 332, Pension Plan Questionnaire. This change is consistent with the comments on the minimal value of pension data and general support for simplifying reporting and reducing the number of forms. Total cost of pension plan will continue to be a part of, and included with, fringe benefit cost.

F. Non-Financial Operating Data

The Reporting System uses several forms to collect information on a broad range of non-financial characteristics of transit service, including maintenance of vehicles, fleet inventories, infrastructure, labor resources, safety, service supplied, and ridership.

Fleet inventory

The reporting system records several types of fleet information on several different forms. Forms 003 and 004 contain the number and type of vehicles required and available to meet peak or maximum service requirements measured at the time of year when maximum service occurs. Forms 406 and 407 record the number of vehicles in operation during average daily time periods. Form 408 measures all vehicles in the total fleet, including vehicles that are active, stored, and awaiting sale.

Proposal—Consistent with numerous ANPRM responses requesting simplification of reporting and reduction in the number of forms, UMTA is eliminating Forms 003 and 004 by incorporating the information from those forms onto Forms 406 and 407.

Service Periods

Time periods of transit service for each mode, including a.m. and p.m. peaks, midday, and hours of service for weekdays, Saturdays, and Sundays are reported on Form 401. These data are not published in the Annual Report.

Ten commenters recommended eliminating Form 401, while one proposed revising it.

Proposal—Consistent with numerous ANPRM requests to simplify reporting and reduce the number of forms, UMTA is eliminating Form 401. Information on service period schedules will be incorporated onto Forms 406 and 407.

Service Reliability—Roadcalls

Data on roadcalls for mechanical failure and other reasons are reported on Form 402.

The ANPRM asked whether reports of roadcalls are of value, whether definitions should be revised to make the data more useful, or whether alternative data items should be substituted to measure reliability.

Taken as a group, the comments expressed a high level of dissatisfaction with the current approach to reporting roadcalls—16 commenters proposed eliminating roadcalls or revising the definition of roadcalls.

Proposal—Because roadcalls are a crucial aspect of performance, the current definition of roadcalls will be retained until UMTA and the industry are able to develop a superior measure of reliability.

Transit System Employee Counts

System-wide hours worked are categorized by different functions on Form 404. For simplicity, these hours are divided by 2080 and reported as full-time equivalents (FTE's); there are no distinctions between labor of full- and part-time employees.

Five commenters supported reporting work hours instead of annual full-time equivalents, arguing that use of the 2080 hours per labor year is arbitrary and confusing. Two commenters opposed this view, supporting the current use of an annual full-time equivalent. Three commenters proposed abandoning the entire employee count form. Two commenters supported use of percentage of hours worked by part-time employees as a useful indicator of the extent to which part-time employees are utilized.

Proposal—The Transit System Employee Count Schedule will report work hours instead of equivalent work years. This change will avoid the arbitrariness of the current definition of full-time equivalent employees.

A check-off box will be added to Form 404 to indicate use of part-time operators. In addition, on a trial basis, all reporters will have the option of indicating the percentage of paid hours for revenue vehicle operations provided by part-time operators on Form 404. The local definition of part-time will be summarized on Form 005. UMTA believes that this data will be of value in assessments of the effect of part-time labor on performance, including costs, service, safety, and other factors.

Service Supplied and Consumed

Service supplied and consumed information is reported on Form 406 for non-rail modes and on Form 407 for rail modes. Information includes measures of the quantity of service supplied, including vehicle miles and hours, actual and scheduled vehicle revenue miles, and capacity miles; and unlinked passenger trips and passenger miles. Most items on these forms are reported by time-of-day.

Two comments opposed and no comments supported development of new measures of service quality.

Proposal—Although UMTA will not add measures of service quality, it will improve access to reports of actual and scheduled vehicle revenue miles, which are currently reported. Scheduled vehicle revenue miles are currently available only on tape. Comparisons of actual and schedule vehicle revenue miles can provide a measure of one aspect of service reliability.

IV. Bibliography

Reference documents for the Uniform System of Accounts and Records and Reporting System are as follows.

Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System

Volume I—General Description (January 1977)

Volume II—Uniform System of Accounts and Records (January 1977)

Reporting Manual and Sample Forms (All Reporting Levels) (April 1991)

Data User's Guide to the UMTA Section 15 Reporting System, Volpe National Transportation Systems Center, June 1, 1989.

National Urban Mass Transportation Statistics: 1989 Section 15 Annual Report (November 1990), from U.S. Government Printing Office, (202) 783–3238.

UMTA Circular 2710.1A, Sampling Procedures for Obtaining Fixed Route Bus Operating Data Required Under the Section 15 Reporting System, July, 1988.

UMTA Circular 2710.2A, Sampling Procedures for Obtaining Demand Responsive Bus System Operating Data Required Under the Section 15 Reporting System, July, 1988.

UMTA Circular 2710.4A, Revenue Based Sampling Procedures for Obtaining Fixed Route Bus Operating Data Required Under the Section 15 Reporting System, July, 1988.

UMTA Circular 2710.6, Section 15 Accounting and Reporting Release #1, July, 1988. (Questions and answers on Section 15).

UMTA Circular 2710.7, Section 15 Accounting and Reporting Release #2, July, 1988. (Questions and answers on Section 15).

Uniform System of Accounts and Records and Reporting System; Clarification of Procedures for Addressing Noncompliance with Reporting Requirements; Final Rule. Changes to Section 15; Notice (52 FR 36182) September 25, 1987 (49 CFR Part 630).

Transit Profiles for Thirty Large Agencies for the 1989 Section 15 Report Year, Audit Review and Analysis Division, Office of Capital and Formula Assistance, Urban Mass Transportation Administration, February 19, 1991.

V. Appendix

Attached to the proposed revised part 630 is an Appendix which explains the overall structure of the section 15 Uniform System of Accounts and Records and Reporting System. This Appendix provides a general overview of the Systems. It is important to emphasize that in the actual preparation of a report, reporters must use part 630, the Reporting Manual, and any other materials provided by UMTA. The Appendix describes the two levels of reporting and recordkeeping used in the Reporting and the Accounts and Records Systems, and the use and structure of the Systems. Finally, the Appendix provides a list of reporting forms in table 8.

VI. Regulatory Analyses and Notices

A. Executive Order 12291

This action has been reviewed under Executive Order 12291, and it has been determined that it is not a major rule. It will not result in an annual effect on the economy of $100 million or more. This regulation is not significant under the Department's Regulatory Policies and Procedures. UMTA finds that the economic impact of this regulation is so minimal that a full regulatory evaluation is not required.

B. Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), as added by the Regulatory Flexibility Act, Public Law 96–354, UMTA certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Act. To the extent the new regulation would be more easily understood and more clearly states the basic reporting procedures, it may save small entities time in determining their rights and responsibilities.

C. Environmental Impacts

This final regulation would not adversely affect the environment.

D. Paperwork Reduction Act

The collection of information requirements in the present rule are subject to the Paperwork Reduction Act, Public Law 96–511, 44 U.S.C. chapter 35.

The paperwork requirements associated with this NPRM are being forwarded to the Office of Management and Budget (OMB) for review.

List of Subjects in 49 CFR Part 630

Mass transportation, Reporting and recordkeeping requirements, Uniform system of accounts.

VII. Revision of 49 CFR Part 630

Based on the foregoing, UMTA proposes to revise 49 CFR part 630 as follows:

PART 630—UNIFORM SYSTEM OF ACCOUNTS AND RECORDS AND REPORTING SYSTEM

Section

630.1 Purpose.
630.3 Scope.
630.5 Definitions.
630.7 Requirements.
630.9 Failure to report data.
630.11 Late and incomplete reports.
630.13 Inaccurate data.
630.15 Negative certification findings.
630.17 Waiver of reporting requirements.
630.19 Data adjustments.
630.21 Display of OMB control numbers.

Appendix to Part 630—Overview and Explanation of the Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System.

Authority: Sec. 111, Pub. L. 93–503, 88 Stat. 1573 (49 U.S.C 1611); Secs. 303(a) and 304(c), Pub. L. 97–424, 96 Stat. 2141 (49 U.S.C. 1607); and 49 CFR 1.51.

§ 630.1 Purpose.

The purpose of this part is to prescribe requirements and procedures necessary for compliance with the Uniform System of Accounts and Records and Reporting System mandated by section 15 of the Urban Mass Transportation Act of 1964 (UMT Act), as amended, 49 U.S.C. 1611, and to set forth the procedures for addressing a reporting agency's failure to comply with these requirements.

§ 630.3 Scope.

This part applies to all applicants and beneficiaries of Federal financial assistance under section 9 of the UMT Act (49 U.S.C. 1604 and 1607).

§ 630.5 Definitions.

(a) Except as otherwise provided, terms defined in the Urban Mass Transportation Act of 1964, as amended (49 U.S.C. 1601 et seq.), are used in this part as so defined.

(b) Terms defined in the January 10, 1977 Edition of the Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System, as updated in the annual Reporting Manual, are used in this part as so defined.

(c) For purposes of this part:

Administrator means the Urban Mass Transportation Administrator or the Administrator's designee.

Applicant means an applicant for assistance under section 9 of the UMT Act.

Assistance means Federal financial assistance for the acquisition, construction, or operation of public mass transportation services.

Beneficiary means any organization operating and delivering urban transit services that directly receives benefits from assistance under section 9 of the UMT Act.

Chief Executive Officer (CEO) means the principal executive in charge of and responsible for the transit or reporting agency.

Current edition of the Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System means the most recently issued edition of the Reference Volumes, as modified by any Circulars or other written modifications about which the reporting agency has received reasonable notice. For the Reference Volumes, "reasonable notice" is given for the applicable report if the most recent edition is mailed to the reporting agency at least 120 days before the agency's reporting deadline. For Circulars and other written modifications, "reasonable notice" is given if the reporting agency is mailed the modifications at least 30 days before a reporting deadline. However, UMTA reserves the right to waive these notice requirements in unique cases that require immediate implementation (such as a change in the statute).

Days means calendar days.

Deadhead miles means the miles a vehicle travels when out of service, i.e., returning to the garage, changing routes, etc., or when there is no reasonable expectation of carrying revenue passengers. The total miles traveled by revenue vehicles consist of miles traveled when in revenue service and these deadhead miles.

Mass Transportation Agency or *transit agency* means an agency authorized to transport people by bus, rail, or other conveyance, either publicly or privately owned, and which provides to the public general or special service (but not including school, charter, or sightseeing service) on a regular and continuing, scheduled or unscheduled, basis. Transit agencies are classified according to the mode of transit service operated. A multimode transit agency operates two or more modes, which are defined in the current edition of the Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System.

Reference Volume(s) means the current edition of the Urban Mass Transportation Industry Uniform System of Accounts and Records, which is composed of Volume I-General Description; Volume II-Uniform System of Accounts and Records; and Reporting Manual and Sample Forms (All Reporting Levels). These volumes are subject to periodic revision. Beneficiaries and applicants are responsible for using the current edition of the reference volumes.

Reporting agency is the agency required to submit a report under section 15.

The UMT Act means the Urban Transportation Act of 1964, as amended. (49 U.S.C. 1601 et seq.)

Vehicle revenue miles means the miles a vehicle travels when in revenue service. A transit vehicle is in revenue service only when the vehicle is available to the public and there is reasonable expectation of carrying passengers that either directly pay fares, are subsidized by public policy, or provide payment through some contract arrangement.

§ 630.7 Requirements.

(a) *Uniform System of Accounts and Records.* Each applicant for and direct beneficiary of Federal financial assistance under sections 5 or 9 of the UMT Act must comply with the applicable procedural requirements of the section 15 Uniform System of Accounts and Records, as set forth in the current edition of the "Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System," Circulars, and other reference documentation.

(b) *Reporting System.* Each applicant for and direct beneficiary of Federal financial assistance under sections 5 or 9 of the UMT Act must comply with the applicable procedural requirements of the section 15 Reporting System, as set forth in the current edition of the "Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System," Circulars, and other reference documentation.

(c) *Copies.* Copies of the referenced documents are available from the Urban Mass Transportation Administration, Audit, Review and Analysis Division (UGM–13), 400 7th Street, SW., room 9305, Washington, DC 20590. These materials are subject to periodic revision. Revisions of these documents will be mailed to all persons required to comply and a notice of any significant changes in these procedures will be published in the **Federal Register.**

§ 630.9 Failure to report data.

Failure to report data in accordance with this Part and the current edition of the Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System will result in the reporting agency being ineligible to directly or indirectly receive (e.g., a public agency receiving UMTA funds through another public agency rather than directly from UMTA) any section 9 grants. This ineligibility applies to all reporting agencies without regard to the size of the urbanized area served by the reporting agency.

§ 630.11 Late and incomplete reports.

(a) *Late Reports.* A report is to be received by UMTA no later than the 120th day following the last day of the reporting agency's fiscal year.

(1) An extension of 30 days after the due date provided for in § 630.11(a) may be requested by a reporting agency.

(2) Failure to submit the required report by the due date will be treated under § 630.9 as failure to report data.

(3) A second 30-day extension after the due date provided for in § 630.11(a) will be granted only where

unforeseeable circumstances beyond the reporting agency's control have made it impossible to meet the due date. No second extension will be granted if it would delay the apportionment of formula grants to other grantees.

(b) *Incomplete Reports.* (1) Report submissions which do not contain all the necessary reporting forms, data, or certifications for services directly operated by the reporting agency in substantial conformance with the definitions, procedures, and format requirements set out in the section 15 Uniform System of Accounts and Records and Reporting System shall be treated under § 630.9 as failure to report data.

(2) Submission of a report with incomplete data or missing forms for services provided under contract to the reporting agency by private or public carriers shall not be treated under § 630.9 as failure to report data provided that the reporting agency has exhausted all possibilities for obtaining this information.

§ 630.13 Inaccurate data.

Failure to respond to data validation questions. UMTA, either directly or through a contractor, will review each section 15 report to verify the reasonableness of the data submitted. If any of the data do not appear reasonable, UMTA or its contractor will notify the reporting agency of this fact and request justification to document the accuracy of the questioned data. Failure of a reporting agency to make a good faith response to this request will be treated under § 630.9 as failure to report data.

§ 630.15 Negative certification findings.

UMTA will enter a zero for use in computing the section 9 apportionment for any questionable data item(s) in a reporting agency's section 15 Report if the independent auditor's section 9 data certification for that report indicates that any of the data do not appear accurate or have not been collected and reported in accordance with UMTA's definitions and/or confidence and precision levels, or expresses any other negative finding, such as the lack of adequate documentation or a reliable recordkeeping system.

§ 630.17 Waiver of reporting requirements.

(a) Request for waivers of reporting requirements must be received 60 days before the due date in order to receive consideration.

(b) The Administrator may, at the Administrator's discretion, consider a waiver request or grant a waiver on the Administrator's own initiative not received 60 days in advance if good cause is shown by the requesting party.

(c) Waivers of one or more sections of the reporting requirements may be granted at the discretion of the Administrator on a showing that the party seeking the waiver cannot furnish the required data without unreasonable expense and inconvenience.

§ 630.19 Data adjustments.

Errors in the data used in making the apportionment may be discovered after any particular year's apportionment is completed. If so, UMTA shall make adjustments to correct these errors in a subsequent year's apportionment to the extent feasible.

§ 630.21 Display of OMB control numbers.

All of the information collection requests in this part have been approved by the Office of Management and Budget under control number 2132–0006.

Appendix to Part 630—Overview and Explanation of the Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System

A. Introduction

Section 15 of the Urban Mass Transportation Act of 1964, as amended (UMT Act), provides for establishment of two information-gathering analytic systems: A Uniform System of Accounts and Records, and a Reporting System for the collection and dissemination of public mass transportation financial and operating data by uniform categories. The purpose of these two Systems is to provide information on which to base public transportation planning and public sector investment decisions. The section 15 program is administered by the Urban Mass Transportation Administration (UMTA).

The Uniform System of Accounts and Records consists of:

- Various categories of accounts and records for classifying financial and operating data;
- Precise definitions as to what data elements are to be included in these categories; and
- Definitions of practices for systematic collection and recording of such information.

While a specific accounting system is recommended for this recordkeeping, it is possible to make a translation from most existing accounting systems to comply with the Section 15 Reporting System, which consists of forms and procedures:

- For transmitting data from transit agencies to UMTA;
- For editing and storing the data; and
- For UMTA to report information to various groups.

Under the terms of section 15 of the UMT Act, all applicants for and beneficiaries of Federal assistance under section 9 of the Act (i.e., under the formula grant programs) must comply with the Reporting System and the Uniform System of Accounts and Records in order to be eligible for Federal grants. It should be noted that separate and complete section 15 reports must be submitted by or for each purchased transportation service provider that operates 100 or more revenue vehicles for the purchased service during the maximum service period.

B. Purpose of This Appendix

This Appendix presents a general introduction to the structure and operation of the two Systems. It is not a detailed set of instructions for completion of a section 15 report or establishment of a System of Accounts and Records. Persons in need of more information should refer to the current edition of the Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System, available from: Urban Mass Transportation Administration, Office of Capital and Formula Assistance, Audit, Review & Analysis Division (UGM–13), 400 Seventh Street, SW., room 9305, Washington, DC 20590 (202) 366–1610.

The current edition of the Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System is composed of: Volume I—General Description (January 10, 1977), Volume II—Uniform System of Accounts and Records (January 10, 1977), Reporting Manual and Sample Forms (All Reporting Levels) (April 1991).

UMTA periodically updates these reference documents or supplements them to revise or clarify section 15 definitions and reporting forms and instructions. Section 630.7 makes clear that reporting agencies must use the most recent edition of the reference documents and reporting forms to comply with the section 15 requirements. UMTA therefore urges local officials to check with UMTA before completing a section 15 report to avoid unnecessary efforts and delays.

C. Special (Reduced) Reporting Requirements

Certain information collection and recording requirements were tailored to accommodate the unique characteristics of certain transportation modes. Reduced requirements were permitted during limited time periods to ease transition to complete reporting for these modes. Reduced reporting requirements for commuter rail systems and vanpool services ended in the 1987 report year. In addition, the reduced reporting requirements for private subscription and private noncontract conventional bus service will be eliminated in the 1992 report year.

D. Two Levels of Section 15 Reporting and Recordkeeping

UMTA, in cooperation with experts representing operators, public agencies, and other constituencies of the transit industry, developed two different reporting formats to be adaptable to the varying sizes of transit agencies. The Systems also provide for the varying levels of recordkeeping specificity and complexity that are necessary to accommodate variations in size, local laws, and modes of transport. A basic level of detail is reported under the Minimum (M) reporting level.

The Uniform Systems also contain an Expanded (E) reporting level for submitting more detailed revenue and expense data. The Expanded (E) level is voluntary and contains subcategories of data that should be aggregated to record each object class or expense function at the minimum level and thus serves to define the more aggregated data. The definitions for data reported at the Minimum (M) level are consistent with and summarized from those for the more detailed Expanded (E) level data.

E. The Uniform System of Accounts and Records

The Uniform System of Accounts and Records consists of a financial accounting and operational recordkeeping system designed for mass transportation managers and planners. Its uniformity permits more thorough and accurate comparisons and analyses of different transit agencies' operating costs and efficiencies than if each had a unique recordkeeping and accounting system. The System establishes various categories of accounts and records for classifying mass transportation operating and financial data, and includes precise definitions of transportation terminology to ensure that all users share a common understanding of how to use and interpret the data collected.

(1) Use of the Accounts and Records System

Beneficiaries of and applicants for Federal assistance are not required to use the Uniform System of Accounts and Records in keeping their own records. If an applicant or beneficiary chooses not to use the System, however, it must nevertheless be able to translate its accounts and records system to the accounts prescribed in the System. The accounting system that the reporter uses must permit preparation of financial and operating data that conform to the Uniform System directly from its records at the end of the fiscal year, and must be consistent with the following:

(i) The data must have been developed using the accrual method of accounting. Those transit systems that use cash-basis accounting, in whole or in part, must make work sheet adjustments in their account books to record the data on the accrual basis.

(ii) Reporting agencies must follow or be able to directly translate their system to the accounting treatment specified in the publication "Urban Mass Transportation Industry Uniform System of Accounts and Records and Reporting System."

(iii) The reporting agency's accounting categories (chart of accounts) must be correctly related, via a clear audit trail, to the accounting agencies prescribed in the Uniform System of Accounts and Records and Reporting System.

(2) General Structure of Uniform Accounts and Records System

In the section 15 System, operating expenses incurred by the transit system are classified by mode. The expenses of each mode are recorded in two dimensions:

(i) The type of expenditure (expense object class); and

(ii) The function or activity performed.

The expense object classes are typical of those of most transit accounting systems. Table 1 is a list of the expense object classes to be reported under the Minimum (M) reporting level for section 15.

TABLE 1.—MINIMUM (M) LEVEL EXPENSE OBJECT CLASSES

501. Labor
01 Operators' Salaries and Wages
02 Other Salaries and Wages
502. Fringe Benefits
503. Services
504. Materials and Supplies
01 Fuel and Lubricants
02 Tires and Tubes
99 Other Materials and Supplies
505. Utilities
506. Casualty and Liability Costs
507. Taxes
508. Purchased Transportation
01 Less Than 100 Vehicles
02 100 or More Vehicles
509. Miscellaneous Expense
510. Expense Transfers
511. Interest Expenses
512. Leases and Rentals
513. Depreciation
13 Amortization of Intangibles
514. Purchase Lease Payments
515. Related Parties Lease Agreement
516. Other Reconciling Items

Table 2 presents the more detailed Expanded (E) level expense object classes and Minimum (M) level object class expenses and how they relate to each other. Within each object class, the Uniform System categorizes expenditures by four basic functions: Vehicle operations, vehicle maintenance, nonvehicle maintenance, and general administration. UMTA developed the four standard functional classifications for uniformity and to enhance the usefulness of the data collected under section 15.

BILLING CODE 4910-57-M

AGGREGATION OF EXPENSE OBJECT CLASSES

EXPANDED LEVEL E EXPENSE OBJECT CLASSES	MINIMUM LEVEL M EXPENSE OBJECT CLASSES
501.01 Operators Salaries & Wages	501.01 Operators Salaries & Wages
501.02 Other Salaries & Wages	501.02 Other Salaries & Wages
502.15 Fringe Benefits	502.00 Fringe Benefits
503.03 Professional & Technical Services	503.00 Services
503.05 Contract Maintenance Services	
503.90 Other Services	
504.01 Fuel & Lubricants	504.01 Fuel & Lubricants
504.02 Tires & Tubes	504.02 Tires & Tubes
504.99 Other Materials & Supplies	504.99 Other Materials & Supplies
505.01 Propulsion Power	505.00 Utilities
505.02 Utilities Other than Propulsion Power	
506.91 Premiums - PL&PD Insurance	506.00 Casualty & Liability Costs
506.92 Recoveries - PL&PD Losses, Settlements	
506.93 Payouts - Insured/Uninsured PD&PL Settlements	
506.05 Provisions - Uninsured PL&PD Settlements	
506.94 Premiums, Recoveries & Other Corporate Losses	
507.05 Fuel & Lubricant Taxes	507.00 Taxes
507.90 Other Taxes	
508.01 Purchased Transportation (<100 Vehicles)	508.01 Purchased Transportation (<100 Vehicles)
508.02 Purchased Transportation (>100 Vehicles)	508.02 Purchased Transportation (>100 Vehicles)
509.90 Other Miscellaneous Expense	509.00 Miscellaneous Expense
509.08 Advertising/Promotion Media	
510.01 Function Reclassification	510.00 Expense Transfers
510.02 Expense Reclassification	
510.03 Capitalization of Nonoperating Costs	

BILLING CODE 4910-57-C

The four functional classifications are used for recordkeeping and reporting of Level M data. Level E uses a more detailed breakdown of each function. Table 3 shows the expanded and minimum levels of functional classifications and how they relate to each other.

BILLING CODE 4910-57-M

AGGREGATION OF EXPENSE FUNCTIONS

EXPANDED LEVEL E	MINIMUM LEVEL M
VEHICLE OPERATIONS	**VEHICLE OPERATIONS**
2011 Transportation Administration 2031 Revenue Vehicle Operations 2151 Ticketing & Fare Collection 2161 System Security 2000 Other Operations	010 Vehicle Operations
VEHICLE MAINTENANCE	**VEHICLE MAINTENANCE**
3041 Maintenance Administration - Vehicles 3000 Servicing & Repair - Revenue Vehicles 3061 Inspection & Maintenance of Revenue Vehicles 3001 Service & Maintenance - Revenue Vehicles	041 Vehicle Maintenance
NON-VEHICLE MAINTENANCE	**NON-VEHICLE MAINTENANCE**
4042 Maint. Administration - Non-Vehicle 4101 Maint of Vehicle Movement Control 4111 Maint of Fare Collection & Counting Equip 4121 Maint of Roadway and Track 4122 Maint of Structures, Tunnels & Subways 4123 Maint of Passenger Stations 4000 Maint of Other Bldgs Grounds & Equip 4001 Accident & Vandalism Repairs Of Bldgs Grounds, & Equipment	042 Non-Vehicle Maintenance
GENERAL ADMINISTRATION	**GENERAL ADMINISTRATION**
5000 General Administration 5001 Marketing & Customer Service 5177 Planning 5181 General Functions	160 General Administration

BILLING CODE 4910-57-C

Table 4 is a list of the revenue object classes for the Minimum (M) level under Section 15. Table 5 presents the more detailed Expanded (E) level revenue object classes as well as the Minimum (M) level revenue object classes and how the two levels relate to each other.

TABLE 4.—MINIMUM (M) LEVEL REVENUE OBJECT CLASSES

401. Passenger Fares for Transit Service
402. Special Transit Fares
403. School Bus Service Revenues
404. Freight Tariffs
405. Charter Service Revenues
406. Auxiliary Transportation Revenues
407. Nontransportation Revenues
408. Taxes Levied Directly by Transit System
409. Local Cash Grants and Reimbursements
410. Local Special Fare Assistance
411. State Cash Grants and Reimbursements
412. State Special Fare Assistance
413. Federal Cash Grants and Reimbursements
430. Contributed Services
440. Subsidy From Other Sectors of Operations

BILLING CODE 4910-57-M

AGGREGATION OF REVENUE OBJECT CLASSES

EXPANDED LEVEL E REVENUE OBJECT CLASSES	MINIMUM LEVEL M REVENUE OBJECT CLASSES
401 PASSENGER FARES FOR TRANSIT SERVICE (FORM 202)	
401.01 Full Adult Fares 401.02 Senior Citizen Fares 401 03 Student Fares 401 06 "Park & Ride" - Parking Revenue Only 401 90 Other Special Ride Fares	401 Passenger Fares For Transit Service
402 SPECIAL TRANSIT FARES	
402 90 Contract & Special Service Fares	402 Special Transit Fares
403 SCHOOL BUS SERVICE REVENUES	
403 01 Fares From School Bus Service	403 School Bus Service Revenues
404 FREIGHT TARRIFFS	
404 01 Hauling Freight	404 Freight Tarriffs
405 CHARTER SERVICE REVENUES	
405 01 Fares from Charter Services	405 Charter Service Revenues
406 AUXILIARY TRANSPORTATION REVENUES	
406 90 Station & Vehicle Concessions 406.03 Advertising Services 406 04 Automotive Vehicle Ferriage 406 91 Other Auxiliary Revenues	406 Auxiliary Transportation Revenues
407 NON - TRANSPORTATION REVENUES	
407 04 Investment Income 407 90 Other Non-Transportation Revenues	407 Non-Transportation Revenues
408 TAXES LEVIED BY TRANSIT SYSTEM	
408 01 Property Tax Revenue 408 02 Sales Tax Revenue 408 90 Other Tax Revenue	408 Taxes Levied By Transit System
409 LOCAL CASH GRANTS AND REIMBURSEMENTS	
409 01 General Operating Assistance 409 91 Special Demonstration Project Assistance - Local 409 92 Other Local Financial Assistance	409 Local Cash Grants and Reimbursements
410 LOCAL SPECIAL FARE ASSISTANCE	
410 90 Local Special Fare Assistance	410 Local Special Fare Assistance

AGGREGATION OF REVENUE OBJECT CLASSES

EXPANDED LEVEL E REVENUE OBJECT CLASSES	MINIMUM LEVEL M REVENUE OBJECT CLASSES
411 STATE CASH GRANTS ASSISTANCE	
411 01 General Operating Assistance	411 State Cash Grant Assistance
411 91 Special Demonstration Project Assistance - State	
411 92 Other State Financial Assistance	
412 STATE SPECIAL FARE ASSISTANCE	
412 90 State Special Fare Assistance	412 State Special Fare Assistance
413 FEDERAL CASH GRANTS AND REIMBURSEMENTS	
413 01 General Operating Assistance	413 Federal Cash Grants & Reimbursements
413 04 Special Demonstration Project Assistance	
413 99 Other Financial Assistance	
430 CONTRIBUTED SERVICES	
430 01 State and Local Governments	430 01 State and Local Governments
430 02 Contra Account for Expenses Net Contributed Services	430 02 Contra Account for Expenses Net Contributed Services
440 SUBSIDY FROM OTHER SECTORS OF OPERATION	
440 90 Other Subsidies	440 Subsidy from Other Sectors of Operation
OPTIONAL INFORMATION	
Passenger Fares for Transit Services by Mode	Passenger Fares for Transit Services by Mode

Table 6 presents the classification for sources and uses of capital required under Section 15. These classifications replace capital information previously required on the balance sheet and capital subsidiary schedule.

TABLE 6.—CAPITAL FUNDING

Sources of Capital
Federal Funds
State Funds
Local Funds
Transit Agency Funds
Uses of Capital
Revenue Vehicles
Transit Way and Facilities
Other Capital Expenses

The Uniform System of Accounts and Records also includes collecting and recording of certain operating data elements. The basic operating data elements are listed in Table 7.

TABLE 7.—OPERATING DATA ELEMENTS

Revenue Vehicles Maintenance Performance and Energy Consumption
Roadcalls for Mechanical Failure
Roadcalls for Other Reasons
Labor Hours for Inspection and Maintenance
Number of Light Maintenance Facilities
Energy Consumption
Transit Way Mileage
Fixed Guideway Classifications for Rail and Non-rail Modes
Directional Route Miles
Miles of Track
Number of Crossings
Number of Stations
Average Monthly Directional Route Miles
Employee Equivalents
Operating and Capital Employee Equivalents for Labor
Classifications
Part-time Labor
Transit System Accidents
Collisions
Non-Collisions
Station Accidents
Service Supplied
Number of Vehicles, Trains, and Passenger Cars in Operation
Total Actual Vehicle, and Passenger Car Revenue Miles
Total Scheduled Vehicle, and Passenger Car Revenue Miles
Total Actual Vehicle, Train, and Passenger Car Revenue Miles
Miles of Charter and School Bus Service
Total Actual Vehicle, Train, and Passenger Car Revenue Hours
Total Actual Vehicle, Train, and Passenger Car Hours
Hours of Charter and School Bus Service
Service Consumed
Unlinked Passenger Trips
Passenger Miles [1]
Service Personnel Classifications
Service Operated and Nonoperated (Days) Classifications
Revenue Vehicle Inventory

[1] Sampling or other procedures that meet prescribed precision and confidence levels need only be applied every third year by reporters who meet the following criteria: (a) Operate in urbanized areas of less than 500,000 population; (b) Directly operate less than 100 revenue vehicles for all modes in maximum service; or (c) Operate purchased transportation service and do not submit a separate Section 15 report.

The definitions for the above expense object classes, functions, revenue object classes, balance sheet object classes, and operating data elements are contained in the reference volumes.

F. The Reporting System

(1) The section 15 Reporting System consists of forms and procedures for transmitting data from transit agencies to UMTA. All beneficiaries of Federal financial assistance must submit the required forms and information in order to allow UMTA to: (1) Store and generate information on the Nation's mass transportation systems; and (2) calculate apportionment allocations for the section 9 formula grant program (for urbanized areas of 200,000 or more inhabitants). Agencies submitting Section 15 reports may only submit data for transit services which they directly operate and purchase under contract from public agencies and/or private carriers.

Separate and complete Section 15 reports must be submitted by or for each purchased transportation service provider that operates 100 or more revenue vehicles for the purchased service during the maximum service period. The reporting requirements include the following major segments, which are based on information assembled through the Uniform System of Accounts and Records:

1. Capital report.
2. Revenue report.
3. Expense report.
4. Nonfinancial operating data reports.
5. Miscellaneous auxiliary questionnaires and subsidiary schedules.
6. Data certifications.

(2) The following Table 8 lists all reporting forms to be filed by all reporting agencies:

TABLE 8.—MINIMUM (M) LEVEL REPORTING FORMS

Basic Information Forms:
Transit System Identification
Contractual Relationship Identification
Supplemental Information
Capital Report Forms:
Capital Funding
Revenue Report Forms:
Revenue Summary
Sources of Funding for Operations
Expense Report Forms:
Expenses Classified by Function
Operators' Wages
Fringe Benefits
Nonfinancial Operating Data Report Forms:
Revenue Vehicle Maintenance Performance and Energy Consumption
Transit Way Mileage
Transit System Employee Equivalents
Transit System Safety
Transit System Service
Revenue Vehicle Inventory
Summary Form:
Section 9 Statistics

(3) The section 15 Reporting System includes several data certification requirements.

(a) Financial Data Certification

Reporting agencies must submit with their section 15 report a letter or report signed by an independent public accountant or other responsible independent entity such as a state audit agency. This statement must attest to the conformity, in all material respects of the financial data reporting forms in the Section 15 report with the Uniform System of Accounts and Records and Reporting System. The letter or report shall also state whether any of the reporting forms do not conform to the Section 15 requirements, and describe the discrepancies.

(b) Section 9 Data Certification

Certification of the data used to apportion section 9 funds is required for section 15 reports covering 100 or more vehicles operated in maximum service by all modes that are in or serve urbanized areas with populations of 200,000 or more. All section 9 data (directly operated as well as purchased service) in the report will be certified. This section 9 data certification must be signed by an independent auditor. The data used to apportion section 9 funds are: Directional route miles, vehicle revenue miles, passenger miles, and operating cost.

(c) The Chief Executive Officer (CEO) Certification

The CEO of each reporting agency is required to submit a certification with each annual section 15 report. The certification must attest:

—To the accuracy of all data contained in the section 15 report;
—That all data submitted in the section 15 report are in accord with Section 15 definitions;
—If applicable, that the reporting agency's accounting system used to derive all data submitted in the section 15 report is the section 15 Uniform System of Accounts and Records and that a section 15 report using this system was certified by an independent auditor in a previous report year;
—If applicable, the fact that the reporting agency's internal accounting system is other than the Uniform System of Accounts and Records, and that its: (i) Accounting system uses the accrual basis of accounting, (ii) accounting system is directly translated, via a clear audit trail, to the accounting treatment and categories specified by the section 15 Uniform System of Accounts and Records, and (iii) accounting system and direct translation to the Uniform System of Accounts and Records are the same as those certified by an independent auditor in a previous reporting year; and
—That a 100% count of passenger mile data was conducted or that the sampling method used to collect passenger mile data for each mode/type of service meets UMTA requirements.

Issued On: August 1, 1991.

Brian W. Clymer,

Administrator.

[FR Doc. 91–18723 Filed 8–9–91; 8:45 am]

BILLING CODE 4910–57–M

federal register

Monday
August 12, 1991

Part IV

Department of Education

Commercial Drivers Education Program; Applications for New Awards for Fiscal Year 1992; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.247]

Commercial Drivers Education Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 1992

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: To increase the literacy skills of eligible commercial drivers so that those drivers may successfully complete the knowledge test requirements under the Commercial Motor Vehicle Safety Act of 1986. The term eligible commercial driver means a commercial driver licensed prior to the requirements of the commercial Motor Vehicle Safety Act of 1986.

Eligible Applicants: The following entities are eligible for an award under this program:

(a) Private employers employing commercial drivers in partnership with local educational agencies, State educational agencies, colleges, universities, or community colleges.

(b) Local educational agencies, State educational agencies, colleges, universities, or community colleges.

(c) Approved apprentice training programs. The term "approved apprentice training programs" has the meaning given this term in the National Apprenticeship Act of 1937.

(d) Labor organizations, the memberships, of which include commercial drivers.

Cost Sharing is required by the statute authorizing this program. The non-Federal share required refers to 50 percent of the total project cost including both Federal and non-Federal funds.

Grantees shall refer to appropriate adult education programs authorized under other portions of the Adult Education Act those individuals who are identified as having literacy skill problems beyond those which prevent them from successfully completing the knowledge test requirements under the Commercial Motor Vehicle Safety Act of 1986.

Deadline for Transmittal of Applications: 10/11/91.

Deadline for Intergovernmental Review: 12/11/91.

Available Funds: $1,951,975.

Estimated Range of Awards: $150,000–$200,000.

Estimated Average Size of Awards: $195,000.

Estimated Number of Awards: 10.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 18 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations), part 75 (Direct Grant Programs), part 77 (Definitions that Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 81 (General Education Provisions Act—Enforcement), part 82 (New Restrictions on Lobbying), part 85 (Government-Wide Debarment and Suspension (Nonprocurement) and Government-Wide Requirements for Drug-Free Workplace (Grants), and part 86 (Drug-Free Schools and Campuses).

Selection Criteria

(a)(1) The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

(2) The maximum total score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

The Secretary assigns the fifteen points, reserved in 34 CFR 75.210(c), as follows: 10 points to selection criterion (3)—Plan of Operation—in 34 CFR 75.210(b)(3) for a total of 25 points for that criterion; and 5 points to selection criterion (4)—Quality of key personnel—in 34 CFR 75.210(b)(4) for a total of 12 points for that criterion.

(b) *The criteria*—(1) *Meeting the purposes of the authorizing statute.* (30 points) The Secretary reviews each application to determine how well the project will meet the purpose of the Adult Education Act, including consideration of:

(i) The objective of the project; and

(ii) How the objectives of the project further the purposes of the Adult Education Act.

(2) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the Adult Education Act, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of Operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition.

(4) *Quality of key personnel.* (12 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraph (b)(4)(i) (A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i) (A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent

to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee)

(7) *Adequacy of resources.* (3 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Intergovernmental Review of Federal Programs: This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive Order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financal assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive Order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on September 17, 1990, pages 38210–38211.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, Executive Order 12372—CFDA# 84.247, U.S. Department of Education, room 4161, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please Note that the Above Address is not the Same Address as the One to Which the Applicant Submits its Completed Application. *Do Not Send Applications to the Above Address.*

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.247), Washington, DC 20202–4725.

or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control center, Attention: (CFDA# 84.247), room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC 20202–4725.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgement to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the application for Federal Assistance (Standard Form 424) the CFDA number of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this notice is divided into four parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Part IV: Partners' Agreement Form

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certifications regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters, and Drug-Free Workplace Requirements (ED Form 80–0013) and instructions.

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80–0014) and instructions. (NOTE: ED Form 80–0014 is intended for the use of grantees and should not be transmitted to the Department).

Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions, and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

All forms and instructions are included in the Appendix to this notice.

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, the certifications and Partners' agreement form. However, the application form, the assurances, the certifications and Partners' agreement form must each include an original ink signature. No grant may be awarded unless a complete application form has been received.

All applicants must submit ONE original signed application, and at least two copies of the application. Please mark each application as original or copy. No grant may be awarded unless a complete application form has been received.

FOR FURTHER INFORMATION CONTACT: Marian Banfield, Special Programs Branch, Division of National Programs, Office of Vocational and Adult Education, U.S. Department of Education, room 4512–MES, 400 Maryland Avenue SW., Washington, DC 20202–7327. Telephone (202) 732–1838. Or Carroll Towey, Program Services Branch, Division of Adult Education and Literacy, Office of Vocational and Adult Education, U.S. Department of Education, room 4425–MES, 400 Maryland Avenue SW., Washington, DC 20202–7320. Telephone (202) 732–2391. Deaf and hearing impaired individuals may call the Federal Dual Party Relay

Service at 1–800–877–8339 (in the Washington, DC 202 area code, telephone 708–9300) between 8 a.m. and 7 p.m., Eastern time.

Program Authority: 20 U.S.C. 1211(b).

Dated: August 5, 1991.

Betsy Brand,

Assistant Secretary, Office of Vocational and Adult Education.

BILLING CODE 4000–01–M

APPENDIX

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☒ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, state, and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify): _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify): _____

9. NAME OF FEDERAL AGENCY:

U.S. Department of Education/OVAE

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 • 2 4 7

TITLE: COMMERCIAL DRIVERS EDUCATION PROGRAM

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:

a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - "New" means a new assistance award.
   - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

SF 424 (REV 4-88) Back

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1. COMMERCIAL DR.	84.247	$	$	$	$	$
2.						
3.						
4.						
5. TOTALS		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

BILLING CODE 4000-01-C

SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8. COMMERCIAL DRIVERS EDUCATION PROGRAM	$	$	$	$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTALS (sum of lines 16 -19)	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

(Attach additional Sheets if Necessary)

21 Direct Charges:	22. Indirect Charges:
23 Remarks	

SF 424A (4-88) Page 2
Prescribed by OMB Circular A-102

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Part II—Budget Information Instructions for the SF–424A

General Instructions

This form is designed so that application can be made for funds from any one of the grant programs funded by the U.S. Department of Education. For the Commercial Drivers Education Program (CFDA No. 84.247) sections A, B, and C should include budget estimates for the entire project period.

Note: Sections D and E need not be completed to apply for this program.

All applications should contain a breakdown by the object class categories shown in sections, B, Lines 6a through 6j.

Section A. Budget Summary

Line 1. Columns (a) through (g)—Enter on Line 1 the catalog program title in Column (a) and the catalog program number in Column (b). Leave Columns (c) and (d) blank. Enter in Columns (e), (f) and (g), the appropriate amounts of funds needed to support the project for the entire project period.

Note: Grant recipients under the Commercial Drivers Education Program (CFDA No. 84.247) are required to provide 50 percent of the total cost of a project conducted under the program. In other words, the amount shown on Line 1, Column (f) must be 50 percent of the amount shown on Line 1, Column (g).

Note: Lines 2, 3, 4, and 5 of section A need not be completed to apply for this program.

Section B. Budget Categories

Lines 6a through 6i—Fill in the total requirements for Federal funds by object class categories for the entire project period in Column (1).

Note: Columns (2), (3), (4), and (5) of section B need not be completed to apply for this program.

Line 6a—Personnel: Show salaries and wages to be paid to personnel employed in the project. Fees and expenses for consultants must be included in Line 6f.

Line 6b—Fringe Benefits: Include contributions for Social Security, employee insurance, pension plans, etc. Leave blank if fringe benefits to personnel are treated as part of the indirect cost rate.

Line 6c—Travel: Indicate the amount requested for travel of employees.

Line 6d—Equipment: Applicants who are institutions of higher education, hospitals, or nonprofit organizations must indicate the cost of nonexpendable personal property which has a useful life of more than one year and an acquisition cost of $300 or more per unit. Applicants who are State or local governments must indicate the cost of nonexpendable personal property which has a useful life of more than one year and an acquisition cost of $5000 or more per unit.

Line 6e—Supplies: Include the cost of consumable supplies to be used in this project. These should be items which cost less than $300 per unit with a useful life of less than one year if an applicant is an institution of higher education, a hospital, or a nonprofit organization. If the applicant is a State or local government, list consumable items which cost less than $5000 per unit with a useful life of less than one year.

Line 6f—Contractual: Show the amount to be used for: (a) Procurement contracts (except those which belong on other lines such as supplies and equipment listed above); and (b) payments for consultants.

Line 6g—Construction: Construction expenses are not allowable under the Commercial Drivers Education Program (CFDA No. 84.247).

Line 6h—Other: Indicate all direct costs not clearly covered by Lines 6a through 6g. Trainee costs or stipends are not allowable.

Line 6i—Total Direct Charges: Show total of Lines 6a through 6h.

Line 6j—Show the amount of indirect cost to be charged to the project.

Line 6k—Enter the total of the amounts on Lines 6i and 6j.

Note: Line 7 of Section B need not be completed to apply for this program.

Section C. Non-Federal Resources

Note: Cost sharing is required by the statute authorizing this program. The non-Federal share required refers to 50 percent of the total project cost, including both Federal and non-Federal funds.

Line 8—Enter any amounts of non-Federal resources that will be used on the grant. Contributions may be in the form of cash or in-kind contributions. If any in-kind contributions are included, provide a brief explanation of each contributioin on a separate sheet.

Column (a)—Enter the catalog program title.

Column (b)—Enter the contribution to be made by the applicant. If an application is filed on behalf of a partnership, include the contributions of all partners—not merely those of the partner designated as the applicant on the Partners' Agreement Form and the SF 424. If an applicant is a State agency, the applicant's contribution should be included in column (b), rather than in column (c).

Column (c)—Enter the contribution of any State agency that is neither an applicant nor a partner in an application in which another partner has been designated as the applicant.

Column (d)—Enter the contribution to be made from all other sources.

Column (e)—Enter the totals of Columns (b), (c), and (d).

Note: The amount shown on Line 8, Column (e), should be the same as the figure shown on Section A, Line 1, Column (f).

Note: Lines 9, 10, 11, and 12 of Section C need be completed to apply for this program.

Section D. Forecasted Cash Needs

Note: This section does not apply to the Commercial Drivers Education Program.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Note: This section does not apply to the Commercial Drivers Education Program.

Section F. Other Budget Information

Prepare a detailed Budget Narrative that explains, justifies, and/or clarifies the budget figures shown in section A, B, and C. Explain:

1. The basis used to estimate certain costs (professional personnel), consultants, travel, indirect costs) and any other cost that may appear unusual;
2. How the major cost items relate to the proposed project activities;
3. The costs of the project's evaluation component; and
4. What non-Federal funds will be used in each budget category.

Instructions for Part III—Application Narrative

Before preparing the Application Narrative, an applicant should read carefully the description of the program and the selection criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested, describe when the applicant plans to meet each objective of the project, and should—

1. Begin with the Abstract; that is, a summary of the proposed project;
2. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this application package; and
3. Include any other pertinent information that might assist the Secretary in reviewing the application.

The Secretary strongly requests the applicant to limit the Application Narrative to no more than 30 double-spaced, typed, 8½″×11″ pages (on one side only), although the Secretary will consider applications of greater length. Be sure that each page of your application is numbered consecutively.

Include as an appendix to the Application Narrative supporting

documentation, also on 8½" × 11" paper, (e.g., letters of support, footnotes, resumes, etc) or any other pertinent information that might assist the Secretary in reviewing the application.

Applicants are advised that:

(1) Under § 75.217 of the Education Department General Administrative Regulations (EDGAR), the Department considers only information contained in the application in ranking applications for funding consideration. Letters of support sent separately from the formal application package are not considered in the review by the technical review panels.

(2) In reviewing applications, the technical review panel evaluates each application solely on the basis of the established technical review criteria. Letters of support contained in the application will strengthen the application only insofar as they contain commitments which pertain to the established technical review criteria.

Include any other pertinent information that might assist the Secretary in reviewing the application under the statute authorizing this program.

Instructions for Part IV—Partners' Agreement Form

Instructions: As previously indicated, there are four categories of entites that are eligible for an award under this program. See the list of categories (a)–(d) in the description of ELIGIBLE APPLICANTS near the beginning of this Notice. Only entities in category (a) must submit a signed Partners' Agreement Form and enclose it with the application. Category (a) includes private employers employing commercial drivers in partnership with local educational agencies, State educational agencies, colleges, universities, or community colleges. The partners may designate either the private employer employing commercial drivers or the educational partner as the applicant on behalf of the partnership, however, both the designated applicant and the other partner must sign the Agreement Form. If the Form is not signed by both partners and submitted with the application, the Secretary will return the application without further consideration for funding pursuant to 34 CFR 75.216.

BILLING CODE 4000-01-M

PART IV - PARTNERS' AGREEMENT FORM FOR COMMERCIAL DRIVERS EDUCATION PROGRAM

INSTRUCTIONS: Applicants who apply as private employers employing commercial drivers in partnership with local educational agencies, State educational agencies, colleges, universities, or community colleges (category (a) in the description of Eligible Applicants near the beginning of this notice) must submit a signed Partners' Agreement Form and enclose it with the application. It is essential that both partners sign and submit this document in order for their application to be considered complete. If the document is not signed by both partners and submitted with the application, the Secretary will return the application without further consideration for funding pursuant to 34 CFR 75.216.

Applicants applying under category (b) (Local education agencies, State educational agencies, colleges, universities or community colleges); category (c) (Approved apprentice training programs); or category (d) (Labor organizations, the memberships of which include commercial drivers); as described under Eligible Applicants are not required to submit a partnership agreement as they are not required to apply in partnership with any other entity. Only applicants in category (a) must submit a Partnership Agreement Form.

Any questions concerning forming a valid partnership and properly completing the Partners' Agreement Form may be referred to one of the program officers listed as an information contact in this notice.

Partners' Agreement

As authorized representatives of our organizations, we agree on their behalf to the following terms with respect to our application number V247A as a condition of applying for and receiving a grant from the Commercial Drivers Education Program. We:

- designate partner _____ as the applicant on behalf of the partnership;
- are willing to be partners in this project;
- will perform the role detailed for each of us in the application;
- will be bound by every statement and assurance made in the application.

Partner One (business partner)	Partner Two (educational partner)
_____ Original Ink Signature	_____ Original Ink Signature
_____ Name (Typed)	_____ Name (Typed)
_____ Title (Typed)	_____ Title (Typed)
_____ Organization (Typed)	_____ Organization (Typed)
_____ Date (Typed)	_____ Date (Typed)

BILLING CODE 4000-01-C

Any questions about forming a valid partnership and properly completing the Partners' Agreement Form may be referred to one of the program officers listed as an information contact in this Notice. Remember, entities in categories (b)–(d) do not need to submit a Partners' Agreement Form because they are not required to enter into a partnership as a condition of filing an application. For example, category (b) includes local educational agencies, State educational agencies, colleges, universities, or community colleges that are applying individually rather than in partnership with a private employer under category (a); since no partnership has been established, it is not necessary for entities applying under category (b) to submit a Form.

Instructions for Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project, OMB 1830–0013, Washington, DC 20503.

(Information collection approved under OMB control number 1830–0013. Expiration Date: 7/31/92.)

BILLING CODE 4000–01–M

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C.§§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse, (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program andto purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office

Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 --

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are obsolete)

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion--Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: Congressional District, *if known*:	Congressional District, *if known*:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	9. Award Amount, *if known*: $
10. a. Name and Address of Lobbying Entity (*if individual, last name, first name, MI*):	b. Individuals Performing Services (*including address if different from No. 10a*) (*last name, first name, MI*):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment (*check all that apply*):	13. Type of Payment (*check all that apply*):
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment (*check all that apply*): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____

Print Name: _____

Title: _____

Telephone No.: _____ Date: _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ of _____

Authorized for Local Reproduction
Standard Form - LLL-A

[FR Doc. 91-18938 Filed 8-9-91; 8:45 am]
BILLING CODE 4000-01-C

federal register

Monday
August 12, 1991

Part V

Department of Transportation

Research and Special Programs Administration

National Solid Wastes Management Association; Application for Preemption Determination; Notice

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. PDA-1]

National Solid Wastes Management Association; Application for Preemption Determination Concerning Regulations of the States of Maryland and Massachusetts and a Statute of the State of Pennsylvania

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Public notice and invitation to comment.

SUMMARY: The National Solid Wastes Management Association has applied for an administrative determination whether Maryland, Massachusetts and Pennsylvania requirements for bonds for hazardous-waste-carrying vehicles are preempted by the Hazardous Materials Transportation Act (HMTA).

DATES: Comments received on or before October 1, 1991, and rebuttal comments received on or before November 15, 1991, will be considered before an administrative ruling is issued by the Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration. Rebuttal comments may discuss only those issues raised by comments received during the 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. 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–1). Three copies are requested. A copy of each comment and rebuttal comment must also be sent to John H. Turner, Esq., Association Counsel, National Solid Wastes Management Association, 1730 Rhode Island Avenue NW., suite 1000, Washington, DC 20036; Mr. James P. Snyder, Director, Bureau of Waste Management, Department of Environmental Resources, Commonwealth of Pennsylvania, P.O. Box 2093, Fulton Building, Harrisburg, PA 17120; Mr. Richard Collins, Director, Hazardous & Solid Waste Management Administration, State of Maryland, 2500 Broening Highway, Baltimore, MD 21224; and Mr. William F. Cass, Director, Division of Hazardous Waste, Department of Environmental Quality Engineering, Commonwealth of Massachusetts, One Winter Street, 5th Floor, Boston, MA 02108. A certification that a copy has been sent to each person must also be included with the comment. (The following format is suggested: "I certify that copies of this comment have been sent to Messrs. Turner, Snyder, Collins and Cass at the addresses specified in the Federal Register.")

FOR FURTHER INFORMATION CONTACT: Edward H. Bonekemper, III, Assistant Chief Counsel for Hazardous Materials Safety, Office of the Chief Counsel, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590–0001, telephone number 202–366–4400.

SUPPLEMENTARY INFORMATION:

1. Background

The preemption provisions of the Hazardous Materials Transportation Act (HMTA), 49 App. U.S.C. 1801 *et seq.*, were modified by the Hazardous Materials Transportation Uniform Safety Act of 1990 (HMTUSA), Public Law 101–615. The Research and Special Programs Administration's (RSPA's) regulations have been revised to reflect these changes. 56 FR 8616 (Feb. 28, 1991); 56 FR 15510 (Apr. 17, 1991).

Section 105(a)(4) of the HMTA (49 U.S.C. 1811(a)(4)) preempts "any law, regulation, order, ruling, provision, or other requirement of a State or political subdivision thereof or an Indian tribe" which concerns a "covered subject" and "is not substantively the same" as any provision of the HMTA or any regulation under that provision concerning that subject. The "covered subjects" are defined in section 105(a)(4) as:

(i) The designation, description, and classification of hazardous materials.

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials.

(iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents.

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials.

(v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

RSPA has issued a notice of proposed rulemaking proposing a specific definition for the term "substantively the same." 56 FR 36992 (Aug. 1, 1991). (However, no "covered subject" is at issue in this matter.)

In addition, section 105(b)(4) of the HMTA, 49 App. U.S.C. 1804(b)(4), addresses the preemption standards for hazardous materials highway routing requirements. No routing issues are involved in this matter, and the Secretary of Transportation has delegated responsibility for those highway routing issues, including the issuance of preemption determinations on highway routing issues to the Federal Highway Administration. 56 FR 31343 (July 10, 1991).

Finally, section 112(a) of the HMTA, 49 App. U.S.C. 1811(a), provides that State, political subdivision and Indian tribe requirements not covered by those section 105 (a) or (b) provisions are preempted if—(1) Compliance with both the State or political subdivision or Indian Tribe requirement and any requirement of [the HMTA] or of a regulation issued under [the HMTA] is not possible, [or] (2) The State or political subdivision or Indian tribe requirement as applied or enforced creates an obstacle to the accomplishment and execution of [the HMTA] or the regulations issued under [the HMTA] * * *.

As indicated in the preamble to the final regulation implementing the HMTUSA preemption provisions, 56 FR at 8617 (Feb. 28, 1991), Congress, in section 112, codified the "dual compliance" and "obstacle" standards which RSPA previously had adopted by regulation and used in issuing its advisory inconsistency rulings.

All of the above-described preemption standards are in RSPA's regulations at 49 CFR 107.202.

Congress also provided for issuance of binding preemption determinations to replace the advisory inconsistency ruling process previously utilized by RSPA. Any person directly affected by such a requirement may apply for a determination whether a State, political subdivision or Indian tribe requirement is preempted by the HMTA. Notice of the application must be published in the Federal Register, and then the applicant is precluded from seeking judicial relief on that issue for 180 days after the application or until the preemption determination is issued, whichever occurs first. A party to a preemption determination proceeding may seek judicial review of the determination in U.S. district court within 60 days after the determination becomes final. Section 112(c) of the HMTA, 49 App. U.S.C. 1811(c).

The Secretary of Transportation has delegated authority to issue preemption determinations, except for those concerning highway routing issues, to

RSPA. 49 CFR 1.53; 56 FR 31343 (July 10, 1991). RSPA's Associate Administrator for Hazardous Materials Safety will issue those determinations. RSPA's regulations concerning preemption determinations were issued on February 28, 1991 (56 FR 8616), and are at 49 CFR 107.203–211 and 107.227.

Preemption determinations do not address issues of preemption arising under the Commerce Clause of the Constitution or under statutes other than the HMTA.

In issuing its preemption determinations under the HMTA, RSPA is guided by the principles enunciated in Executive Order No. 12612 entitled "Federalism" (52 FR 41685, Oct. 30, 1987). Section 4(a) of that Executive Order authorizes preemption of state laws only when the statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of state authority directly conflicts with the exercise of Federal authority. The HMTA, of course, contains several express preemption provisions, which RSPA has implemented through regulations.

2. The Application for a Preemption Determination

On July 17, 1991, the National Solid Wastes Management Association submitted the application for a preemption determination which is reproduced as appendix A to this notice.

(Copies of the three States' bond requirements were enclosed with the application and are available at no cost from the Dockets Unit, Research and Special Programs Administration, room 8421, Nassif Building, 400 Seventh Street SW. 20590–0001, telephone 202–366–4453)

3. Public Comment

Comments should be limited to the issue of whether the cited Maryland, Massachusetts and Pennsylvania bonding requirements are preempted by the HMTA. Comments should specifically address the "dual compliance" and "obstacle" tests described in the "Background" section. Because no "covered subject" is at issue in this matter, the "substantively the same" standard is not relevant.

Persons intending to comment on the application should review the standards and procedures governing the Department's consideration of applications for preemption determinations found at 49 CFR 107.201–107.211.

Issued in Washington, DC on August 6, 1991.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

Appendix A—Petition of National Solid Wastes Management Association to Initiate a Proceeding to Determine that Maryland, Massachusetts and Pennsylvania Provisions Requiring Bonds for Hazardous Waste-Carrying Vehicles Are Preempted by the Hazardous Materials Transportation Act (as amended)

I. Introduction and Authority for a Determination of Preemption

The National Solid Wastes Management Association ("NSWMA"), on behalf of its Chemical Waste Transportation Institute ("CWTI"), hereby petitions the Department of Transportation ("DOT") to institute an administrative proceeding leading to a binding inconsistency ruling invalidating hazardous waste transportation bonding requirements imposed by Maryland, Massachusetts and Pennsylvania. Petitioner calls on the Department to determine that the bond requirements are inconsistent with, and hence preempted, by the Hazardous Materials Transportation Act ("HMTA"), as amended by the Hazardous Materials Transportation Uniform Safety Act of 1990 ("HMTUSA"), and the Hazardous Materials Regulations ("HMR") promulgated by DOT.

The Department has previously held that non-Federal bonding requirements are flatly inconsistent with and preempted by the HMTA. In Inconsistency Ruling No. IR–25, 54 FR 16,308 (April 21, 1989), a local ordinance requiring the posting of a $1,000.00 bond for the highway transportation of hazardous waste was deemed inconsistent with the Act. DOT advanced the following rationale for its premise that non-Federal financial responsibility requirements imposed upon carriers of hazardous waste present a substantial risk of interference with the uniform system of regulation envisioned by Congress:

[I]f any one State may use [such measures] to deflect interstate carriers of hazardous materials into other jurisdictions, than all States may do so. The logical result would be, if not a total cessation of a Congressionally recognized form of interstate transportation, than the very pagework of varying and conflicting state and local regulations which Congress sought to preclude.

Id. at 16,310 (citing Inconsistency Ruling No. 10, 49 FR 46,656, 46,657).

DOT also noted that non-Federal bonding, insurance and indemnity requirements for hazardous materials transportation in all instances fail the "obstacle" preemption test and are, accordingly, inconsistent with the HMTA and the HMR:

If OHMT later determines that a bonding, insurance, or indemnity requirement is necessary under the HMTA for the transportation of non-radioactive hazardous materials, it will amend the HMR accordingly. Until such time, the absence of such a requirement of the HMR is a reflection of the OHMT's determination that no such requirement is necessary and that any such requirement imposed at the state or local level is inconsistent with the HMR.

The subject of bonding, insurance and indemnity requirements for hazardous materials transportation is exclusively Federal. The existence in the U.S. of more than 30,000 local jurisdictions, each having the potential to impose such requirements, demonstrates the havoc which could be created if even a small percentage of them were to impose such requirements (with their inevitable differences). It would be extremely difficult for carriers to learn about, let alone comply with, such local requirements.

Id. at 16,311.

Despite the clear, unambiguous finding of the DOT, three jurisdictions—Maryland, Massachusetts and Pennsylvania—continue to impose inconsistent, parochial bonding requirements upon motor carriers of hazardous waste. Such measures have been flatly rejected, by the DOT and the Congress, and cannot be permitted to stand.

II. The Need and Justification for a Finding of Inconsistency

A. Interest of Petitioner

Petitioner, NSWMA, is a non-profit trade association made up of approximately 2,500 private firms whose primary concern is the collection, transport, management and disposal of hazardous, solid and infectious waste and refuse. NSWMA members own and operate hazardous waste treatment, storage and disposal facilities and solid waste landfills throughout the United States. The Association's Chemical Waste Transportation Institute ("CWTI") consists of members who transport in interstate commerce hazardous waste from generators to disposal sites, either by truck or rail. These firms provide a vital service by handling and transporting this waste in an environmentally protective manner. A number of the Institute's members operate in Maryland, Massachusetts and Pennsylvania.

B. The Maryland, Massachusetts and Pennsylvania Bonding Requirements are Flatly Contrary to the Mandate of the HMTA

In contravention of the prior inconsistency rulings of this Department and the terms of the HMTA, as amended, Maryland, Massachusetts and Pennsylvania have imposed bonding requirements applicable only to motor carriers of hazardous waste. The state provisions, moreover, cannot be reconciled with and are not reciprocally recognized by each other. If these bonding requirements are permitted to stand, members of NSWMA which operate motor vehicles in interstate commerce will be faced with the need to comply with financial responsibility mandates in Maryland, Massachusetts and Pennsylvania that differ from the comprehensive federal program. It was this reason—the possibility that the states might enforce conflicting requirements—that prompted Congress to enact the HMTA and led to the imposition of more stringent preemption requirements in the HMTUSA. See, e.g., H.R. Rep. No. 444, Pt. 1, 101st Cong., 2d Sess. 34 (1990) ("Conflicting Federal, State and local requirements pose potentially serious threats to the safe

transportation of hazardous materials."). Moreover, unless these non-Federal bonding requirements are invalidated, other states may be encouraged to adopt disparate bonding, insurance and indemnification mandates. The mere *possibility* that numerous requirements could be imposed by states mandates a finding of preemption. See, e.g., Inconsistency Ruling 15, 49 FR 46,660 (1984); Inconsistency Ruling 14, 49 FR 46,656 (1984); Inconsistency Ruling 5, 47 FR 51,991 (1982).

(1) The Maryland Requirement

Maryland requires motor carriers of hazardous waste to secure "a bond of not less than $50,000" as a condition of securing a permit. Md. Regs. Code tit., 26, subtit. 13, § 4.04 (copy attached). The bond must be executed by the permittee and a corporate surety licensed to do business within the state. In lieu of a corporate surety, the permittee may deposit cash or negotiable bonds of the U.S. government in an amount at least equal "to the required sum of the bond." Alternatively, a certificate of deposit may be utilized, if it is "equivalent to the required bond, issued by a bank within the State, and accompanied by [a] written agreement of the bank to pay on demand to the State upon a finding of forfeit by the Secretary."

(2) The Massachusetts Requirement

The Massachusetts regulations provide that "no new or revised license to transport hazardous wastes shall be issued by the Department until the applicant for such license has filed a bond payable to the Department on a form provided by the Department, and such bond has been approved by the Department." Mass. Regs. Code tit. 310, § 30:411 (copy attached). The amount of the bond must be "$10,000 at a minimum" and "in an amount sufficient to assure that the licensee shall faithfully perform all of the requirements of [Massachusetts hazardous materials transportation regulations], the terms and conditions of the license and any Department order issued to the licensee." The "bond" may consist of a surety or performance bond, a "collateral indemnity agreement in a certain sum payable to the Department in cash or in negotiable bonds of the United States of America, the Commonwealth of Massachusetts or any city, town or body politic of the Commonwealth", or "irrevocable letter of credit of any bank organized or authorized to transact business in the Commonwealth or in the United States of America", or "any other collateral deemed satisfactory to the Department, provided that all such collateral shall be deposited in an escrow account in a bank authorized to transact in the Commonwealth, or may be held by the Department, and shall in all cases be in favor of the Department."

(3) The Pennsylvania Requirement

Pennsylvania law requires that a bond of "$10,000 at a minimum" (the Commonwealth typically requires bonds in amounts up to $50,000) be deposited "to ensure that the licensee faithfully performs the requirements of the act, the rules and regulations promulgated thereunder, the terms and conditions of the license and any Department order issued to the licensee." 25 Pa. Code § 263.32 (copy attached). The amount of the bond apparently depends upon the type of material and the volumes transported.

III. The State-Mandated Bonding Requirements Cannot Satisfy the "Obstacle" Test Set Forth in Section 112(a) of the HMTUSA

Congress revised section 112(a) of the HMTA by including the "obstacle" standard, previously used as a regulatory standard for determining preemption, as an explicit statutory ground for a binding finding of preemption. As the RSPA noted in its February 28, 1991 interpretive rule, 56 FR 8,616 (Feb. 28, 1991), the original HMTA "did not define 'inconsistent' or provide any standards for determining what requirements were 'inconsistent'." *Id.* at 8,617.

Accordingly, the Department previously set forth by regulation, see 49 CFR 107.209(c), two criteria for determining "whether a non-Federal requirement was inconsistent with the HMTA or the regulations * * *" *Id.* The "obstacle" criterion was, of course, "originally established by Supreme Court decisions determining whether a conflict exists between a State and Federal statute in areas where Congress has not completely foreclosed State regulation." *Id.*

In the HMTUSA, Congress merely "adopted" these standards proposed by the Department. The "two standards [adopted] are the same requirements that are current codified in regulations relating to inconsistency rulings." H.R. Rep. No. 441, Pt. 1, 101st Cong., 2d Sess. 49 (1990). Congress stated its intention to clarify the current preemption process "by more 'clearly identifying the standards against which a determination of preemption is made. Those standards are now reflected in court decisions and they are documented in the precedents established in the administrative rulings by the Department.' H.R. Rep. No. 444, Pt. 2, 101st Cong., 2d Sess. at 25 (1990)." *Id.*

As the Department has emphasized, while the scope of the "obstacle" test has not changed, Congress clearly provided for "an affirmative statement of preemption", *id.*, in cases in which the test is not met by state or local requirements. Accordingly, while all previous inconsistency rulings issued by the RSPA were merely advisory, the same tests must now be utilized, both by the RSPA and the courts, in making legally binding preemption determinations.

That the state bonding requirements at issue here constitute an obstacle to the accomplishment and execution of the federal legislation, in violation of section 112(a)(2) of the HMTUSA, is clear. The Department, as noted above, in a prior inconsistency ruling flatly rejected non-Federal bonding requirements. The Department's rationale for condemning the Maryland Heights, Missouri ordinance requiring bonds for hazardous waste-transporting vehicles is equally applicable here—federal regulations already require insurance or bonds for motor carriers transporting hazardous wastes, hazardous substances and other hazardous materials. See 54 FR at 16,311. By determining that "the subject is bonding" is "exclusively Federal", *id.*, the Department recognized that the *very existence* of local or state bonding schemes stands as an obstacle to the Congressional intent that a "multiplicity of state and local regulations and the potential for varying as well as conflicting regulations" be precluded. S. Rep. No. 1192, 93rd Cong., 2d Sess. 37–38 (1974).

In a variety of contexts, the DOT has warned that unless such state requirements are invalidated, other states surely will adopt similar provisions, resulting in multiplicity and hindering the accomplishment of the objectives of the HMTA. See, e.g., Inconsistency Ruling No. 15, 49 FR 46,660, 46,664 (possibility that other states can replicate Vermont user fee, resulting in multiplicity, necessitated finding of inconsistency); Inconsistency Ruling No. 14, 49 FR 46,656, 46,659 (1984); Inconsistency Ruling No. 10, 49 FR 46,665 (1984), correction, 50 FR 1,939 (1985); Inconsistency Ruling No. 8, 49 FR 46,637, 46,661 (1984); Inconsistency Ruling No. 6, 48 FR 760, 765 (1983). Maryland, Massachusetts and Pennsylvania are not, of course, precluded by federal law from assuming any role in the regulation of hazardous materials transport. Their role is, however, strictly confined to the narrow scope permitted by the preemption provisions of the HMTA and HMTUSA. Statewide bonding requirements, like ones imposed by municipalities or counties, exceed the scope of proper non-Federal authority and frustrate the fundamental goals of Congress.

Finally, NSWMA notes that a finding of preemption is totally consistent, not only with the provisions of the HMTA/HMTUSA, but also with basic principles of American federalism. On several occasions, the Supreme Court has found excessive state-imposed transportation requirements given the need for federal uniformity and in light of the potential for multiplicity. In *Bibb* v. *Navajo Freight Lines, Inc.*, 359 U.S. 520 (1959), for example, the Court held invalid a Illinois mudguard requirement for trucks that used the state's highways. Although a unanimous Court recognized the state's authority to regulate the use of its highways was "broad and pervasive", *id.* at 523, it nevertheless held that the impact of the measure upon commerce—especially on "interlining"—was significant and that the safety benefit to the state was "too inconclusive", given the demonstrated burden on commerce. Similarly, in *Kassel* v. *Consolidated Freightways Corp.*, 450 U.S. 662 (1981), the Court rejected a state's argument that a restriction prohibiting certain vehicles from engaging in interstate transport made the state's routes safer. In *City of Burbank* v. *Lockheed Air Terminal*, 411 U.S. 624, 639 (1973), the Court likewise struck down a local ordinance restricting the use of a private airport on the ground that similar restrictions throughout the nation would cripple transportation. Congress has gone further, by setting forth in the HMTA (as amended) specific federal requirements for the demonstration by hazardous materials transporters of financial responsibility. Intervention by the Department is now essential in order to preserve and protect the uniform regulatory system which is essential

to the safe and efficient transportation of hazardous materials.

IV. Conclusion

For the reasons stated above, NSWMA requests that the Department of Transportation expeditiously grant the relief requested in this Petition. A copy of this Petition has been forwarded to the following by U.S. mail, first-class, return receipt requested:

James P. Snyder, Director, Bureau of Waste Management, Department of Environmental Resources, P.O. Box 2093, Fulton Building, Harrisburg, PA 17120.

Richard Collins, Director, Hazardous & Solid Waste Management Administration, 2500 Broening Highway, Baltimore, MD 21224.

William F. Cass, Director, Division of Hazardous Waste, Department of Environmental Quality Engineering, One Winter Street, 5th Floor, Boston, MA 02108.

Respectively submitted,

John H. Turner,

Association Counsel, National Solid Wastes Management Association (NSWMA), 1730 Rhode Island Ave., NW., suite 1000, Washington, DC 20036, (202) 659–4613.

[FR Doc. 91–19063 Filed 8–9–91; 8:45 am]

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federal register

Monday
August 12, 1991

Part VI

Department of Education

National Institute on Disability and Rehabilitation Research; State Grants Program for Technology-Related Assistance; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; State Grants Program for Technology-Related Assistance

AGENCY: Department of Education.

Notice Inviting Applications for New Awards Under the State Grants Program for Technology-Related Assistance for Individuals With Disabilities for Fiscal Year 1992

Purpose of Program: This program provides financial assistance to States to assist them in developing and implementing a consumer-responsive, comprehensive statewide program of technology-related assistance for individuals with disabilities.

Deadline For Transmittal of Applications: October 15, 1991.

Applications Available: August 22, 1991.

Eligible Applicants: State entities designated by the Governor as the lead agency.

Available Funds: $5,000,000.

Estimated Average Size of Awards: $500,000.

Estimated Number of Awards: 10.

Project Period: Up to 36 months, with the possibility of a 24 month extension.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR), in 34 CFR parts 74, 75 (except § 75.618), 77, 79, 80, 81, 82, 85, 86; and (b) the regulations for this program is 34 CFR part 345.

For Applications Contact: National Institute on Disability and Rehabilitation Research, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–2601. Attention: Peer Review Unit. Telephone: (202) 732–1141; Deaf or hearing-impaired individuals may call (202) 732–5373 for TDD services.

FOR FURTHER INFORMATION CONTACT: Carol Cohen, National Institute on Disability and Rehabilitation Research, Telephone: (202) 732–5066.

Program Authority: 29 U.S.C. 2201–2271.

Dated: August 7, 1991.

Robert R. Davila,

Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 91–19076 Filed 8–9–91; 8:45 am]

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federal register

Monday
August 12, 1991

Part VII

Department of the Treasury

Office of Thrift Supervision

12 CFR Parts 508, 509, 512 and 513
Rules of Practice and Procedure in Adjudicatory Proceedings; Rule

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 508, 509, 512 and 513

[No. 91-464]

RIN 1550-AA35

Rules of Practice and Procedure in Adjudicatory Proceedings

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (the OTS), pursuant to and in accordance with section 916 of the Financial Institution Reform, Recovery and Enforcement Act of 1989, Public Law No. 101-73, 103 Stat. 183, 486 (Section 916) is amending its regulations pertaining to the conduct of administrative hearings. Section 916 requires the Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board of Governors), the Federal Deposit Insurance Corporation (FDIC), OTS, and the National Credit Union Administration (NCUA) (collectively referred to herein as the Agencies) to develop a set of uniform rules and procedures for administrative proceedings (Uniform Rules). Section 916 further requires that the Agencies promulgate provisions for summary judgment rulings where no dispute as to the material facts of a case exist.

In compliance with the mandate of Section 916, this final rule promulgates a uniform set of rules for formal enforcement actions common to at least four of the listed agencies. In addition, this final rule promulgates additional regulations to supplement the Uniform Rules (the Local Rules) and makes certain other conforming amendments.

EFFECTIVE DATE: August 12, 1991.

FOR FURTHER INFORMATION CONTACT: C. Dawn Causey, Attorney, Enforcement, (202) 906-7157; Carolyn B. Lieberman, Senior Deputy Chief Counsel, (202) 906-6251; Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

A. General Discussion

Section 916 requires that the Agencies develop a set of uniform rules and procedures for administrative hearings. By including this provision in the Financial Institution Reform, Recovery and Enforcement Act of 1989 (FIRREA), Congress intended that the Agencies, by promulgating uniform procedures, would improve and expedite their administrative proceedings. The statutory provision is a reflection of "recent recommendations of the Administrative Conference of the United States and the House Government Operations Committee." H.R. Rep. No. 54, 101st Cong., 1st Sess., pt. 1, at 396. The Administrative Conference of the United States found in its December 30, 1987, recommendation that "(g)iven the similar statutory bases for these enforcement actions, the five agencies jointly should be able to develop substantially similar rules of procedure and practice for formal enforcement proceedings." 1 CFR 305.87-12.

To comply with the requirements of section 916, the Agencies issued for comment a Joint Notice of Proposed Rulemaking on June 17, 1991 (56 FR 27790). The proposed rule contained one set of Uniform Rules applicable to all the Agencies and separate Local Rules applicable to each agency.

The OTS has received comments on the joint proposed rule and its own Local Rules and is now issuing a final rule. This final rule is intended to standardize procedures for formal administrative actions and to facilitate administrative practice before the Agencies.

Subpart A of OTS's final rule, the "Uniform Rules," sets forth the rules of practice and procedure for those formal enforcement actions that are required by statute to be determined on the record after an opportunity for an administrative hearing and generally replace the procedures governing formal adjudications in 12 CFR part 509, subpart A. Each agency is adopting substantially similar Uniform Rules. The Local Rules in subpart B generally replace the procedures for civil money penalties found in 12 CFR part 509, subpart B, and add further provisions. Civil money penalties and other OTS-specific proceedings are subject to the provisions in both subparts.

The OTS Local Rules address civil money penalties, deposition discovery and additional procedures for the post-hearing process.

B. Summary and Discussion of Uniform and Local Rules

Subpart A. Uniform Rules of Practice and Procedure

This subpart sets forth rules of practice and procedure governing formal administrative actions, includes rules on the commencement of enforcement proceedings, filing and service of papers, motions, discovery, depositions, prehearing conferences, public hearings, hearing subpoenas, conflicts of interest, ex parte communications, rules of evidence, and post-hearing procedures.

Subpart B. Local Rules

There are four basic parts to the OTS Local Rules: An expansion of the scope provisions to include additional OTS proceedings, deposition discovery, civil money penalties and additional clarifying procedures. The appointment of the Office of Financial Institution Adjudication to hear OTS's APA proceedings implements the other statutory directive contained in section 916.

In particular, included in this subpart are the rules for taking the deposition of an expert or of another person, including another party, who has direct knowledge of matters that are non-privileged, relevant and material to the proceeding and where there is a need for the deposition. OTS is adding a demonstration of need in order to make the OTS rule consistent with the rule promulgated by the Office of the Comptroller of the Currency. This uniformity will encourage consistent interpretation of the rules governing deposition discovery.

This provision is not intended to allow unlimited deposition discovery or the taking of senior OTS official's depositions, unless those individuals have personal knowledge about the facts of the case. Rather, it is intended to permit limited deposition discovery of experts and persons having direct knowledge of the facts who may be called on to testify at the administrative hearing.

This subpart also provides that at the request of a party, the administrative law judge shall issue a subpoena requiring the attendance of a witness at a deposition. The party requesting the subpoena is responsible for serving it on the person named therein, or on that person's counsel. The person named in the subpoena or any other party to the proceeding may file a motion to quash or modify the subpoena within the time for compliance set forth in the subpoena, but in no case later than ten days after the date of service.

Also included in the OTS Local Rules is a provision on the presence of cameras and other recording devices in administrative proceedings. As proposed, the provision would have allowed the Director to consider petitions to allow electronic media to be present during administrative hearings. Upon further consideration, OTS has determined that it is inappropriate to allow cameras and other recording devices (other than those used by the court reporter) to be used during

administrative hearings and the provision has been modified accordingly. See, 1 CFR 305.72–1 (1991). This provision codifies recent OTS procedures in several administrative proceedings. See, OTS Order No. 90–1714, dated September 18, 1990, concerning the use of cameras in the Neil M. Bush administrative hearing. However, § 509.4 would allow the Director to waive this prohibition if the Director determined that circumstances presently unforeseen so warrant.

C. Response to Comments

1. Uniform Rules

In response to the June 17, 1991, joint notice of proposed rulemaking, the Agencies received three comments: 2 from law firms and 1 from a trade association. The Agencies have jointly reviewed the portions of the comments concerning the Uniform Rules.

One of the commenters criticized the proposed rule for failing to accommodate default situations where good cause could be shown for the failure to file an answer (§ 509.19(c)(1)). This comment reflects a misunderstanding of the proposal. The rulemaking empowers the administrative law judge to extend time limits for good cause (§ 509.13), and requires that default judgments be entered only upon a motion for default filed by Enforcement Counsel (§ 509.19). This latter proceeding provides respondents with an opportunity to oppose the motion. Because of the confusion evidenced by the comment, the final rule has been amended to make the motion for default process more explicit.

Another issue raised by a commenter concerned the differences in procedures for formal investigations, Equal Access to Justice Act implementation, sanctions and a number of other procedures. The lack of uniformity in these areas is based on the scope of section 916. As noted above, the purpose behind Section 916 was the improvement and expedition of administrative APA proceedings. *Cf.* H.R. Conf. Rep. No. 222, 101st Cong., 1st Sess. 442 (1989). The statutory mandate for the promulgation of these regulations is coupled with the requirement for the several Agencies to create a "pool" of administrative law judges. The clear Congressional intent is that these Uniform Rules be developed for use by the Agencies in actions before the "pool" or "OFIA" as that entity is referred to in this rulemaking. Accordingly, the inclusion of non-APA proceedings would exceed the statutory mandate of Section 916 and presents practical implementation problems as well.

For example, the Uniform Rules do not contain provisions governing formal investigations. This is because such an investigation is not an APA proceeding. In addition, the statutory authority for formal investigations arises in several statutes, not just the Federal Deposit Insurance Act, and the Agencies have differing policies concerning the frequency, length and procedures for formal investigations. This diversity in statutory authority is reflected in the independent and separate procedures of each agency. OTS's rules governing formal investigations, for example, are found in an entirely different part of its regulations, 12 CFR part 512, and were not republished as part of the promulgation of this rulemaking.

Likewise, the Uniform Rules do not contain provisions addressing the Equal Access to Justice Act. Again, the diversity of agency structure is a determining factor here. Both the OCC and the OTS are bureaus of the U.S. Department of Treasury. As such, they are subject to Treasury's Equal Access to Justice Act regulatory provisions found at 31 CFR part 6.

Another issue raised by two of the commenters concerned the different positions taken by the Agencies on discovery depositions. The commenters noted that the use of discovery depositions would encourage settlements and would result in the increased use of summary judgment by establishing the absence of disagreement as to material facts.

The scope of discovery in the Uniform Rules was considered at length. It was determined that broad document discovery would be permitted generally; however, it was recognized that there is no constitutional right to prehearing discovery, including deposition discovery. See, *Sims* v. *Nat'l Transp. Safety Bd.*, 662 F.2d 668, 671 (10th Cir. 1981); *P.S.C. Resources, Inc.* v. *NLRB*, 576 F.2d 380, 386 (1st Cir. 1978); *Silverman* v. *Commodity Futures Trading Comm'n*, 549 F2d 28, 33 (7th Cir. 1977). Further, the Administrative Procedure Act contains no provisions for prehearing discovery, and the discovery provisions of the Federal Rules of Civil Procedure are inapplicable to administrative proceedings. *Frillette* v. *Kimberlin*, 508 F.2d 205 (3rd Cir. 1974), *cert. denied*, 421 U.S. 980 (1975). Rather, each agency determines the extent and nature of discovery to which a party in an administrative hearing is entitled. *McClelland* v. *Andrus*, 606 F.2d 1278, 1285 (D.C. Cir. 1979).

The Agencies attempted to strike a balance between the interests of respondents in obtaining pretrial disclosure, including discovery depositions, and the Agencies' need for swift adjudication while preserving limited resources. This process included taking into account the various interests and concerns of both the industry and the general public that each Agency serves, as well as each Agency's own institutional interests and concerns. The contrasting interests and concerns are reflected in the types, complexity and quantity of enforcement actions brought by each agency; the methods of litigation; the structure of each regulator; and the supervisory procedures developed internally by each agency. This process resulted in divergent provisions on the use of discovery depositions.

Thus, the experiences of the OCC, the Board of Governors and the OTS resulted in a finding that limited discovery depositions served a useful purpose by promoting fact finding and in resolving cases expeditiously. However, discovery depositions for the OCC, the Board of Governors and the OTS are limited to witnesses that have factual, direct personal knowledge of the matters at issue. The FDIC and the NCUA have determined that the interests of respondents in further pretrial disclosures in their respective proceedings were mitigated by the availability of extensive document discovery that complements the document intensive nature of their proceedings.

A further comment suggested that the definition of "Decisional employee" in proposed § 509.3(e) be expanded to preclude from service in a decisional capacity any employee of the Agencies who had served within the previous twelve months on the enforcement staff of any of the Agencies. The commenter suggested that this expansion would protect against bias and conflicting interests.

This suggestion is not adopted as the final rule incorporates the formulation of the Administrative Procedure Act (APA). The APA forbids an employee from acting in a decisional capacity in a specific case where the employee has acted in an investigative or prosecutorial function in that same case or in a factually related case. 5 U.S.C. 554(d). Accordingly, Congress has already drawn the line defining conflicts of interest in this context, and the Agencies find no basis for modification.

Another recommendation was made that § 509.18(b) should be modified to require that an agency set forth in a

notice not only facts showing that the agency is entitled to relief of some kind but also those facts required for the particular relief requested. The Agencies believe that § 509.18(b) meets those standards for notice pleading set forth in Rule 8 of the Federal Rules of Civil Procedure. The Agencies have determined that this standard for pleadings is sufficient for administrative proceedings. See, *First Nat'l Monetary Corp.* v. *Weinberger*, 819 F.2d 1334, 1339 (6th Cir. 1987); *Boise Cascade Corp.* v. *Fed. Trade Comm'n*, 498 F. Supp. 772, 780 (D. Del. 1980).

One commenter suggested that the proposed rule concerning the severance of proceedings be modified as it was unduly stringent in light of the severity of the sanctions and penalties that the Agencies may impose as part of an administrative enforcement action. The commenter argued that any inconsistency or conflict in the positions of respondents should warrant severance of the proceeding without the necessity of weighing any countervailing interests. The commenter further urged that concerns regarding administrative economy are not entitled to weight in light of the small number of cases that have been adjudicated by the Agencies historically.

This amendment is not adopted in the final rule. A similar weighing test for severance is applied by federal courts in criminal cases. See, *e.g.*, *U.S.* v. *Walton*, 552 F.2d 1354, 1362, (10th Cir.), *cert. denied*, 431 U.S. 959 (1977) (demonstrating that the weighing test appropriately may be applied in cases involving substantial sanctions and penalties). In addition, the general interest in economy and efficiency in resolving an administrative adjudication exists independently of the total volume of adjudications at any particular time. Hence, the historical volume has little impact on the calculation of adjudicatory economy and efficiency.

Another commenter urged modification of § 509.24(c) concerning the nondiscoverability of privileged documents. This commenter objected to the ability of Enforcement Counsel to assert the deliberative process privilege on the ground that, in some cases, it is subject to abuse by Enforcement Counsel seeking to prevent disclosure of relevant and probative material. The commenter suggests, instead, that all material for which the deliberative process privilege is claimed should be produced pursuant to a protective order barring public disclosure, and that § 509.24 should provide for *in camera* inspection of disputed privileged material by the administrative law judge.

The Agencies have concluded that Enforcement Counsel should retain the right to assert the deliberative process privilege at the outset. Ample means to challenge an improper assertion of privilege are available to respondents without modifying § 509.24 to permit a challenge to the assertion of the privilege before the administrative law judge. Confronted with such a challenge, an administrative law judge would need no further specific authority by rule to inquire of Enforcement Counsel as to the basis of the assertion of privilege, to conduct an inspection of the purported privileged material *in camera*, and then to rule whether the privilege can be maintained.

Another of the comments suggested that the determination to seal a document pursuant to § 509.33(b) should be subject to review by an administrative law judge under an abuse of discretion standard. It was further suggested that a respondent should be able to request that certain information such as confidential personal information be filed under seal.

The Uniform Rules accommodate this last concern by permitting a respondent to file a motion to seal a document containing confidential personal information. However, the statutory language of 12 U.S.C. 1818(u)(6) vests the Agencies with exclusive authority to seal all or part of a document if disclosure would be contrary to the public interest. Accordingly, the Agencies disagree with the commenter that this determination should be subject to review by an administrative law judge.

A further comment urged the deletion of § 509.36(c)(2), which provides that any document prepared by a Federal financial institutions regulatory agency or by a state regulatory agency is admissible with or without a sponsoring witness. The commenter argued that the provision violates normal evidentiary standards and raises due process concerns.

The Agencies disagree. The first sentence of § 509.36(c)(2) cross-references § 509.36(a), which makes agency prepared documents subject to the same evidentiary standards as those applicable to non-agency prepared documents. Moreover, the same types of agency prepared documents tend to be introduced into evidence in every case. These documents, such as examination reports, rarely give rise to authentication issues, and the Agencies are of the opinion that requiring a sponsoring witness for such documents needlessly consumes judicial resources and impedes the hearing process.

Yet another comment urged that § 509.39(b)(2) be modified to allow a party to raise new legal arguments in exceptions filed to the administrative law judge's recommended decision and that the Agency Head not be precluded from considering such an argument.

The Agencies agree. The Director, as the Agency Head of OTS, should have the discretion to determine whether a new argument that is raised for the first time in the exceptions should be considered, even if the party had a prior opportunity to make the argument. For example, the Director should have the discretion to consider whether a new argument has important legal and policy implications that warrant further consideration. Accordingly, the language of § 509.39(b)(2) is amended to read that "No exception *need* be considered * * *." (emphasis added).

The Agencies do not agree that the Agency Head should, in effect, be required to consider new arguments raised for the first time in the exceptions. Such a provision may encourage careless or even deceptive pleading. Generally, a party should be permitted to submit a new argument only if there was no previous opportunity to present the argument, *e.g.*, a relevant court decision has been issued in the interim since the filing of the recommended decision.

Another suggestion forwarded by a commenter concerned the publication of enforcement orders and actions. Indeed, Congress has already addressed this concern when it amended 12 U.S.C. 1818(u) in title XXV, the "Comprehensive Thrift and Bank Fraud Prosecution and Taxpayer Recovery Act of 1990" of the Crime Control Act of 1990, Public Law No. 101–647, 104 Stat. 4789. The Agencies are required by statute to publish all final orders and other documents subject to enforcement action. Each of the Agencies has procedures implementing this statutory directive and most, if not all, enforcement decisions may be found by consulting the Public Reading Rooms or libraries of each agency. In addition, Agencies frequently issues press releases concerning recent cases and decisions.

2. OTS Local Rules

One commenter urged deletion of § 509.103(a), expressing the view that its rationale was unclear in light of the characterization of civil money penalties as a "penal sanction" in *First National Bank of Gordon* v. *Dept. of the Treasury*, 911 F.2d 64 (8th Cir. 1990). It is evident

from the language of the civil money penalty provisions in FIRREA, as well as from the legislative history, that civil money penalties are intended both to remedy wrongful conduct and to deter such conduct in the future and, accordingly, do not constitute penal sanctions. In these circumstances, OTS does not believe it is necessary to provide a description of civil money penalties and subsection (a) of proposed § 509.103 has been deleted.

Similarly, OTS has deleted subsection (d) to proposed § 509.103 because it merely restates the statutory considerations of FIRREA. Both FIRREA and its legislative history are clear as to the various factors that OTS must consider when assessing civil money penalties. See, H. Rept. No. 54, 101st Cong. 1st Sess., pt. 1, at 469, reprinted in 1989 U.S. Code Cong. & Admin. News 265, citing with approval the 13 factors contained in the 1980 interagency policy issued by the Federal Financial Institution's Examination Council. The remaining subsections of § 509.103 have been redesignated as subparagraphs (a) and (b).

The commenter further noted that the assessment order for civil money penalties should contain sufficient grounds properly pleaded in the notice. OTS agrees with the commenter. However, the standard for a notice of assessment enumerated is sufficient as explained in the OTS's response to the comment on the sufficiency of notices in the Uniform Rules. For this reason, OTS is not implementing the commenter's suggestion.

This commenter also disagreed with proposed § 509.104(e) concerning extensions of time to render decisions by the Director. The commenter misreads the cited case, *Saratoga Savings & Loan Ass'n* v. *Fed, Home Loan Bank Board*, 879 F.2d 689 (9th Cir. 1989), and OTS is adopting as final the rule as proposed.

The commenter also suggested that OTS adopt rules for sanctions against parties who engage in improper conduct during agency proceedings. OTS directs the commener's attention to 12 CFR part 513. That part allows the OTS to suspend or debar, either temporarily or permanently, attorneys and others from practicing before the Office if the OTS makes a determination that the individual: (i) Lacks the necessary qualifications to represent others; (ii) is lacking in character or professional integrity; (iii) has engaged in dilatory, obstructionist, egregious, contemptuous, contumacious or other unethical or improper professional conduct; or (iv) has willfully violated or willfully aided or abetted the violation of any laws or regulations for which the OTS has jurisdiction. 12 CFR 513.4(a). A recommendation for such a suspension or debarment proceedings against obstructionist counsel may be made by the administrative law judge to OTS under § 509.6(b). As OTS is not making any substantive changes to the provisions of part 513, there was no need to republish those rules as part of this rulemaking.

D. Additional Modifications to the Rule

In conjunction with the other Agencies, the OTS is amending the Uniform Rules to replace generic definitional terms with terms specifically applicable to the OTS. Thus, the OTS is replacing the term "Agency Head" and "Agency" with "Director" and "Office" and is restricting the "scope" provision to those statutes applicable to OTS. Further conforming changes have been made to the definitions of Local Rules, Uniform Rules and OFIA. Each of the other Agencies has made similar changes.

The purpose of these changes is to make the Uniform Rules easier to understand and use. These changes do not affect the substance of the Uniform Rules.

In addition to the changes already noted, the OTS is also making various other minor technical and conforming changes to the Uniform and Local Rules to improve the clarity and consistency of the rules, including the correction of additional out-of-date cross references.

E. Administrative Procedure Act

The Director is adopting this regulation effective upon publication in the **Federal Register**, without the usual 30-day delay of effectiveness provided for in 5 U.S.C. 553 of the APA. While the APA requires publication of a substantive regulation not less than thirty days before its effective date, the delayed effective date requirement may be waived for "good cause."

Good cause for the waiver of the 30-day requirement may be found if the delayed effective date is "impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b). *See Central Lincoln Peoples' Utility Distr.* v. *Johnson*, 735 F.2d 1101 (9th Cir. 1984). The necessity for compliance with a statutorily prescribed time limit can also contribute to a finding of good cause. *See Philadelphia Citizens in Action* v. *Schweiker*, 669 F.2d 877, 888 (3d Cir. 1982). In the present case, the implementation of a delayed effective date would impair the ability of the Agencies to comply with the statutory mandate in Section 916 and would be contrary to the public interest.

Section 916 contains a dual mandate from Congress to the Agencies to (1) establish their own pool of administrative law judges (OFIA), and (2) develop Uniform Rules and procedures for administrative hearings "[b]efore the close of the 24-month period beginning on the date of the enactment of this Act (August 9, 1989)." In order to address properly these two mandates, the Uniform Rules and the establishment of OFIA should be implemented in a coordinated and synchronized manner. If OFIA is established prior to the effective date of this rulemaking, OFIA would be required to adjudicate some cases under the prior, divergent rules of each Agency. As the proceedings filed with OFIA will be primarily new actions, use of the new Uniform Rules rather than the prior versions will reduce significantly the potential for confusion and more appropriately fulfill the mandate of section 916. It would, therefore, be contrary to the public interest to delay the effective date for implementation of this rulemaking.

F. Applicability of Rules to Enforcement Proceedings

Part 509, as revised by this final rule, applies to any proceeding that is commenced by the issuance of a notice on or after August 12, 1991. The former version of part 509 applies to any proceeding commenced prior to August 12, 1991 unless, with the consent of the administrative law judge, the parties agree to have the proceeding governed by revised part 509.

G. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, it is certified that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required.

H. Executive Order 12291

The OTS has determined that this rule does not constitute a "major rule" and, therefore, does not require the preparation of a regulatory impact analysis.

List of Subjects

12 CFR Part 508

Administrative practice and procedure, Crime, Savings associations.

12 CFR Part 509

Administrative practice and procedure, Penalties.

12 CFR Part 512

Administrative practice and procedure, Investigations.

12 CFR Part 513

Accountants, Administrative practice and procedure, Lawyers.

Accordingly, the OTS hereby amends parts 508, 509, 512, and 513, subchapter A, chapter V, title 12, Code of Federal Regulations, as set forth below:

SUBCHAPTER A—ORGANIZATION AND PROCEDURES

PART 508—[AMENDED]

1. The authority citation for part 508 continues to read as follows:

Authority: Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 2, 64 Stat. 879, as amended (12 U.S.C. 1818).

2. Section 508.4(b) is amended by removing the number "§ 509.9" and substituting in lieu thereof the number "§ 509.11".

3. Section 508.6(c) is amended by removing the number "§ 509.5" and substituting in lieu thereof the number "§ 509.6".

4. Section 508.7(a) is amended by removing the number "§ 509.4" and substituting in lieu thereof the number "§ 509.5".

5. Section 508.13(b) is amended by removing "§ 509.27(b) and substituting in lieu thereof the number "§ 509.39".

6. Section 508.14 is amended by removing the phrase "§§ 509.9, 509.10, 509.11, 509.12, and" and substituting in lieu thereof the phrase "§§ 509.10, 509.11, and 509.12".

7. Part 509 is revised to read as follows:

PART 509—RULES OF PRACTICE AND PROCEDURE IN ADJUDICATORY PROCEEDINGS

Subpart A—Uniform Rules of Practice and Procedure

Sec.

509.1 Scope.
509.2 Rules of construction.
509.3 Definitions.
509.4 Authority of Director.
509.5 Authority of the administrative law judge.
509.6 Appearance and practice in adjudicatory proceedings.
509.7 Good faith certification.
509.8 Conflicts of interest.
509.9 Ex parte communications.
509.10 Filing of papers.
509.11 Service of papers.
509.12 Construction of time limits.
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509.14 Witness fees and expenses.
509.15 Opportunity for informal settlement.
509.16 Office's right to conduct examination.
509.17 Collateral attacks on adjudicatory proceeding.
509.18 Commencement of proceeding and contents of notice.
509.19 Answer.
509.20 Amended pleadings.
509.21 Failure to appear.
509.22 Consolidation and severance of actions.
509.23 Motions.
509.24 Scope of document discovery.
509.25 Request for document discovery from parties.
509.26 Document subpoenas to nonparties.
509.27 Deposition of witness unavailable for hearing.
509.28 Interlocutory review.
509.29 Summary disposition.
509.30 Partial summary disposition.
509.31 Scheduling and prehearing conferences.
509.32 Prehearing submissions.
509.33 Public hearings.
509.34 Hearing subpoenas.
509.35 Conduct of hearings.
509.36 Evidence.
509.37 Proposed findings and conclusions.
509.38 Recommended decision and filing of record.
509.39 Exceptions to recommended decision.
509.40 Review by Director.
509.41 Stays pending judicial review.

Subpart B—Local Rules

Sec.

509.100 Scope.
509.101 Appointment of Office of Financial Institution Adjudication.
509.102 Discovery.
509.103 Civil money penalties.
509.104 Additional procedures.

Authority: 5 U.S.C. 556; 12 U.S.C. 1464, 1467, 1467a, 1813; 15 U.S.C. 78*l*.

Subpart A—Uniform Rules of Practice and Procedure

§ 509.1 Scope.

This subpart prescribes Uniform Rules of practice and procedure applicable to adjudicatory proceedings as to which hearings on the record are provided for by the following statutory provisions:

(a) Cease-and-desist proceedings under section 8(b) of the Federal Deposit Insurance Act (FDIA) (12 U.S.C. 1818(b));

(b) Removal and prohibition proceedings under section 8(e) of the FDIA (12 U.S.C. 1818(e));

(c) Change-in-control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)) to determine whether the or the Office should issue an order to approve or disapprove a person's proposed acquisition of an institution and/or institution holding company;

(d) Proceedings under section 15C(c)(2) of the Securities Exchange Act of 1934 (Exchange Act) (15 U.S.C. 78o–5), to impose sanctions upon any government securities broker or dealer or upon any person associated or seeking to become associated with a government securities broker or dealer for which the Office is the appropriate Office;

(e) Assessment of civil money penalties by the Office against institutions, institution-affiliated parties, and certain other persons for which it is the appropriate Office for any violation of:

(1) Section 5 of the Home Owners' Loan Act (HOLA) or any regulation or order issued thereunder, pursuant to 12 U.S.C. 1464 (d), (s) and (v);

(2) Section 9 of the HOLA or any regulation or order issued thereunder, pursuant to 12 U.S.C. 1467(d);

(3) Section 10 of the HOLA, pursuant to 12 U.S.C. 1467a (i) and (r);

(4) Any provisions of the Change in Bank Control Act, any regulation or order issued thereunder or certain unsafe or unsound practices or breaches of fiduciary duty, pursuant to 12 U.S.C. 1817(j)(16);

(5) Sections 22(h) and 23 of the Federal Reserve Act, or any regulation issued thereunder or certain unsafe or unsound practices or breaches of fiduciary duty, pursuant to 12 U.S.C. 1468;

(6) Certain provisions of the Exchange Act, pursuant to section 21B of the Exchange Act (15 U.S.C. 78u–2);

(7) Section 1120 of Financial Institutions Reform, Recovery and Enforcement Act of 1989 (12 U.S.C. 3349), or any order or regulation issued thereunder; and

(8) The terms of any final or temporary order issued or enforceable pursuant to section 8 of the FDIA or of any written agreement executed by the Office, the terms of any conditions imposed in writing by the Office in connection with the grant of an application or request, certain unsafe or unsound practices or breaches of fiduciary duty, or any law or regulation not otherwise provided herein pursuant to 12 U.S.C. 1818(i)(2);

(f) This subpart also applies to all other adjudications required by statute to be determined on the record after opportunity for an agency hearing, unless otherwise specifically provided for in the Office's Local Rules.

§ 509.2 Rules of construction.

For purposes of this subpart:

(a) Any term in the singular includes the plural, and the plural includes the singular, if such use would be appropriate;

(b) Any use of a masculine, feminine, or neuter gender encompasses all three, if such use would be appropriate;

(c) The term *counsel* includes a non-attorney representative; and

(d) Unless the context requires otherwise, a party's counsel of record, if any, may, on behalf of that party, take any action required to be taken by the party.

§ 509.3 Definitions.

For purposes of this subpart, unless explicitly stated to the contrary:

(a) *Administrative law judge* means one who presides at an administrative hearing under authority set forth at 5 U.S.C. 556.

(b) *Adjudicatory proceeding* means a proceeding conducted pursuant to these rules and leading to the formulation of a final order other than a regulation.

(c) *Decisional employee* means any member of the Office's or administrative law judge's staff who has not engaged in an investigative or prosecutorial role in a proceeding and who may assist the Office or the administrative law judge, respectively, in preparing orders, recommended decisions, decisions, and other documents under the Uniform Rules.

(d) *Director* means the Director of the Office of Thrift Supervision or his or her designee.

(e) *Enforcement Counsel* means any individual who files a notice of appearance as counsel on behalf of the Office in an adjudicatory proceeding.

(f) *Final order* means an order issued by the Office with or without the consent of the affected institution or the institution-affiliated party, that has become final, without regard to the pendency of any petition for reconsideration or review.

(g) *Institution* includes any savings association as that term is defined in section 3(b) of the FDIA (12 U.S.C. 1813(b)), any savings and loan holding company or any subsidiary thereof whether wholly or partly owned (other than a bank) as those terms are defined in section 10(a) of the HOLA (12 U.S.C. 1467(a)).

(h) *Institution-affiliated party* means any institution-affiliated party as that term is defined in section 3(u) of the FDIA (12 U.S.C. 1813(u)).

(i) *Local Rules* means those rules found in subpart B of this part.

(j) *Office* means the Office of Thrift Supervision in the case of any savings association or any savings and loan holding company, and subsidiary (other than a bank or subsidiary of that bank) of a savings and loan holding company, any service corporation of a savings association, and any subsidiary of such service corporation, whether wholly or partly owned.

(k) *Office of Financial Institution Adjudication* (OFIA) means the executive body charged with overseeing the administration of administrative enforcement proceedings for the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve Board, the Federal Deposit Insurance Corporation, the National Credit Union Administration and the Office.

(l) *Party* means the Office and any person named as a party in any notice.

(m) *Person* means an individual, sole proprietor, partnership, corporation, unincorporated association, trust, joint venture, pool, syndicate, agency or other entity or organization, including an institution as defined in paragraph (g) of this section.

(n) *Respondent* means any party other than the Office.

(o) *Uniform Rules* means those rules in subpart A of this part.

(p) *Violation* includes any action (alone or with another or others) for or toward causing, bringing about, participating in, counseling, or aiding or abetting a violation.

§ 509.4 Authority of Director.

The Director may, at any time during the pendency of a proceeding perform, direct the performance of, or waive performance of, any act which could be done or ordered by the administrative law judge.

§ 509.5 Authority of the administrative law judge.

(a) *General rule.* All proceedings governed by this part shall be conducted in accordance with the provisions of chapter 5 of title 5 of the United States Code. The administrative law judge shall have all powers necessary to conduct a proceeding in a fair and impartial manner and to avoid unnecessary delay.

(b) *Powers.* The administrative law judge shall have all powers necessary to conduct the proceeding in accordance with paragraph (a) of this section, including the following powers:

(1) To administer oaths and affirmations;

(2) To issue subpoenas, subpoenas duces tecum, and protective orders, as authorized by this part, and to quash or modify any such subpoenas and orders;

(3) To receive relevant evidence and to rule upon the admission of evidence and offers of proof;

(4) To take or cause depositions to be taken as authorized by this subpart;

(5) To regulate the course of the hearing and the conduct of the parties and their counsel;

(6) To hold scheduling and/or pre-hearing conferences as set forth in § 509.31 of this subpart;

(7) To consider and rule upon all procedural and other motions appropriate in an adjudicatory proceeding, provided that only the Director shall have the power to grant any motion to dismiss the proceeding or to decide any other motion that results in a final determination of the merits of the proceeding;

(8) to prepare and present to the Director a recommended decision as provided herein;

(9) To recuse himself or herself by motion made by a party or on his or her own motion;

(10) To establish time, place and manner limitations on the attendance of the public and the media for any public hearing; and

(11) To do all other things necessary and appropriate to discharge the duties of a presiding officer.

§ 509.6 Appearance and practice in adjudicatory proceedings.

(a) *Appearance before an Office or an administrative law judge.*—(1) *By attorneys.* Any member in good standing of the bar of the highest court of any state, commonwealth, possession, territory of the United States, or the District of Columbia may represent others before the Office if such attorney is not currently suspended or debarred from practice before the Office.

(2) *By non-attorneys.* An individual may appear on his or her own behalf; a member of a partnership may represent the partnership; a duly authorized officer, director, or employee of any government unit, agency, institution, corporation or authority may represent that unit, agency, institution, corporation or authority if such officer, director, or employee is not currently suspended or debarred from practice before the Office.

(3) *Notice of appearance.* Any individual acting as counsel on behalf of a party, including the Office, shall file a notice of appearance with the OFIA at or before the time that individual submits papers or otherwise appears on behalf of a party in the adjudicatory proceeding. Such notice of appearance shall include a written declaration that the individual is currently qualified as provided in paragraph (a)(1) or (a)(2) of this section and is authorized to represent the particular party. By filing a notice of appearance on behalf of a party in an adjudicatory proceeding, the counsel thereby agrees, and represents that he or she is authorized, to accept

service on behalf of the represented party.

(b) *Sanctions.* Dilatory, obstructionist, egregious, contemptuous or contumacious conduct at any phase of any adjudicatory proceeding may be grounds for exclusion or suspension of counsel from the proceeding.

§ 509.7 Good faith certification.

(a) *General requirement.* Every filing or submission of record following the issuance of a notice shall be signed by at least one counsel of record in his or her individual name and shall state that counsel's address and telephone number. A party who acts as his or her own counsel shall sign his or her individual name and state his or her address and telephone number on every filing or submission of record.

(b) *Effect of signature.* (1) The signature of counsel or a party shall constitute a certification that: the counsel or party has read the filing or submission of record; to the best of his or her knowledge, information, and belief formed after reasonable inquiry, the filing or submission of record is well-grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and the filing or submission of record is not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

(2) If a filing or submission of record is not signed, the administrative law judge shall strike the filing or submission of record, unless it is signed promptly after the omission is called to the attention of the pleader or movant.

(c) *Effect of making oral motion or argument.* The act of making any oral motion or oral argument by any counsel or party constitutes a certification that to the best of his or her knowledge, information, and belief formed after reasonable inquiry, his or her statements are well-grounded in fact and are warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and are not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.

§ 509.8 Conflicts of interest.

(a) *Conflict of interest in representation.* No person shall appear as counsel for another person in an adjudicatory proceeding if it reasonably appears that such representation may be materially limited by that counsel's responsibilities to a third person or by the counsel's own interests. The administrative law judge may take corrective measures at any stage of a proceeding to cure a conflict of interest in representation, including the issuance of an order limiting the scope of representation or disqualifying an individual from appearing in a representative capacity for the duration of the proceeding.

(b) *Certification and waiver.* If any person appearing as counsel represents two or more parties to an adjudicatory proceeding or a party and an institution to which notice of the proceeding must be given, counsel must certify in writing at the time of filing the notice of appearance required by § 509.6(a) of this subpart:

(1) That the counsel has personally and fully discussed the possibility of conflicts of interest with each such party or institution;

(2) That each such party or institution has advised its counsel that to its knowledge there is no existing or anticipated material conflict between its interests and the interests of others represented by the same counsel or his or her firm; and

(3) That each such party or institution waives any right it might otherwise have had to assert any known conflicts of interest or to assert any non-material conflicts of interest during the course of the proceeding.

§ 509.9 Ex parte communications.

(a) *Definition*—(1) *Ex parte communication* means any material or oral or written communication concerning the merits of an adjudicatory proceeding that was neither on the record nor on reasonable prior notice to all parties that takes place between:

(i) A party, his or her counsel, or another person interested in the proceeding; and

(ii) The administrative law judge handling that proceeding, the Director or a decisional employee.

(2) *Exception.* A request for status of the proceeding does not constitute an ex parte communication.

(b) *Prohibition of ex parte communications.* From the time the notice is issued by the Director until the date that the Director issues its final decision pursuant to § 509.40(c) of this subpart, no party, interested person or counsel therefor shall knowingly make or cause to be made an ex parte communication concerning the merits of the proceeding to the Director, the administrative law judge, or a decisional employee. The Director, administrative law judge, or decisional employee shall not knowingly make or cause to be made to a party, or any interested person or counsel therefor, an ex parte communication relevant to the merits of a proceeding.

(c) *Procedure upon occurrence of ex parte communication.* If an ex parte communication is received by the administrative law judge, the Director or other person identified in paragraph (a) of this section, that person shall cause all such written communications (or, if the communication is oral, a memorandum stating the substance of the communication) to be placed on the record of the proceeding and served on all parties. All other parties to the proceeding shall have an opportunity, within ten days of receipt of service of the ex parte communication to file responses thereto and to recommend any sanctions, in accordance with paragraph (d) of this section, that they believe to be appropriate under the circumstances.

(d) *Sanctions.* Any party or his or her counsel who makes a prohibited ex parte communication, or who encourages or solicits another to make any such communication, may be subject to any appropriate sanction or sanctions imposed by the Director or the administrative law judge including, but not limited to, exclusion from the proceedings and an adverse ruling on the issue which is the subject of the prohibited communication.

§ 509.10 Filing of papers.

(a) *Filing.* Any papers required to be filed, excluding documents produced in response to a discovery request pursuant to §§ 509.25 and 509.26 of this subpart, shall be filed with the OFIA, except as otherwise provided.

(b) *Manner of filing.* Unless otherwise specified by the Director or the administrative law judge, filing may be accomplished by:

(1) Personal service;

(2) Delivering the papers to a reliable commercial courier service, overnight delivery service, or to the U.S. Post Office for Express Mail delivery;

(3) Mailing the papers by first class, registered, or certified mail; or

(4) Transmission by electronic media, only if expressly authorized, and upon any conditions specified, by the Director or the administrative law judge. All papers filed by electronic media shall also concurrently be filed in accordance with paragraph (c) of this section as to form.

(c) *Formal requirements as to papers filed.*—(1) *Form.* All papers filed must set forth the name, address, and telephone number of the counsel or party making the filing and must be accompanied by a certification setting forth when and how service has been

made on all other parties. All papers filed must be double-spaced and printed or typewritten on 8½ x 11 inch paper, and must be clear and legible.

(2) *Signature.* All papers must be dated and signed as provided in § 509.7 of this subpart.

(3) *Caption.* All papers filed must include at the head thereof, or on a title page, the name of the Office and of the filing party, the title and docket number of the proceeding, and the subject of the particular paper.

(4) *Number of copies.* Unless otherwise specified by the Director, or the administrative law judge, an original and one copy of all documents and papers shall be filed, except that only one copy of transcripts of testimony and exhibits shall be filed.

§ 509.11 Service of papers.

(a) *By the parties.* Except as otherwise provided, a party filing papers shall serve a copy upon the counsel of record for all other parties to the proceeding so represented, and upon any party not so represented.

(b) *Method of service.* Except as provided in paragraphs (c)(2) and (d) of this section, a serving party shall use one or more of the following methods of service:

(1) Personal service;

(2) Delivering the papers to a reliable commercial courier service, overnight delivery service, or to the U.S. Post Office for Express Mail delivery;

(3) Mailing the papers by first class, registered, or certified mail; or

(4) Transmission by electronic media, only if the parties mutually agree. Any papers served by electronic media shall also concurrently be served in accordance with the requirements of § 509.10(c) of this subpart as to form.

(c) *By the Director or the administrative law judge.* (1) All papers required to be served by the Director or the administrative law judge upon a party who has appeared in the proceeding through a counsel of record, shall be served by any means specified in paragraph (b) of this section.

(2) If a party has not appeared in the proceeding in accordance with § 509.6 of this subpart, the Director or the administrative law judge shall make service by any of the following methods:

(i) By personal service;

(ii) By delivery to a person of suitable age and discretion at the party's residence;

(iii) By registered or certified mail addressed to the party's last known address; or

(iv) By any other method reasonably calculated to give actual notice.

(d) *Subpoenas.* Service of a subpoena may be made by personal service, by delivery to an agent, by delivery to a person of suitable age and discretion at the subpoenaed person's residence, by registered or certified mail addressed to the person's last known address, or in such other manner as is reasonably calculated to give actual notice.

(e) *Area of service.* Service in any state, territory, possession of the United States, or the District of Columbia, on any person or company doing business in any state, territory, possession of the United States, or the District of Columbia, or on any person as otherwise provided by law, is effective without regard to the place where the hearing is held, provided that if service is made on a foreign bank in connection with an action or proceeding involving one or more of its branches or agencies located in any state, territory, possession of the United States, or the District of Columbia, service shall be made on at least one branch or agency so involved.

§ 509.12 Construction of time limits.

(a) *General rule.* In computing any period of time prescribed by this subpart, the date of the act or event from which the designated period of time begins to run is not included. The last day so computed is included unless it is a Saturday, Sunday, or Federal holiday. When the last day is a Saturday, Sunday, or Federal holiday, the period runs until the end of the next day that is not a Saturday, Sunday, or Federal holiday. Intermediate Saturdays, Sundays, and Federal holidays are included in the computation of time, except that, when the time period within which an act is to be performed is ten days or less, intermediate Saturdays, Sundays, and Federal holidays are not included.

(b) *When papers are deemed to be filed or served.* (1) Filing and service are deemed to be effective:

(i) In the case of personal service or same day commercial courier delivery, upon actual service;

(ii) In the case of overnight commercial delivery service, U.S. Express mail delivery, or first class, registered, or certified mail, upon deposit in or delivery to an appropriate point of collection; or

(iii) In the case of transmission by electronic media, as specified by the authority receiving the filing, in the case of filing, and as agreed among the parties, in the case of service.

(2) The effective filing and service dates specified in paragraph (b)(1) of this section may be modified by the Director or administrative law judge in the case of filing or by agreement of the parties in the case of service.

(c) *Calculation of time for service and filing of responsive papers.* Whenever a time limit is measured by a prescribed period from the service of any notice or paper, the applicable time limits are calculated as follows:

(1) If service is made by first class, registered or certified mail, add three days to the prescribed period;

(2) If service is made by express mail or overnight delivery service, add one day to the prescribed period; or

(3) If service is made by electronic media transmission, add one day to the prescribed period, unless otherwise determined by the Director or the administrative law judge in the case of filing, or by agreement among the parties in the case of service.

§ 509.13 Change of time limits.

Except as otherwise provided by law, the administrative law judge may, for good cause shown, extend the time limits prescribed by the Uniform Rules or any notice or order issued in the proceedings. After the referral of the case to the Director pursuant to § 509.38 of this subpart, the Director may grant extensions of the time limits for good cause shown. Extensions may be granted at the motion of a party or on the Director's or the administrative law judge's own motion after notice and opportunity to respond is afforded all non-moving parties.

§ 509.14 Witness fees and expenses.

Witnesses subpoenaed for testimony or deposition shall be paid the same fees for attendance and mileage as are paid in the United States district courts in proceedings in which the United States is a party, provided that, in the case of a discovery subpoena addressed to a party, no witness fees or mileage need be paid. Fees for witnesses shall be tendered in advance by the party requesting the subpoena, except that fees and mileage need not be tendered in advance where the Office is the party requesting the subpoena. The Office shall not be required to pay any fees to, or expenses of, any witness not subpoenaed by the Office.

§ 509.15 Opportunity for informal settlement.

Any respondent may, at any time in the proceeding, unilaterally submit to Enforcement Counsel written offers or proposals for settlement of a proceeding, without prejudice to the rights of any of the parties. No such offer or proposal shall be made to any Office representative other than Enforcement

Counsel. Submission of a written settlement offer does not provide a basis for adjourning or otherwise delaying all or any portion of a proceeding under this part. No settlement offer or proposal, or any subsequent negotiation or resolution, is admissible as evidence in any proceeding.

§ 509.16 Office's right to conduct examination.

Nothing contained in this subpart limits in any manner the right of the Office to conduct any examination, inspection, or visitation of any institution or institution-affiliated party, or the right of the Office to conduct or continue any form of investigation authorized by law.

§ 509.17 Collateral attacks on adjudicatory proceeding.

If an interlocutory appeal or collateral attack is brought in any court concerning all or any part of an adjudicatory proceeding, the challenged adjudicatory proceeding shall continue without regard to the pendency of that court proceeding. No default or other failure to act as directed in the adjudicatory proceeding within the times prescribed in this subpart shall be excused based on the pendency before any court of any interlocutory appeal or collateral attack.

§ 509.18 Commencement of proceeding and contents of notice.

(a) *Commencement of proceeding.* (1)(i) Except for change-in-control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)), a proceeding governed by this subpart is commenced by issuance of a notice by the Director.

(ii) The notice must be served by the Director upon the respondent and given to any other appropriate financial institution supervisory authority where required by law.

(iii) The notice must be filed with the OFIA.

(2) Change-in control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)) commence with the issuance of an order by the Director.

(b) *Contents of notice.* The notice must set forth:

(1) The legal authority for the proceeding and for the Office's jurisdiction over the proceeding;

(2) A statement of the matters of fact or law showing that the Office is entitled to relief;

(3) A proposed order or prayer for an order granting the requested relief;

(4) The time, place, and nature of the hearing as required by law or regulation;

(5) The time within which to file an answer as required by law or regulation;

(6) The time within which to request a hearing as required by law or regulation; and

(7) The answer and/or request for a hearing shall be filed with OFIA.

§ 509.19 Answer.

(a) *When.* Within 20 days of service of the notice, respondent shall file an answer as designated in the notice. In a civil money penalty proceeding, respondent shall also file a request for a hearing within 20 days of service of the notice.

(b) *Content of answer.* An answer must specifically respond to each paragraph or allegation of fact contained in the notice and must admit, deny, or state that the party lacks sufficient information to admit or deny each allegation of fact. A statement of lack of information has the effect of a denial. Denials must fairly meet the substance of each allegation of fact denied; general denials are not permitted. When a respondent denies part of an allegation, that part must be denied and the remainder specifically admitted. Any allegation of fact in the notice which is not denied in the answer must be deemed admitted for purposes of the proceeding. A respondent is not required to respond to the portion of a notice that constitutes the prayer for relief or proposed order. The answer must set forth affirmative defenses, if any, asserted by the respondent.

(c) *Default*—(1) *Effect of failure to answer.* Failure of a respondent to file an answer required by this section within the time provided constitutes a waiver of his or her right to appear and contest the allegations in the notice. If no timely answer is filed, the administrative law judge, upon motion of the Enforcement Counsel, shall file with the Director a recommended decision containing the findings and the relief sought in the notice. Any final order issued by the Director based upon a respondent's failure to answer is deemed to be an order issued upon consent.

(2) *Effect of failure to request a hearing in civil money penalty proceedings.* If respondent fails to request a hearing as required by law within the time provided, the notice of assessment constitutes a final and unappealable order.

§ 509.20 Amended pleadings.

(a) *Amendments.* The notice or answer may be amended or supplemented at any stage of the proceeding by leave of the administrative law judge. Such leave will be freely given. The respondent shall answer an amended notice within the time remaining for the respondent's answer to the original notice, or within ten days after service of the amended notice, whichever period is longer, unless the Director or administrative law judge orders otherwise for good cause shown.

(b) *Amendments to conform to the evidence.* When issues not raised in the notice or answer are tried at the hearing by express or implied consent of the parties, they will be treated in all respects as if they had been raised in the notice or answer, and no formal amendments are required. If evidence is objected to at the hearing on the ground that it is not within the issues raised by the notice or answer, the administrative law judge may allow the notice or answer to be amended and will do so freely when the determination of the merits of the action is served thereby and the objecting party fails to satisfy the administrative law judge that the admission of such evidence would unfairly prejudice the party's action or defense upon the merits. The administrative law judge may grant a continuance to enable the objecting party to meet such evidence.

§ 509.21 Failure to appear.

Failure of a respondent to appear in person at the hearing or by a duly authorized counsel constitutes a waiver of respondent's right to a hearing and is deemed an admission of the facts as alleged and consent to the relief sought in the notice. Without further proceedings or notice to the respondent, the administrative law judge shall file with the Director a recommended decision containing the findings and the relief sought in the notice.

§ 509.22 Consolidation and severance of actions.

(a) *Consolidation.* (1) On the motion of any party, or on the administrative law judge's own motion, the administrative law judge may consolidate, for some or all purposes, any two or more proceedings, if each such proceeding involves or arises out of the same transaction, occurrence or series of transactions or occurrences, or involves at least one common respondent or a material common question of law or fact, unless such consolidation would cause unreasonable delay or injustice.

(2) In the event of consolidation under paragraph (a)(1) of this section, appropriate adjustment to the prehearing schedule must be made to avoid unnecessary expense, inconvenience, or delay.

(b) *Severance.* The administrative law judge may, upon the motion of any

party, sever the proceeding for separate resolution of the matter as to any respondent only if the administrative law judge finds that:

(1) Undue prejudice or injustice to the moving party would result from not severing the proceeding; and

(2) Such undue prejudice or injustice would outweigh the interests of judicial economy and expedition in the complete and final resolution of the proceeding.

§ 509.23 Motions.

(a) *In writing.* (1) Except as otherwise provided herein, an application or request for an order or ruling must be made by written motion.

(2) All written motions must state with particularity the relief sought and must be accompanied by a proposed order.

(3) No oral argument may be held on written motions except as otherwise directed by the administrative law judge. Written memoranda, briefs, affidavits or other relevant material or documents may be filed in support of or in opposition to a motion.

(b) *Oral motions.* A motion may be made orally on the record unless the administrative law judge directs that such motion be reduced to writing.

(c) *Filing of motions.* Motions must be filed with the administrative law judge, but upon the filing of the recommended decision, motions must be filed with the Director.

(d) *Responses.* (1) Except as otherwise provided herein, within ten days after service of any written motion, or within such other period of time as may be established by the administrative law judge or the Director, any party may file a written response to a motion. The administrative law judge shall not rule on any oral or written motion before each party has had an opportunity to file a response.

(2) The failure of a party to oppose a written motion or an oral motion made on the record is deemed a consent by that party to the entry of an order substantially in the form of the order accompanying the motion.

(e) *Dilatory motions.* Frivolous, dilatory or repetitive motions are prohibited. The filing of such motions may form the basis for sanctions.

(f) *Dispositive motions.* Dispositive motions are governed by §§ 509.29 and 509.30 of this subpart.

§ 509.24 Scope of document discovery.

(a) *Limits on discovery.* (1) Parties to proceedings under this subpart may obtain document discovery through the production of documents, including writings, drawings, graphs, charts, photographs, recordings, and other data compilations from which information can be obtained, or translated, if necessary, by the parties through detection devices into reasonably usable form.

(2) Discovery by use of deposition is governed by § 509.102 of this part.

(b) *Relevance.* Parties may obtain document discovery regarding any matter, not privileged, which has material relevance to the merits of the pending action. It is not a ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to discovery of admissible evidence. The request may not be unreasonable, oppressive, excessive in scope or unduly burdensome.

(c) *Privileged matter.* Privileged documents are not discoverable. Privileges include the attorney-client privilege, work-product privilege, any government's or government agency's deliberative-process privilege, and any other privileges the Constitution, any applicable act of Congress, or the principles of common law provide.

(d) *Time limits.* All discovery, including all responses to discovery requests, shall be completed at least 20 days prior to the date scheduled for the commencement of the hearing, except as provided in the Local Rules. No exceptions to this time limit shall be permitted, unless the administrative law judge finds on the record that good cause exists for waiving the requirements of this paragraph.

§ 509.25 Request for document discovery from parties.

(a) *General rule.* Any party may serve on any other party a request to produce for inspection any discoverable documents which are in the possession, custody, or control of the party upon whom the request is served. The request must identify the documents to be produced either by individual item or by category, and must describe each item and category with reasonable particularity. Documents must be produced as they are kept in the usual course of business and shall be organized to correspond with the categories in the request.

(b) *Production or copying.* The request must specify a reasonable time, place, and manner for production and performing any related acts. In lieu of inspecting the documents the requesting party may specify that all or some of the responsive documents are to be copied and the copies delivered to the requesting party. If copying of fewer than 250 pages is requested, the party to whom the request is addressed shall bear the cost of copying and shipping charges. If more than 250 pages of copying is requested, the requesting party shall pay for copying, unless the parties agree otherwise, at the current per-page copying rate imposed by the Office's rules at 12 CFR part 505 implementing the Freedom of Information Act (5 U.S.C. 552a) plus the cost of shipping.

(c) *Obligation to update responses.* A party who has responded to a discovery request with a response that was complete when made is not required to supplement the response to include documents thereafter acquired, unless the responding party learns that:

(1) The response was materially incorrect when made; or

(2) The response, though correct when made, is no longer true and a failure to amend the response is, in substance, a knowing concealment.

(d) *Motions to limit discovery.* (1) Any party that objects to a discovery request may, within ten days of being served with such request, file a motion in accordance with the provisions of § 509.23 of this subpart to revoke or otherwise limit the request. If an objection is made to only a portion of an item or category in a request, the portion objected to shall be specified. Any objections not made in accordance with this paragraph and § 509.23 of this subpart are waived.

(2) The party who served the request that is the subject of a motion to revoke or limit may file a written response within five days of service of the motion. No other party may file a response.

(e) *Privilege.* At the time other documents are produced, all documents withheld on the grounds of privilege must be reasonably identified, together with a statement of the basis for the assertion of privilege.

(f) *Motions to compel production.* (1) If a party withholds any documents as privileged or fails to comply fully with a discovery request, the requesting party may, within ten days of the assertion of privilege or of the time the failure to comply becomes known to the requesting party, file a motion in accordance with the provisions of § 509.23 of this subpart for the issuance of a subpoena compelling production.

(2) The party who asserted the privilege or failed to comply with the request may file a written response to a motion to compel within five days of service of the motion. No other party may file a response.

(g) *Ruling on motions.* After the time for filing responses pursuant to this section has expired, the administrative law judge shall rule promptly on all

motions filed pursuant to this section. If the administrative law judge determines that a discovery request, or any of its terms, is unreasonable, unduly burdensome, excessive in scope, repetitive of previous requests or seeks to obtain privileged documents, he or she may modify the request, and may issue appropriate protective orders, upon such conditions as justice may require. The pendency of a motion to revoke or limit discovery or to compel production shall not be a basis for staying or continuing the proceeding, unless otherwise ordered by the administrative law judge.

(h) *Enforcing discovery subpoenas.* If the administrative law judge issues a subpoena compelling production of documents by a party, the subpoenaing party may, in the event of noncompliance and to the extent authorized by applicable law, apply to any appropriate United States district court for an order requiring compliance with the subpoena. A party's right to seek court enforcement of a subpoena shall not in any manner limit the sanctions that may be imposed by the administrative law judge against a party who fails to produce subpoenaed documents.

§ 509.26 Document subpoenas to nonparties.

(a) *General rules.* (1) Any party may apply to the administrative law judge for the issuance of a document discovery subpoena addressed to any person who is not a party to the proceeding. The application must contain a proposed document subpoena and a brief statement showing the general relevance and reasonableness of the scope of documents sought. The subpoenaing party shall specify a reasonable time, place, and manner for making production in response to the document subpoena.

(2) A party shall only apply for a document subpoena under this section within the time period during which such party could serve a discovery request under § 509.24(d) of this subpart. The party obtaining the document subpoena is responsible for serving it on the subpoenaed person and for serving copies on all parties. Document subpoenas may be served in any state, territory, or possession of the United States, the District of Columbia, or as otherwise provided by law.

(3) The administrative law judge shall promptly issue any document subpoena requested pursuant to this section. If the administrative law judge determines that the application does not set forth a valid basis for the issuance of the subpoena, or that any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may refuse to issue the subpoena or may issue it in a modified form upon such conditions as may be consistent with the Uniform Rules.

(b) *Motion to quash or modify.* (1) Any person to whom a document subpoena is directed may file a motion to quash or modify such subpoena, accompanied by a statement of the basis for quashing or modifying the subpoena. The movant shall serve the motion on all parties, and any party may respond to such motion within ten days of service of the motion.

(2) Any motion to quash or modify a document subpoena must be filed on the same basis, including the assertion of privilege, upon which a party could object to a discovery request under § 509.25(d) of this subpart, and during the same time limits during which such an objection could be filed.

(c) *Enforcing document subpoenas.* If a subpoenaed person fails to comply with any subpoena issued pursuant to this section or any order of the administrative law judge which directs compliance with all or any portion of a document subpoena, the subpoenaing party or any other aggrieved party may, to the extent authorized by applicable law, apply to an appropriate United States district court for an order requiring compliance with so much of the document subpoena as the administrative law judge has not quashed or modified. A party's right to seek court enforcement of a document subpoena shall in no way limit the sanctions that may be imposed by the administrative law judge on a party who induces a failure to comply with subpoenas issued under this section.

§ 509.27 Deposition of witness unavailable for hearing.

(a) *General rules.* (1) If a witness will not be available for the hearing, a party may apply in accordance with the procedures set forth in paragraph (a)(2) of this section, to the administrative law judge for the issuance of a subpoena, including a subpoena duces tecum, requiring the attendance of the witness at a deposition. The administrative law judge may issue a deposition subpoena under this section upon showing that:

(i) The witness will be unable to attend or may be prevented from attending the hearing because of age, sickness or infirmity, or will otherwise be unavailable;

(ii) The witness' unavailability was not procured or caused by the subpoenaing party;

(iii) The testimony is reasonably expected to be material; and

(iv) Taking the deposition will not result in any undue burden to any other party and will not cause undue delay of the proceeding.

(2) The application must contain a proposed deposition subpoena and a brief statement of the reasons for the issuance of the subpoena. The subpoena must name the witness whose deposition is to be taken and specify the time and place for taking the deposition. A deposition subpoena may require the witness to be deposed at any place within the country in which that witness resides or has a regular place of employment or such other convenient place as the administrative law judge shall fix.

(3) Any requested subpoena that sets forth a valid basis for its issuance must be promptly issued, unless the administrative law judge on his or her own motion, requires a written response or requires attendance at a conference concerning whether the requested subpoena should be issued.

(4) The party obtaining a deposition subpoena is responsible for serving it on the witness and for serving copies on all parties. Unless the administrative law judge orders otherwise, no deposition under this section shall be taken on fewer than ten days' notice to the witness and all parties. Deposition subpoenas may be served in any state, territory, possession of the United States, or the District of Columbia, on any person or company doing business in any state, territory, possession of the United States, or the District of Columbia, or as otherwise permitted by law.

(b) *Objections to deposition subpoenas.* (1) The witness and any party who has not had an opportunity to oppose a deposition subpoena issued under this section may file a motion with the administrative law judge to quash or modify the subpoena prior to the time for compliance specified in the subpoena, but not more than ten days after service of the subpoena.

(2) A statement of the basis for the motion to quash or modify a subpoena issued under this section must accompany the motion. The motion must be served on all parties.

(c) *Procedure upon deposition.* (1) Each witness testifying pursuant to a deposition subpoena must be duly sworn, and each party shall have the right to examine the witness. Objections to questions or documents must be in short form, stating the grounds for the objection. Failure to object to questions or documents is not deemed a waiver except where the ground for the objection might have been avoided if the

objection had been timely presented. All questions, answers, and objections must be recorded.

(2) Any party may move before the administrative law judge for an order compelling the witness to answer any questions the witness has refused to answer or submit any evidence the witness has refused to submit during the deposition.

(3) The deposition must be subscribed by the witness, unless the parties and the witness, by stipulation, have waived the signing, or the witness is ill, cannot be found, or has refused to sign. If the deposition is not subscribed by the witness, the court reporter taking the deposition shall certify that the transcript is a true and complete transcript of the deposition.

(d) *Enforcing subpoenas.* If a subpoenaed person fails to comply with any order of the administrative law judge which directs compliance with all or any portion of a deposition subpoena under paragraph (b) or (c)(2) of this section, the subpoenaing party or other aggrieved party may, to the extent authorized by applicable law, apply to an appropriate United States district court for an order requiring compliance with the portions of the subpoena that the administrative law judge has ordered enforced. A party's right to seek court enforcement of a deposition subpoena in no way limits the sanctions that may be imposed by the administrative law judge on a party who fails to comply with or procures a failure to comply with, a subpoena issued under this section.

§ 509.28 Interlocutory review.

(a) *General rule.* The Director may review a ruling of the administrative law judge prior to the certification of the record to the Director only in accordance with the procedures set forth in this section and § 509.23 of this subpart.

(b) *Scope of review.* The Director may exercise interlocutory review of a ruling of the administrative law judge if the Director finds that:

(1) The ruling involves a controlling question of law or policy as to which substantial grounds exist for a difference of opinion;

(2) Immediate review of the ruling may materially advance the ultimate termination of the proceeding;

(3) Subsequent modification of the ruling at the conclusion of the proceeding would be an inadequate remedy; or

(4) Subsequent modification of the ruling would cause unusual delay or expense.

(c) *Procedure.* Any request for interlocutory review shall be filed by a party with the administrative law judge within ten days of his or her ruling and shall otherwise comply with § 509.23 of this subpart. Any party may file a response to a request for interlocutory review in accordance with § 509.23(d) of this subpart. Upon the expiration of the time for filing all responses, the administrative law judge shall refer the matter to the Director for final disposition.

(d) *Suspension of proceeding.* Neither a request for interlocutory review nor any disposition of such a request by the Director under this section suspends or stays the proceeding unless otherwise ordered by the administrative law judge or the Director.

§ 509.29 Summary disposition.

(a) *In general.* The administrative law judge shall recommend that the Director issue a final order granting a motion for summary disposition if the undisputed pleaded facts, admissions, affidavits, stipulations, documentary evidence, matters as to which official notice may be taken, and any other evidentiary materials properly submitted in connection with a motion for summary disposition show that:

(1) There is no genuine issue as to any material fact; and

(2) The moving party is entitled to a decision in its favor as a matter of law.

(b) *Biling of motions and responses.* (1) Any party who believes that there is no genuine issue of material fact to be determined and that he or she is entitled to a decision as a matter of law may move at any time for summary disposition in its favor of all or any part of the proceeding. Any party, within 20 days after service of such a motion, or within such time period as allowed by the administrative law judge, may file a response to such motion.

(2) A motion for summary disposition must be accompanied by a statement of the material facts as to which the moving party contends there is no genuine issue. Such motion must be supported by documentary evidence, which may take the form of admissions in pleadings, stipulations, depositions, investigatory depositions, transcripts, affidavits and any other evidentiary materials that the moving party contends support his or her position. The motion must also be accompanied by a brief containing the points and authorities in support of the contention of the moving party. Any party opposing a motion for summary disposition must file a statement setting forth those material facts as to which he or she contends a genuine dispute exists. Such opposition must be supported by evidence of the same type as that submitted with the motion for summary disposition and a brief containing the points and authorities in support of the contention that summary disposition would be inappropriate.

(c) *Hearing on motion.* At the request of any party or on his or her own motion, the administrative law judge may hear oral argument on the motion for summary disposition.

(d) *Decision on motion.* Following receipt of a motion for summary disposition and all responses thereto, the administrative law judge shall determine whether the moving party is entitled to summary disposition. If the administrative law judge determines that summary disposition is warranted, the administrative law judge shall submit a recommended decision to that effect to the Director. If the administrative law judge finds that no party is entitled to summary disposition, he or she shall make a ruling denying the motion.

§ 509.30 Partial summary disposition.

If the administrative law judge determines that a party is entitled to summary disposition as to certain claims only, he or she shall defer submitting a recommended decision as to those claims. A hearing on the remaining issues must be ordered. Those claims for which the administrative law judge has determined that summary disposition is warranted will be addressed in the recommended decision filed at the conclusion of the hearing.

§ 509.31 Scheduling and prehearing conferences.

(a) *Scheduling conference.* Within 30 days of service of the notice or order commencing a proceeding or such other time as parties may agree, the administrative law judge shall direct counsel for all parties to meet with him or her in person at a specified time and place prior to the hearing or to confer by telephone for the purpose of scheduling the course and conduct of the proceeding. This meeting or telephone conference is called a "scheduling conference." The identification of potential witnesses, the time for and manner of discovery, and the exchange of any prehearing materials including witness lists, statements of issues, stipulations, exhibits and any other materials may also be determined at the scheduling conference.

(b) *Prehearing conferences.* The administrative law judge may, in addition to the scheduling conference, on his or her own motion or at the

request of any party, direct counsel for the parties to meet with him or her (in person or by telephone) at a prehearing conference to address any or all of the following:

(1) Simplification and clarification of the issues;

(2) Stipulations, admissions of fact, and the contents, authenticity and admissibility into evidence of documents;

(3) Matters of which office notice may be taken;

(4) Limitation of the number of witnesses;

(5) Summary disposition of any or all issues;

(6) Resolution of discovery issues or disputes;

(7) Amendments to pleadings; and

(8) Such other matters as may aid in the orderly disposition of the proceeding.

(c) *Transcript.* The administrative law judge, in his or her discretion, may require that a scheduling or prehearing conference be recorded by a court reporter. A transcript of the conference and any materials filed, including orders, becomes part of the record of the proceeding. A party may obtain a copy of the transcript at its expense.

(d) *Scheduling or prehearing orders.* At or within a reasonable time following the conclusion of the scheduling conference or any prehearing conference, the administrative law judge shall serve on each party an order setting forth any agreements reached and any procedural determinations made.

§ 509.32 Prehearing submissions.

(a) Within the time set by the administrative law judge, but in no case later than 14 days before the start of the hearing, each party shall serve on every other party, his or her:

(1) Prehearing statement;

(2) Final list of witnesses to be called to testify at the hearing, including name and address of each witness and a short summary of the expected testimony of each witness;

(3) List of the exhibits to be introduced at the hearing along with a copy of each exhibit; and

(4) Stipulations of fact, if any.

(b) *Effect of failure to comply.* No witness may testify and no exhibits may be introduced at the hearing if such witness or exhibit is not listed in the prehearing submissions pursuant to paragraph (a) of this section, except for good cause shown.

§ 509.33 Public hearings.

(a) *General rule.* All hearings shall be open to the public, unless the Office, in its discretion, determines that holding an open hearing would be contrary to the public interest. Within 20 days of service of the notice or, in the case of change-in-control proceedings under section 7(j)(4) of the FDIA (12 U.S.C. 1817(j)(4)), within 20 days from service of the hearing order, any respondent may file with the Director a request for a private hearing, and any party may file a pleading in reply to such a request. Such requests and replies are governed by § 509.23 of this subpart. Failure to file a request or a reply is deemed a waiver of any objections regarding whether the hearing will be public or private.

(b) *Filing document under seal.* Enforcement Counsel, in his or her discretion, may file any document or part of a document under seal if disclosure of the document would be contrary to the public interest. The administrative law judge shall take all appropriate steps to preserve the confidentiality of such documents or parts thereof, including closing portions of the hearing to the public.

§ 509.34 Hearing subpoenas.

(a) *Issuance.* (1) Upon application of a party showing general relevance and reasonableness of scope of the testimony or other evidence sought, the administrative law judge may issue a subpoena or a subpoena duces tecum requiring the attendance of a witness at the hearing or the production of documentary or physical evidence at such hearing. The application for a hearing subpoena must also contain a proposed subpoena specifying the attendance of a witness or the production of evidence from any state, territory, or possession of the United States, the District of Columbia or as otherwise provided by law at any designated place where the hearing is being conducted.

(2) A party may apply for a hearing subpoena at any time before the commencement of a hearing. The party making the application shall serve a copy of the application and the proposed subpoena on every other party to the proceeding. During a hearing, such applications may be made orally on the record before the administrative law judge.

(3) The administrative law judge shall promptly issue any hearing subpoena requested pursuant to this section. If the administrative law judge determines that the application does not set forth a valid basis for the issuance of the subpoena, or that any of its terms are unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may refuse to issue the subpoena or may issue it in a modified form upon any conditions consistent with this subpart.

(b) *Motion to quash or modify.* (1) Any person to whom a hearing subpoena is directed may file a motion to quash or modify such subpoena, accompanied by a statement of the basis for quashing or modifying the subpoena. The movant shall serve the motion on all parties, and any party may respond to such motion within ten days of service of the motion.

(2) Any motion to quash or modify a hearing subpoena must be filed prior to the time specified in the subpoena for compliance, but not more than ten days after the date of service of the subpoena upon the movant.

(c) *Enforcing subpoenas.* If a subpoenaed person fails to comply with any subpoena issued pursuant to this section or any order of the administrative law judge which directs compliance with all or any portion of a document subpoena, the subpoenaing party or any other aggrieved party may seek enforcement of the subpoena pursuant to section § 509.26(c) of this subpart.

§ 509.35 Conduct of hearings.

(a) *General rules.* (1) Hearings shall be conducted so as to provide a fair and expeditious presentation of the relevant disputed issues. Each party has the right to present its case or defense by oral and documentary evidence and to conduct such cross examination as may be required for full disclosure of the facts.

(2) *Order of hearing.* Enforcement Counsel shall present its case-in-chief first, unless otherwise ordered by the administrative law judge, or unless otherwise expressly specified by law or regulation. Enforcement Counsel shall be the first party to present an opening statement and a closing statement, and may make a rebuttal statement after the respondent's closing statement. If there are multiple respondents, respondents may agree among themselves as to their order of presentation of their cases, but if they do not agree the administrative law judge shall fix the order.

(3) *Stipulations.* Unless the administrative law judge directs otherwise, all stipulations of fact and law previously agreed upon by the parties, and all documents, the admissibility of which have been previously stipulated, will be admitted into evidence upon commencement of the hearing.

(b) *Transcript.* The hearing must be recorded and transcribed. The transcript shall be made available to any party upon payment of the cost thereof. The administrative law judge shall have

authority to order the record corrected, either upon motion to correct, upon stipulation of the parties, or following notice to the parties upon the administrative law judge's own motion. The administrative law judge shall serve notice upon all parties that the certified transcript, together with all hearing exhibits and exhibits introduced but not admitted into evidence at the hearing, has been filed.

§ 509.36 Evidence.

(a) *Admissibility.* (1) Except as is otherwise set forth in this section, relevant, material, and reliable evidence that is not unduly repetitive is admissible to the fullest extent authorized by the APA and other applicable law.

(2) Evidence that would be admissible under the Federal Rules of Evidence is admissible in a proceeding conducted pursuant to this subpart.

(3) Evidence that would be inadmissible under the Federal Rules of Evidence may not deemed or ruled to be inadmissible in a proceeding conducted pursuant to this subpart if such evidence is relevant, material, reliable and not unduly repetitive.

(b) *Official notice.* (1) Official notice may be taken of any material fact which may be judicially noticed by a United States district court and any material information in the official public records of any Federal or state government agency.

(2) All matters officially noticed by the administrative law judge or Director shall appear on the record.

(3) If official notice is requested or taken of any material fact, the parties, upon timely request, shall be afforded an opportunity to object.

(c) *Documents.* (1) A duplicate copy of a document is admissible to the same extent as the original, unless a genuine issue is raised as to whether the copy is in some material respect not a true and legible copy of the original.

(2) Subject to the requirements of paragraph (a) of this section, any document, including a report of examination, supervisory activity, inspection or visitation, prepared by the appropriate Office or state regulatory agency, is admissible either with or without a sponsoring witness.

(3) Witnesses may use existing or newly created charts, exhibits, calendars, calculations, outlines or other graphic material to summarize, illustrate, or simplify the presentation of testimony. Such materials may, subject to the administrative law judge's discretion, be used with or without being admitted into evidence.

(d) *Objections.* (1) Objections to the admissibility of evidence must be timely made and rulings on all objections must appear on the record.

(2) When an objection to a question or line of questioning propounded to a witness is sustained, the examining counsel may make a specific proffer on the record of what he or she expected to prove by the expected testimony of the witness, either by representation of counsel or by direct interrogation of the witness.

(3) The administrative law judge shall retain rejected exhibits, adequately marked for identification, for the record, and transmit such exhibits to the Director.

(4) Failure to object to admission of evidence or to any ruling constitutes a waiver of the objection.

(e) *Stipulations.* The parties may stipulate as to any relevant matters of fact or the authentication of any relevant documents. Such stipulations must be received in evidence at a hearing, and are binding on the parties with respect to the matters therein stipulated.

(f) *Depositions of unavailable witnesses.* (1) If a witness is unavailable to testify at a hearing, and that witness has testified in a deposition to which all parties in a proceeding had notice and an opportunity to participate, a party may offer as evidence all or any part of the transcript of the deposition, including deposition exhibits, if any.

(2) Such deposition transcript is admissible to the same extent that testimony would have been admissible had that person testified at the hearing, provided that if a witness refused to answer proper questions during the depositions, the administrative law judge may, on that basis, limit the admissibility of the deposition in any manner that justice requires.

(3) Only those portions of a deposition received in evidence at the hearing constitute a part of the record.

§ 509.37 Proposed findings and conclusions.

(a) *Proposed findings and conclusions and supporting briefs.* (1) Any party may file with the administrative law judge proposed findings of fact, proposed conclusions of law, and a proposed order within 30 days after the parties have received notice that the transcript has been filed with the administrative law judge, unless otherwise ordered by the administrative law judge.

(2) Proposed findings and conclusions must be supported by citation to any relevant authorities and by page references to any relevant portions of the record. A post-hearing brief may be filed in support of proposed findings and conclusions, either as part of the same document or in a separate document. Any party who fails to file timely with the administrative law judge any proposed finding or conclusion is deemed to have waived the right to raise in any subsequent filing or submission any issue not addressed in such party's proposed finding or conclusion.

(b) *Reply briefs.* Reply briefs may be filed within 15 days after the date on which the parties' proposed findings, conclusions, and order are due. Reply briefs must be strictly limited to responding to new matters, issues, or arguments raised in another party's papers. A party who has not filed proposed findings of fact and conclusions of law or a post-hearing brief may not file a reply brief.

(c) *Simultaneous filing required.* The administrative law judge shall not order the filing by any party of any brief or reply brief in advance of the other party's filing of its brief.

§ 509.38 Recommended decision and filing of record.

Within 45 days after expiration of the time allowed for filing reply briefs under § 509.37(b) of this subpart, the administrative law judge shall file with and certify to the Director for decision the record of the proceeding. The record must include the administrative law judge's recommended decision, recommended findings of fact, recommended conclusions of law and proposed order; all prehearing and hearing transcripts, exhibits, and rulings; and the motions, briefs, memoranda, and other supporting papers filed in connection with the hearing. The administrative law judge shall serve upon each party the recommended decision, findings, conclusions and proposed order.

§ 509.39 Exceptions to recommended decision.

(a) *Filing exceptions.* Within 30 days after service of the recommended decision, findings, conclusions, and proposed order under § 509.38 of this subpart, a party may file with the Director written exceptions to the administrative law judge's recommended decision, findings, conclusions or proposed order, to the admission or exclusion of evidence, or to the failure of the administrative law judge to make a ruling proposed by a party. A supporting brief may be filed at the time the exceptions are filed, either as part of the same document or in a separate document.

(b) *Effect of failure to file or raise exceptions.* (1) Failure of a party to file exceptions to those matters specified in paragraph (a) of this section within the time prescribed is deemed a waiver of objection thereto.

(2) No exception need be considered by the Director if the party taking exception had an opportunity to raise the same objection, issue, or argument before the administrative law judge and failed to do so.

(c) *Contents.* (1) All exceptions and briefs in support of such exceptions must be confined to the particular matters in, or omissions from, the administrative law judge's recommendations to which that party takes exception. (2) All exceptions and briefs in support of exceptions must set forth page or paragraph references to the specific parts of the administrative law judge's recommendations to which exception is taken, the page or paragraph references to those portions of the record relied upon to support each exception, and the legal authority relied upon to support each exception.

§ 509.40 Review by the Director.

(a) *Notice of submission to the Director.* When the Director determines that the record in the proceeding is complete, the Director shall serve notice upon the parties that the proceeding has been submitted to the Director for final decision.

(b) *Oral argument before the Director.* Upon the initiative of the Director or on the written request of any party filed with the Director within the time for filing exceptions, the Director may order and hear oral argument on the recommended findings, conclusions, decision, and order of the administrative law judge. A written request by a party must show good cause for oral argument and state reasons why arguments cannot be presented adequately in writing. A denial of a request for oral argument may be set forth in the Director's final decision. Oral argument before the Director must be on the record.

(c) *Director's final decision.* (1) Decisional employees may advise and assist the Director in the consideration and disposition of the case. The final decision of the Director will be based upon review of the entire record of the proceeding, except that the director may limit the issues to be reviewed to those findings and conclusions to which opposing arguments or exceptions have been filed by the parties.

(2) The Director shall render a final decision within 90 days after notification of the parties that the case has been submitted for final decision, or 90 days after oral argument, whichever is later, unless the Director orders that the action or any aspect thereof be remanded to the administrative law judge for further proceedings. Copies of the final decision and order of the Director shall be served upon each party to the proceeding, upon other persons required by statute, and, if directed by the Director or required by statute, upon any appropriate state or Federal supervisory authority.

§ 509.41 Stays pending judicial review.

The commencement of proceedings for judicial review of a final decision and order of the Office may not, unless specifically ordered by the Director or a reviewing court, operate as a stay of any order issued by the Director. The Director may, in its discretion, and on such terms as it finds just, stay the effectiveness of all or any part of its order pending a final decision on a petition for review of the order.

Subpart B—Local Rules

§ 509.100 Scope.

The rules and procedures in this subpart B shall apply to those proceedings covered by subpart A of this part. In addition, subpart A of this part and this subpart shall apply to adjudicatory proceedings for which hearings on the record are provided for by the following statutory provisions:

(a) Proceedings under section 10(a)(2)(D) of the HOLA (12 U.S.C. 1467a(a)(2)(D)) to determine whether any person directly or indirectly exercises a controlling influence over the management or policies of a savings association or any other company;

(b) Proceedings under section 10(g)(5)(A) of the HOLA (12 U.S.C. 1467a(g)(5)(A)) to determine whether to terminate certain activities by savings and loan holding companies or to terminate ownership or control of a non-insured savings and loan holding company subsidiary; and

(c) Proceedings under section 15(c)(4) of the Securities and Exchange Act of 1934 (15 U.S.C. 78o(c)(4)) (Exchange Act) to determine whether any association or person subject to the jurisdiction of the Office pursuant to section 12(i) of the Exchange Act (15 U.S.C. 78*l*(i)) has failed to comply with the provisions of sections 12, 13, 14(a), 14(c), 14(d) or 14(f) of the Exchange Act.

§ 509.101 Appointment of Office of Financial Institution Adjudication.

Unless otherwise directed by the Office, all hearings under subpart A of this part and this subpart shall be conducted by administrative law judges under the direction of the Office of Financial Institution Adjudication, 1700 G Street NW., Washington, DC 20552.

§ 509.102 Discovery.

(a) *In general.* A party may take the deposition of an expert, or of a person, including another party, who has direct knowledge of matters that are non-privileged, relevant and material to the proceeding and where there is a need for the deposition. The deposition of experts shall be limited to those experts who are expected to testify at the hearing.

(b) *Notice.* A party desiring to take a deposition shall give reasonable notice in writing to the deponent and to every other party to the proceeding. The notice must state the time and place for taking the deposition and the name and address of the person to be deposed.

(c) *Time limits.* A party may take depositions at any time after the commencement of the proceeding, but no later than ten days before the scheduled hearing date, except with permission of the administrative law judge for good cause shown.

(d) *Conduct of the deposition.* The witness must be duly sworn, and each party shall have the right to examine the witness with respect to all non-privileged, relevant and material matters of which the witness has factual, direct and personal knowledge. Objections to questions or exhibits shall be in short form, stating the grounds for objection. Failure to object to questions or exhibits is not a waiver except where the grounds for the objection might have been avoided if the objection had been timely presented. The court reporter shall transcribe or otherwise record the witness's testimony, as agreed among the parties.

(e) *Protective orders.* At any time after notice of a deposition has been given, a party may file a motion for the issuance of a protective order. Such protective order may prohibit, terminate, or limit the scope or manner of the taking of a deposition. The administrative law judge shall grant such protective order upon a showing of sufficient grounds, including that the deposition:

(1) Is unreasonable, oppressive, excessive in scope, or unduly burdensome;

(2) Involves privileged, investigative, trial preparation, irrelevant or immaterial matters; or

(3) Is being conducted in bad faith or in such manner as to unreasonably annoy, embarrass, or oppress the deponent.

(f) *Fees.* Deposition witnesses, including expert witnesses, shall be paid the same expenses in the same manner as are paid witnesses in the district courts of the United States in proceedings in which the United States Government is a party. Expenses in accordance with this paragraph shall be paid by the party seeking to take the deposition.

(g) *Deposition subpoenas*—(1) *Issuance.* At the request of a party, the administrative law judge shall issue a subpoena requiring the attendance of a witness at a deposition. The attendance of a witness may be required from any place in any state or territory that is subject to the jurisdiction of the United States or as otherwise permitted by law.

(2) *Service.* The party requesting the subpoena shall serve it on the person named therein and a copy on that person's counsel, or on that person's counsel, by personal service, certified mail, or overnight delivery service. The party serving the subpoena shall file proof of service with the administrative law judge.

(3) *Motion to quash.* A person named in the subpoena or a party may file a motion to quash or modify the subpoena. A statement of the reasons for the motion must accompany it and a copy of the motion must be served on the party that requested the subpoena. The motion must be made prior to the time for compliance specified in the subpoena and not more than ten days after the date of service of the subpoena, or if the subpoena is served within 15 days of the hearing, within five days after the date of service.

(4) *Enforcement of deposition subpoena.* Enforcement of a deposition subpoena shall be in accordance with the procedures of § 509.27(d) of this part.

§ 509.103 Civil money penalties.

(a) *Assessment.* In the event of consent, or if upon the record developed at the hearing the Office finds that any of the grounds specified in the notice issued pursuant to section 509.18 of this part have been established, the Office may serve an order of assessment of civil money penalty upon the party concerned. The assessment order shall be effective immediately upon service or upon such other date as may be specified therein and shall remain effective and enforceable until it is stayed, modified, terminated, or set aside by the Office or by a reviewing court.

(b) *Payment.* (1) Civil penalties assessed pursuant to subpart A of this part and this subpart B are payable and to be collected within 60 days after the issuance of the notice of assessment, unless the Office fixes a different time for payment where it determines that the purpose of the civil money penalty would be better served thereby; however, if a party has made a timely request for a hearing to challenge the assessment of the penalty, the party may not be required to pay such penalty until the Office has issued a final order of assessment following the hearing. In such instances, the penalty shall be paid within 60 days of service of such order unless the Office fixes a different time for payment. Notwithstanding the foregoing, the Office may seek to attach the party's assets or to have a receiver appointed to secure payment of the potential civil money penalty or other obligation in advance of the hearing in accordance with section 8(i)(4) of the FDIA (12 U.S.C. 1818(i)(4)).

(2) Checks in payment of civil penalties shall be made payable to the Treasurer of the United States and sent to the Controller's Division of the Office. Upon receipt, the Office shall forward the check to the Treasury of the United States.

§ 509.104 Additional procedures.

(a) *Replies to exceptions.* Replies to written exceptions to the administrative law judge's recommended decision, findings, conclusions or proposed order pursuant to § 509.39 of this part shall be filed within 10 days of the date such written exceptions were required to be filed.

(b) *Motions.* All motions shall be filed with the administrative law judge; provided however, once the administrative law judge has certified the record to the Director pursuant § 509.39 of this part, all motions must be filed with the Director within the 10 day period allowed for the filing of replies to exceptions. Responses to such motions timely filed before the Director, other than motions for oral argument before the Director, shall be allowed pursuant to the procedures as § 509.23(d) of this part. No response is required for the Director to make a determination on a motion for oral argument.

(c) *Authority of administrative law judge.* In addition to the powers listed in § 509.5 of this part, the administrative law judge shall have the authority to deny any dispositive motion and shall follow the procedures set forth for motions for summary disposition at § 509.29 of this part and partial summary disposition at § 509.30 of this part in making determinations on such motions.

(d) *Notification of submission of proceeding to the Director.* Upon the expiration of the time for filing any exceptions, any replies to such exceptions or any motions and any ruling thereon, and after receipt of certified record, the Office shall notify the parties within ten days of the submission of the proceeding to the Director for final determination.

(e) *Extensions of time for final determination.* The Director may, *sua sponte*, extend the time for final determination by signing an order of extension of time within the 90 day time period and notifying the parties of such extension thereafter.

(f) *Service upon the Office.* Service of any document upon the Office or the Director shall be made by filing with the individuals and/or offices designated by the Office in its Notice issued pursuant to paragraph (d) of this section, § 509.18 of this part or such other means reasonably suited to provide notice of the person and/or office designated to receive filings.

(g) *Presence of cameras and other recording devices.* The use of cameras and other recording devices, other than those used by the court reporter, shall be prohibited and excluded from the proceedings.

PART 512—[AMENDED]

8. The authority citation for part 512 continues to read as follows:

Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 9, as added by sec. 301, 103 Stat. 316 (12 U.S.C. 1467); sec. 10, as added by sec. 301, 103 Stat. 318 (12 U.S.C. 1467a); sec. 3, 64 Stat. 873, as amended by sec. 204, 103 Stat. 190 (12 U.S.C. 1813); sec. 12, 48 Stat. 892, as amended (15 U.S.C. 78*l*)

§ 512.7 [Amended]

9. Section 512.7(b) is amended by removing the phrases "Director or any Deputy Director of Enforcement", "Director or the Deputy Director", and "Director or Deputy Director" each place they appear and substituting in lieu thereof the phrase "Chief Counsel or his designee".

PART 513—[AMENDED]

10. The authority citation for part 513 continues to read as follows:

Authority: Sec. 3, as added by sec. 301, 103 Stat. 278 (12 U.S.C. 1462a); sec. 4, as added by sec. 301, 103 Stat. 280 (12 U.S.C. 1463); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); sec. 12, sec. 3, 64 Stat. 873, as amended by sec. 204, 103 Stat. 190 (12 U.S.C. 1813); 48 Stat. 892, as amended (15 U.S.C. 78*l*).

§ 513.1 [Amended]

11. Section 513.1 is amended in the last sentence by removing the number

"§ 509.5(a)(2)" and substituting in lieu thereof, the number "§ 509.6(a)(1)".

§ 513.5 [Amended]

12. Section 513.5(b) is amended by removing "§ 509a.3" and "§ 509a.7", and substituting in lieu thereof, "§ 508.3" and "§ 508.7" respectively.

Dated: August 6, 1991.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Deputy Director for Washington Operations.

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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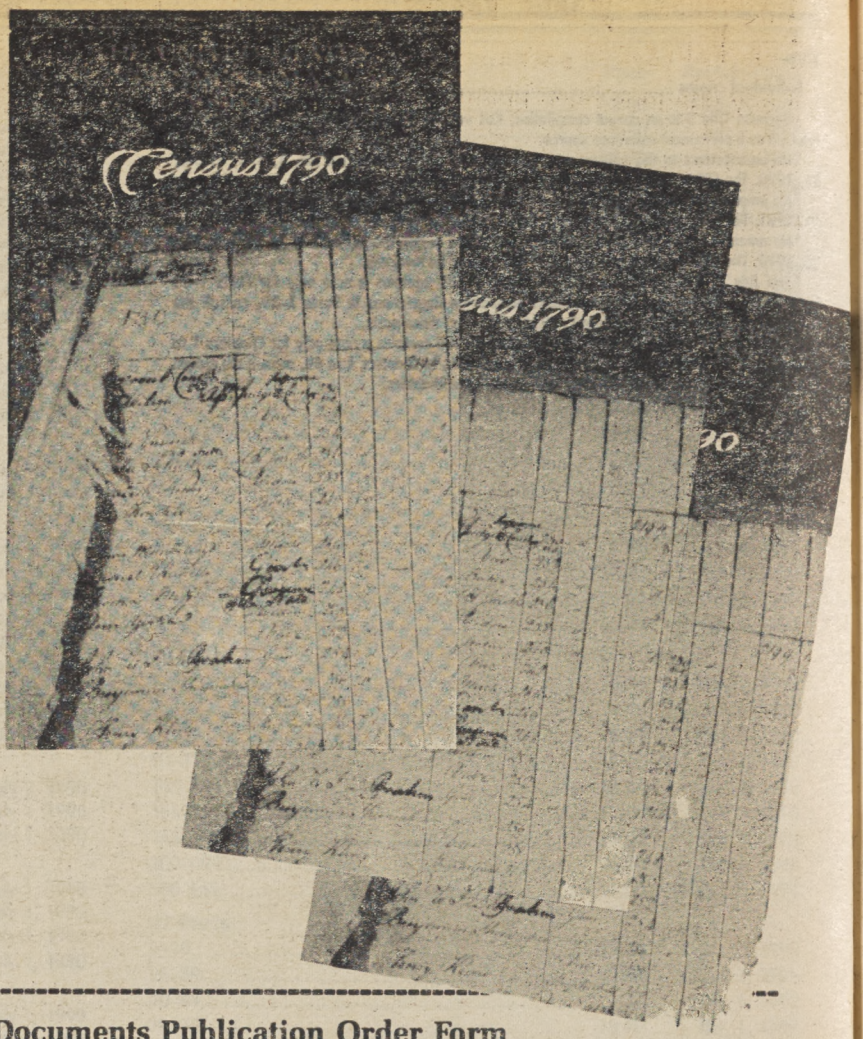
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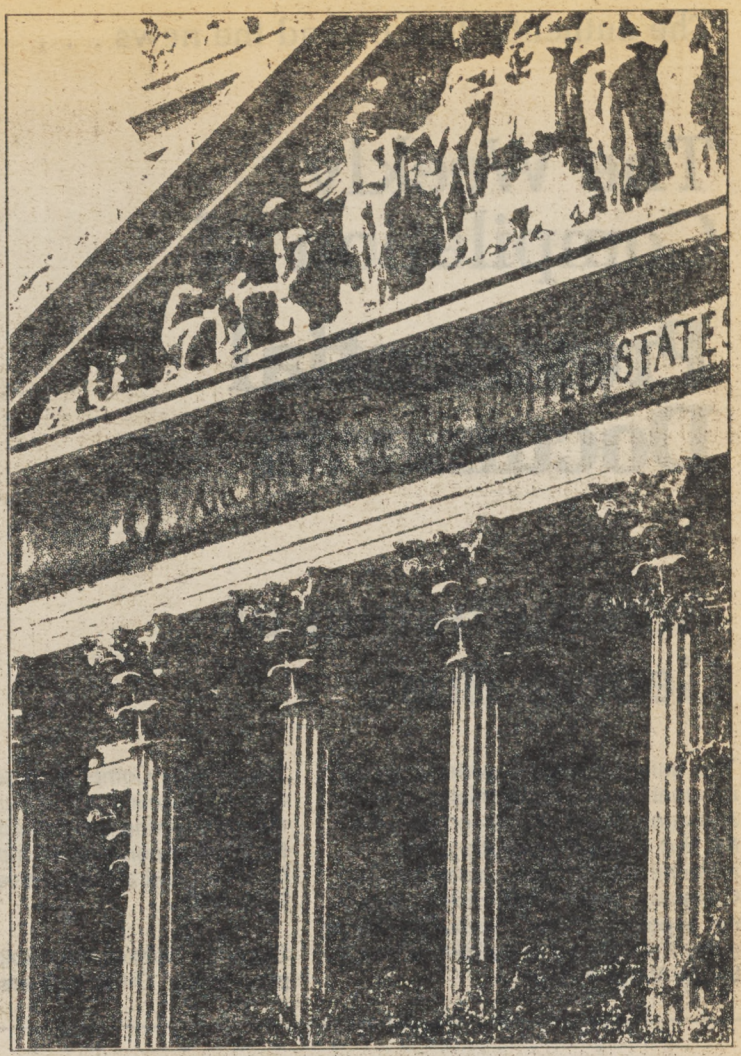
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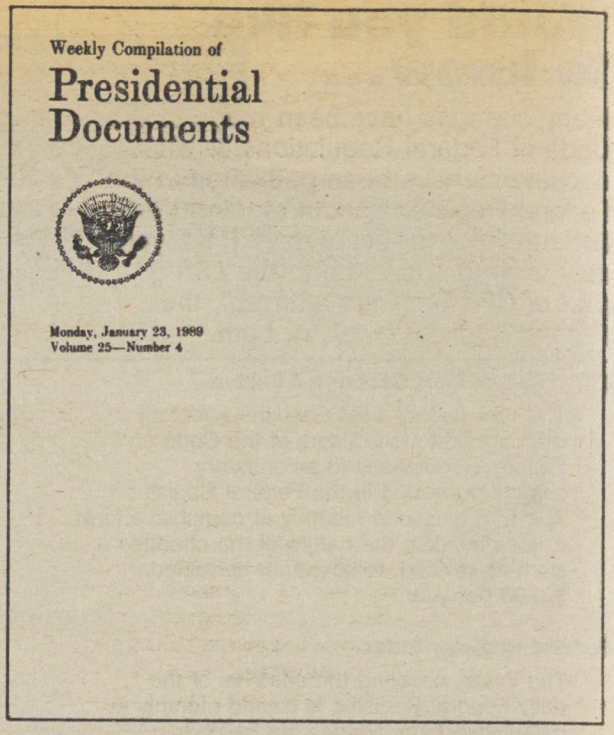
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